

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2018
Constitutional Amendments, 2018
First Extraordinary Session, 2018
Second and Third Extraordinary Sessions, 2017

Volume I
Chapters 1 - 116

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

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OF

STEPHEN J. HARRISON
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OFFICE OF THE CLERK OF THE HOUSE

212 MAIN UNIT
STATE CAPITOL
CHARLESTON, WEST VIRGINIA

CLERK'S OFFICE LEGISLATIVE GROUP

Bo Hoover
Assistant Clerk/Parliamentarian

Robert Altmann Lynn Lewis

Anne Landgrebe Lori Skull

FOREWORD

These volumes contain the Acts of the Second Regular Session, the First Extraordinary Session of the 83rd Legislature, 2018, and the Second and Third Extraordinary Sessions of the 83rd Legislature, 2017.

Second Regular Session, 2018

The Second Regular Session of the 83rd Legislature convened on January 10, 2018. The Constitutional sixty-day limit on the duration of the session was midnight, March 10, 2018. The Legislature adjourned *sine die* on March 10, 2018.

Bills totaling 1,778 were introduced in the two houses during the session (1,143 House, of which 513 were carryover bills from the 2017 Regular Session, 635 Senate). The Legislature passed 260 bills, 131 House and 129 Senate.

The Governor vetoed 11 bills (**Com. Sub. for H. B. 4009**, State Settlement and Recovered Funds Accountability Act; **Com. Sub. for H. B. 4166**, Establishing a special revenue fund to be known as the "Capital Improvements Fund — Department of Agriculture Facilities"; **Com. Sub. for H. B. 4199**, Permitting a nursing home to use trained individuals to administer medication; **Com. Sub. for H. B. 4392**, Relating to Medicaid subrogation liens of the Department of Health and Human Resources; **Com. Sub. for S. B. 141**, Expanding county assessment and collection of head tax on breeding cows; **Com. Sub. for S. B. 313**, Waiving occupational fees and licensing requirements for certain low-income individuals, military families, and young workers; **S. B. 322**, Relating to employees of Department of Agriculture; **S. B. 343**, Limiting expenses in preparing list for notice to redeem; **Com. Sub. for S. B. 392**, Reconfiguring membership of Emergency Medical Services Advisory Council; **Com. Sub. for S. B. 434**, Specifying documents not subject to discovery in certain proceedings; and **Com. Sub. for S. B. 442**, Establishing universal forms and deadlines when submitting prior authorization electronically). Four bills became law without the Governor's signature (**Com. Sub. for H. B. 3004**, Relating to filling vacancies in certain offices; **Com. Sub. for H. B. 4186**, Relating generally to guaranteed asset protection waivers; **Com. Sub. for S. B. 415**,

Permitting wagering on certain professional or collegiate sports events authorized as WV Lottery sports wagering activities; and **Com. Sub. for S. B. 500**, Authorizing City of White Sulphur Springs to expend principal and interest from special interest-bearing fund), leaving a net total of 249 bills, 127 House and 122 Senate, which became law.

There were 187 Concurrent Resolutions introduced during the session, 117 House and 70 Senate, of which 32 House and 22 Senate were adopted. Thirty House Joint Resolutions and 12 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which 2 were adopted, **Com. Sub. for S. J. R. 3**, Judicial Budget Oversight Amendment, and **Com. Sub. for S. J. R. 12**, No Constitutional Right to Abortion Amendment. The House introduced 14 House Resolutions and the Senate introduced 72 Senate Resolutions, of which 8 House and 69 Senate were adopted.

2018 First Extraordinary Session

The Proclamation calling the Legislature into Extraordinary Session on May 20, 2018, contained 9 items for consideration.

The Legislature introduced 17 bills during the Extraordinary Session, 9 House Bills, and 8 Senate Bills. The Legislature passed 8 bills, 4 House and 4 Senate.

The Legislature completed the business of the session and adjourned *sine die* on May 21, 2018.

2017 Second Extraordinary Session

The Proclamation, as amended, calling the Legislature into Extraordinary Session on October 16, 2017, contained 7 items for consideration.

The Legislature introduced 11 bills during the Extraordinary Session, 5 House Bills and 6 Senate Bills.

One concurrent resolution was adopted, **S. C. R. 201**, Authorizing adjournments of Senate and House of Delegates. The Senate adopted two Senate Resolutions.

The Legislature passed 6 bills, 3 House and 3 Senate.

The House adjourned *sine die* on October 17, 2017, and the Senate adjourned *sine die*, ending the Second Extraordinary Session, on January 8, 2018.

2017 Third Extraordinary Session

The Proclamation, calling the Legislature into Extraordinary Session on December 4, 2017, contained 3 items for consideration.

One concurrent resolution was adopted, **S. C. R. 301**, Providing for issuance of bonds under Roads to Prosperity Amendment of 2017, and the Legislature passed **S. B. 3001**, Authorizing sale of bonds pursuant to Roads to Prosperity Amendment of 2017.

The Legislature completed the business of the session and adjourned *sine die* that same day.

STEPHEN J. HARRISON

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

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| 233. | (*SB461) | Extending time to file petition for motor fuel excise tax refund..... | 1980 |
| 234. | (*HB2843) | Permitting Class III municipalities to be included in the West Virginia Tax Increment Act..... | 1983 |
| 235. | (*HB4022) | Exempting the consumer sales and service tax and use tax for services for the repair, remodeling and maintenance of certain aircraft | 2006 |
| 236. | (*HB4135) | Updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act..... | 2009 |
| 237. | (HB4146) | Updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act | 2010 |
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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2018

OFFICERS

Speaker: Tim Armstead - Elkview

Clerk: Stephen J. Harrison - Cross Lanes

Sergeant-at-Arms: Marshall Clay¹ - Fayetteville

Doorkeeper: Frank Larese - Belle

| Name | District | City | Occupation | Term |
|---------------------------------|----------|------------------|---|---|
| ² Adkins, Chanda (R) | 31st | Beckley | Pharmacist | Appt. 2/12/2018, 83rd |
| Ambler, George (R) | 42nd | Ronceverte | Businessman/Educator/Farmer | 81st - 83rd |
| Anderson, Bill (R) | 8th | Williamstown | Educator | 71st - 83rd |
| Armstead, Tim (R) | 40th | Elkview | Attorney | Appt. 9/5/1998, 73rd; 74th - 83rd |
| Atkinson III, Martin "Rick" (R) | 11th | Reedy | Director of Sales | 82nd - 83rd |
| Barrett, Jason (D) | 61st | Martinsburg | Restaurant owner | 81st; 83rd |
| Bates, Mick (D) | 30th | Beckley | Physical Therapist/Small Business Owner | 82nd - 83rd |
| Blair, Saira (R) | 59th | Martinsburg | Student | 82nd - 83rd |
| Boggs, Brent (D) | 34th | Gassaway | Railroad Engineer | 73rd - 83rd |
| Brewer, Scott (D) | 13th | New Haven | Union Carpenter | 83rd |
| Butler, Jim (R) | 14th | Henderson | Excavating Contractor | 81st - 83rd |
| Byrd, Andrew (D) | 35th | South Charleston | Attorney/Small Business Owner | 82nd - 83rd |
| Campbell, Jeff (D) | 42nd | Lewisburg | Teacher/Broadcaster | Appt. 10/30/2017, 83rd |
| Canestraro, Joe (D) | 4th | Benwood | Lawyer | 83rd |
| Capito, Moore (R) | 35th | Charleston | Attorney | 83rd |
| Caputo, Mike (D) | 50th | Rivesville | UMWA, District 31 Vice President | 73rd - 83rd |
| Cooper, Roy (R) | 28th | Wayside | Retired U. S. Navy | 81st - 83rd |
| Cowles, Daryl (R) | 58th | Berkeley Springs | Businessman | 78th - 83rd |
| Criss, Vernon (R) | 10th | Parkersburg | Executive | 69th; 83rd |
| Dean, Mark (R) | 21st | Verner | Principal | 83rd |
| Deem, Frank (R) | 10th | Vienna | Businessman, Oil and Gas Producer | 52nd - 56th (House); 57th - 62nd (Senate); 64th - 65th (Senate); 69th (House); 72nd - 79th (Senate); 82nd - 83rd (House) |
| Diserio, Phillip W. (D) | 2nd | Follansbee | Retired Electrician | 81st; 83rd |
| Eldridge, Jeff (D) | 22nd | Alum Creek | Self-Employed | 77th - 79th; 81st - 83rd |
| Ellington, Joe (R) | 27th | Princeton | Physician | 80th - 83rd |
| Espinosa, Paul (R) | 66th | Charles Town | General Manager, Telecommunications | 81st - 83rd |
| Evans, Allen V. (R) | 54th | Petersburg | Businessman/Farmer | 70th - 84th |
| Evans, Ed (D) | 26th | Welch | Retired Science Teacher | 83rd |
| Fast, Tom (R) | 32nd | Fayetteville | Attorney | 82nd - 83rd |
| Ferro, Michael T. (D) | 4th | McMechen | Retired Educator/Coach | 79th - 83rd |
| Fleischauer, Barbara Evans (D) | 51st | Morgantown | Attorney/Small Business Owner | 72nd - 76th; 78th - 83rd |
| Fluharty, Shawn (D) | 3rd | Wheeling | Attorney | 82nd - 83rd |
| Folk, Michael (R) | 63rd | Martinsburg | Airline Pilot/Farmer | 81st - 83rd |
| Foster, Geoff (R) | 15th | Winfield | Construction Supply | 82nd - 83rd |
| Frich, Cindy (R) | 51st | Morgantown | Sales/Volunteer Home Care | 76th - 77th; 81st - 83rd |
| Gearheart, Marty (R) | 27th | Bluefield | Businessman | 80th - 83rd |
| ³ Graves, Dianna (R) | 38th | Cross Lanes | Auditor | Appt. 9/19/2017, 83rd |
| Hamilton, Bill (R) | 45th | Buckhannon | Independent Insurance Agency Owner | 76th - 83rd |
| Hamrick, Danny (R) | 48th | Lost Creek | Consulting, Media Production | 81st - 83rd |
| Hanshaw, Roger (R) | 33rd | Wallback | Attorney | 82nd - 83rd |
| Harshbarger, Jason (R) | 7th | Pullman | Natural Gas Storage Project Management | 83rd |
| Hartman, William G. (D) | 43rd | Elkins | Retired Independent Insurance Agent | 76th - 83rd |
| Hicks, Kenneth P. (D) | 19th | Kenova | Attorney | 82nd - 83rd |
| Higginbotham, Joshua (R) | 13th | Poca | Author | 83rd |
| Hill, Jordan C. (R) | 41st | Summersville | Human Resources | 82nd - 83rd |
| Hollen, Ray (R) | 9th | Elizabeth | Retired USCG, Retired WV State Police | 83rd |
| Hornbuckle, Sean (D) | 16th | Huntington | Financial Services Broker | 82nd - 83rd |

MEMBERS OF THE HOUSE OF DELEGATES - Continued

| | | | | |
|---|------|----------------------|--|--|
| Householder, Eric L. (R)..... | 64th | Martinsburg..... | Small Business Owner..... | 80th - 83rd |
| Howell, Gary G. (R)..... | 56th | Keyser..... | Small Business Owner..... | 80th - 83rd |
| Inauinta II, Richard J. (D)..... | 48th | Clarksburg..... | Teacher/Coach..... | 76th - 81st; 83rd |
| Iser, Phil (D)..... | 43rd | Elkins..... | Attorney..... | 83rd |
| ⁴ Jennings, D. "Buck" Rolland (R)..... | 53rd | Thornton..... | Self-Employed..... | Appt. 10/10/2017, 83rd |
| Kelly, John R. (R)..... | 10th | Parkersburg..... | Retired, Chemical Industry..... | 82nd - 83rd |
| Kessinger, Kayla (R)..... | 32nd | Mount Hope..... | Director of Human Resources..... | 82nd - 83rd |
| Lane, Charlotte R. (R)..... | 35th | Charleston..... | Lawyer..... | 64th; 67th; 70th; 73rd |
| Longstreth, Linda (D)..... | 50th | Fairmont..... | Administrator/Educator..... | 77th - 83rd |
| Love, Shirley (D)..... | 32nd | Oak Hill..... | Retired..... | Appt. 8/8/1994, 71st (Senate); 72nd - 78th (Senate); 83rd (House) |
| Lovejoy, Chad (D)..... | 17th | Huntington..... | Attorney..... | 83rd |
| Lynch, Dana (D)..... | 44th | Webster Springs..... | Retired..... | 81st - 83rd |
| Marcum, Justin (D)..... | 20th | Williamson..... | Attorney..... | Appt. 1/21/2012, 80th; 81st - 83rd |
| Martin, Patrick S. (R)..... | 46th | Weston..... | Business Owner..... | 83rd |
| Maynard, Zack (R)..... | 22nd | Harts..... | Self-Employed..... | 83rd |
| McGeehan, Pat (R)..... | 1st | Chester..... | Business Sales/ Author..... | 79th; 82nd - 83rd |
| Miley, Timothy (D)..... | 48th | Bridgeport..... | Attorney..... | 77th - 83rd |
| Miller, Carol (R)..... | 16th | Huntington..... | Small Business Owner/Buffalo Farmer..... | 78th - 83rd |
| Miller, Rodney (D)..... | 23rd | Madison..... | Retired Sheriff/Executive Director Sheriff's Assn..... | 83rd |
| Moore, Riley (R)..... | 67th | Halltown..... | | 83rd |
| Moye, Rick (D)..... | 29th | Crab Orchard..... | Businessman/School Bus Operator..... | 78th - 83rd |
| Nelson, Eric Jr. (R)..... | 35th | Charleston..... | Businessman..... | 80th - 83rd |
| Overington, John (R)..... | 62nd | Martinsburg..... | Public Relations/Former Educator..... | 67th - 83rd |
| ⁵ Pack, Jeffrey (R)..... | 28th | Cool Ridge..... | Pest Control Technician..... | Appt. 1/10/2018, 83rd |
| Paynter, Tony (R)..... | 25th | Hanover..... | Truck Driver..... | 83rd |
| Pethel, Dave (D)..... | 5th | Hundred..... | Educator..... | 69th - 71st; 74th - 83rd |
| Phillips, Rupert Jr. (R)..... | 24th | Lorado..... | Sales Manager..... | 80th - 83rd |
| Pushkin, Mike (D)..... | 37th | Charleston..... | Taxi Driver/Musician..... | 82nd - 83rd |
| Pyles, Rodney A. (D)..... | 51st | Morgantown..... | Retired..... | 83rd |
| Queen, Ben (R)..... | 48th | Bridgeport..... | Media Entrepreneur/Photography..... | 83rd |
| Robinson, Andrew (D)..... | 36th | Charleston..... | Real Estate Appraiser/Broker..... | 83rd |
| Rodighiero, Ralph (D)..... | 24th | Logan..... | UPS Driver..... | 78th - 80th; 82nd - 83rd |
| Rohrbach, Matthew (R)..... | 17th | Huntington..... | Physician..... | 82nd - 83rd |
| Romine, Chuck (R)..... | 16th | Huntington..... | Retired Insurance Agent..... | 59th - 61st; 74th; 83rd |
| Romine, William R. (R)..... | 6th | West Union..... | Retired School Administrator..... | 75th - 83rd |
| Rowan, Ruth (R)..... | 57th | Points..... | Retired Educator..... | 77th - 83rd |
| Rowe, Larry L. (D)..... | 36th | Charleston..... | Attorney..... | 73rd - 74th (House) 75th - 76th (Senate) 82nd - 83rd (House) |
| Shott, John (R)..... | 27th | Bluefield..... | Attorney..... | 79th (Resigned and Appt. to Senate 5/19/2010); 81st - 83rd (House) |
| Sobonya, Kelli (R)..... | 18th | Barboursville..... | Realtor..... | 76th - 83rd |
| Sponaugle, Isaac (D)..... | 55th | Franklin..... | Attorney..... | 81st - 83rd |
| Stalder, Joe (R)..... | 51st | Core..... | Retired..... | 82nd - 83rd |
| Storch, Eriikka (R)..... | 3rd | Wheeling..... | Financial Officer..... | 80th - 83rd |
| Summers, Amy (R)..... | 49th | Flemington..... | Registered Nurse..... | 82nd - 83rd |
| Sypolt, Terri Funk (R)..... | 52nd | Kingwood..... | Assessor..... | 83rd |
| Thompson, Robert (D)..... | 19th | Wayne..... | Teacher..... | 83rd |
| Upson, Jill (R)..... | 65th | Charles Town..... | Former Retail Manager..... | 82nd - 83rd |
| Wagner, Danny (R)..... | 47th | Philippi..... | Retired Educator/ Coach..... | 82nd - 83rd |
| ⁶ Walters, Ron (R)..... | 39th | Charleston..... | Insurance Executive/President..... | 71st - 73rd; 75th - 83rd |
| Ward, Guy (R)..... | 50th | White Hall..... | Fairmont Community Development Partnership..... | 83rd |
| Westfall, Steve (R)..... | 12th | Ripley..... | Insurance Agents..... | 81st - 83rd |
| White, Brad (R)..... | 36th | Charleston..... | Insurance Agent/Owner..... | 82nd - 83rd |
| Williams, John (D)..... | 51st | Morgantown..... | Insurance Sales..... | 83rd |
| Wilson, S Marshall (R)..... | 60th | Gerrardstown..... | Author/Army Officer..... | 83rd |
| Zatezalo, Mark (R)..... | 1st | Weirton..... | Hydrogeologist..... | 82nd - 83rd |

MEMBERS OF THE HOUSE OF DELEGATES - Continued

¹ Sergeant-at-Arms Marshall Clay resigned April 1, 2018, and Anne Lieberman was elected on May 21, 2018.
² Appointed February 12, 2018, to fill the unexpired term of Karen “Lynne” Arvon, who was appointed to the Senate January 23, 2018.
³ Appointed September 19, 2017, to fill the unexpired term of Nancy Reagan Foster, who resigned September 1, 2017.
⁴ Appointed October 10, 2017, to fill the unexpired term of Tony Lewis, who died September 24, 2017.
⁵ Appointed January 10, 2018, to fill the unexpired term of John O’Neal, who resigned December 22, 2017.
⁶ Ron Walters resigned March 9, 2018.

ROSTER ADDENDUM

(Other Delegates who served during part of period covered by this publication)

| | | | |
|--------------------------------|-------------------------|------------------------------------|---|
| Arvon, Karen “Lynne” (R)..... | 31st..... Beckley | Medical Sales/Social Services..... | 81st - 83rd, resigned January 23, 2018 due to appointment to the Senate. Served in the House during the 2nd and 3rd Extraordinary Sessions of 2017 and the beginning of the 2018 Regular Session. |
| Baldwin, Stephen Jr. (D)..... | 42nd | Ronceverte | Minister |
| | | | 83rd, resigned October 16, 2017, due to appointment to the Senate. Served in the House during the 2nd Extraordinary Session, 2017. |
| Malcolm, Sharon Lewis (R)..... | 39th | Charleston | Retired State Employee..... |
| | | | 83rd, appointed March 23, 2018 to fill vacancy of Ron Walters and served in the House during the 1st Extraordinary Session, 2018. |
| O’Neal, John IV (R)..... | 28th | Beckley | Business |
| | | | 83rd, resigned December 22, 2017. Served in the House during the 2nd and 3rd Extraordinary Sessions, 2017. |

MEMBERS OF THE SENATE

REGULAR SESSION, 2018

OFFICERS

President: Mitch Carmichael – Ripley

Clerk: Lee Cassis¹ – Charleston

Sergeant-at-Arms: Andrew Palmer – Charleston

Doorkeeper: Jeffrey Branham – Cross Lanes

| Name | District | City | Occupation | Legislative Service |
|---------------------------------------|----------|------------------|---|--|
| ² Arvon, Karen “Lynne” (R) | 9th | Beckley | Medical Sales/Social Services | 81st – 83rd (House); Appt. to Senate 1/23, 2018 |
| Azinger, Mike (R) | 3rd | Vienna | Manager, Contractor Group | 82nd (House); 83rd |
| ³ Baldwin, Jr, Stephen (D) | 10th | Ronceverte | Minister | 83rd (House); Appt. to Senate 10/16/2017, 83rd |
| Beach, Bob (D) | 13th | Morgantown | | Appt. 5/1998, 73rd; 75th – 79th (House); 80th – 83rd |
| Blair, Craig (R) | 15th | Martinsburg | Businessman | 76th – 79th (House); 79th – 83rd |
| Boley, Donna (R) | 3rd | St. Marys | Retired | Appt. 5/14/1985 67th; 68th – 83rd |
| Boso, Greg (R) | 11th | Summersville | Civil Engineer | 82nd – 83rd |
| Carmichael, Mitch (R) | 4th | Ripley | Director of Commercial Sales | 75th – 80th (House); 81st – 83rd |
| Clements, Charles H. (R) | 2nd | New Martinsville | | 77th (House); Appt. 1/2017, 83rd |
| Cline, Sue (R) | 9th | Brenton | Real Estate Agent | Appt. 1/2016, 82nd; 83rd |
| ⁴ Drennan, Mark A. (R) | 4th | Hurricane | Exec. Director of WV Behavioral Providers Association | Appt. 9/5/2017, 83rd |
| Facemire, Doug (D) | 12th | Sutton | Owner, Grocery Chain | 79th – 83rd |
| Ferns, Ryan (R) | 1st | Wheeling | Physical Therapist | 80th – 81st (House); 83rd |
| Gaunch, Ed (R) | 8th | Charleston | Retired/Former President/ Insurance | 82nd – 83rd |
| Jeffries, Glenn (D) | 8th | Red House | Businessman | 83rd |
| Karnes, Robert (R) | 11th | Tallmansville | Information and Technology Field Services | 82nd – 83rd |
| Mann, Kenny (R) | 10th | Ballard | Funeral Director | 83rd |
| Maroney, Mike (R) | 2nd | Glen Dale | Physician | 83rd |
| Maynard, Mark (R) | 6th | Genoa | Automobile Dealer | 82nd – 83rd |
| Ojeda, Richard II (D) | 7th | Holden | Retired US Army/JROTC Instructor | 83rd |
| Palumbo, Corey (D) | 17th | Charleston | Attorney | 76th – 78th (House); 79th – 83rd |
| Plymale, Robert (D) | 5th | Huntington | Businessman | 71st – 83rd |
| Prezioso, Roman (D) | 13th | Fairmont | Administrator | 69th – 73rd (House); 73rd – 83rd |
| Romano, Mike (D) | 12th | Clarksburg | Attorney/CPA | 82nd – 83rd |
| Rucker, Patricia (R) | 16th | Harpers Ferry | Home Schooling Mother | 83rd |
| Smith, Randy (R) | 14th | Davis | Coal Miner | 81st – 82nd (House); 83rd |
| Stollings, Ron (D) | 7th | Madison | Physician | 78th – 83rd |
| Swope, Chandler (R) | 6th | Bluefield | Retired | 83rd |
| Sypolt, Dave (R) | 14th | Kingwood | Professional Land Surveyor | 78th – 83rd |
| Takubo, Tom (R) | 17th | South Charleston | Physician | 82nd – 83rd |
| Trump, Charles (R) | 15th | Berkeley Springs | Lawyer | 71st – 78th (House); 82nd – 83rd |
| Unger, John II (D) | 16th | Martinsburg | Businessman/Economic Development | 74th – 83rd |
| Weld, Ryan (R) | 1st | Wellsburg | Physical Therapist | 82nd – 83rd |
| Woelfel, Mike (D) | 5th | Huntington | Lawyer | 82nd – 83rd |

¹ Appointed January 6, 2018, to fill the vacancy created by the resignation of the Honorable Clark Barnes, who resigned January 5, 2017, and elected on January 8, 2018, as the 22nd Clerk of the Senate.

² Appointed January 23, 2018, to fill the vacancy created by the resignation of Jeff Mullens, who resigned on January 12, 2018.

³ Appointed October 16, 2017, to fill the vacancy created by the resignation of Ronald Miller, who resigned September 30, 2017.

⁴ Appointed September 5, 2017, to fill the vacancy created by the resignation of Mike Hall, who resigned on August 20, 2017.

MEMBERS OF THE SENATE - Continued

ROSTER ADDENDUM

(Other Senators who served during part of period covered by this publication)

| | | | | |
|-------------------------|-----------|---------------------|--------------------|--|
| Miller, Ronald (D)..... | 10th..... | Lewisburg | Self Employed..... | 80 th - 83 rd , resigned September 30, 2017. Served in the 2 nd Extraordinary Session, 2017. |
| Mullens, Jeff (R)..... | 9th..... | Shady Springs | Insurance..... | 83 rd , resigned January 12, 2018. Served in the 2 nd and 3 rd Extraordinary Sessions, 2017 and the beginning of the 2018 Regular Session. |

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2018

STANDING

AGRICULTURE AND NATURAL RESOURCES

A. Evans (*Chair, Agriculture*), Hamilton (*Chair, Natural Resources*), R. Romine (*Vice Chair, Agriculture*), Ambler (*Vice Chair, Natural Resources*), Sponaugle (*Minority Chair, Agriculture*), Rodighiero (*Minority Chair, Natural Resources*), Thompson (*Minority Vice Chair, Agriculture*), Hicks (*Minority Vice Chair, Natural Resources*), Anderson, Atkinson, Cooper, Folk, Hanshaw, Harshbarger, C. Miller, Moore, Overington, Statler, Summers, Wagner, Brewer, Campbell, Eldridge, Love and Lynch.

BANKING AND INSURANCE

Frich (*Chair, Banking*), Westfall (*Chair, Insurance*), White (*Vice Chair, Insurance*), Upson (*Vice Chair, Banking*), Marcum (*Minority Chair, Banking*), Hartman (*Minority Chair, Insurance*), Lovejoy (*Minority Vice Chair, Banking*), Robinson (*Minority Vice Chair, Insurance*), Adkins, Capito, Criss, Deem, A. Evans, Householder, Martin, McGeehan, Nelson, C. Romine, Shott, Walters, Bates, Iaquinta, Isner, Rowe and Sponaugle.

EDUCATION

Espinosa (*Chair*), Statler (*Vice Chair*), Moye (*Minority Chair*), Hornbuckle (*Minority Vice Chair*), Atkinson, Blair, Cooper, Dean, Folk, Higginbotham, Kelly, Rohrbach, R. Romine, Rowan, Upson, Wagner, Westfall, Wilson, Campbell, E. Evans, Hicks, Pyles, Rodighiero, Rowe and Thompson.

HOUSE OF DELEGATES COMMITTEES

ENERGY

Anderson (*Chair*), Kelly (*Vice Chair, Oil and Gas*), Zatezalo (*Vice Chair, Coal*), Pethtel (*Minority Chair*), Eldridge (*Minority Vice Chair*), Hamilton, Harshbarger, Higginbotham, Kessinger, Martin, Maynard, Paynter, Phillips, R. Romine, Statler, Storch, Sypolt, Upson, Ward, Boggs, Caputo, Hicks, Lynch, Marcum and Miley.

ENROLLED BILLS (JOINT)

Hanshaw (*Chair*), Westfall (*Vice Chair*), Lane, Marcum and Pushkin.

FINANCE

Nelson (*Chair*), Householder (*Vice Chair*), Boggs (*Minority Chair*), Bates (*Minority Vice Chair*), Ambler, Anderson, Butler, Cowles, Ellington, Espinosa, A. Evans, Frich, Gearheart, Hamilton, C. Miller, Storch, Walters, Westfall, Barrett, Hartman, Longstreth, Moye, Pethtel, Rowe and Sponaugle.

FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES

Statler (*Chair*), Maynard (*Vice Chair*), R. Miller (*Minority Chair*), Lovejoy (*Minority Vice Chair*), Cooper, Deem, Jennings, Sypolt, Ward, Love and Sponaugle.

GOVERNMENT ORGANIZATION

Howell (*Chair*), Hamrick (*Vice Chair*), Ferro (*Minority Chair*), Diserio (*Minority Vice Chair*), Adkins, Criss, Graves, Hill, Jennings, Martin, Maynard, McGeehan, Pack, Paynter, C. Romine, Sypolt, Ward, Brewer, Caputo, Eldridge, Iaquinta, Lynch, Marcum, Pyles and Williams.

HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Ellington (*Chair*), Summers (*Vice Chair*), Longstreth (*Minority Chair*), Pushkin (*Minority Vice Chair*), Atkinson, Butler, Cooper, Criss, Dean, Frich, Hill, Hollen, Householder, Queen, Rohrbach, Rowan, Sobonya, White, Bates, Campbell, Fleischauer, Iaquinta, Love, Robinson and Rodighiero.

INDUSTRY AND LABOR

Fast (*Chair*), Foster (*Vice Chair*), Brewer (*Minority Chair*), Isner (*Minority Vice Chair*), Blair, Cowles, Dean, Ellington, Harshbarger, Hill, Householder, Jennings, Overington, Shott, Sobonya, Statler, Ward, White, Caputo, Diserio, Ferro, Fluharty, Hicks, R. Miller and Pushkin.

INTERSTATE COOPERATION

Storch (*Chair*), Hamrick (*Vice Chair*), Ellington, Higginbotham, R. Romine, Barrett and Ferro.

JUDICIARY

Shott (*Chair*), Hanshaw (*Vice Chair*), Fleischauer (*Minority Chair*), Fluharty (*Minority Vice Chair*), Capito, Deem, Fast, Foster, Harshbarger, Hollen, Kessinger, Lane, Moore, Overington, Queen, Sobonya, Summers, Zatezalo, Byrd, Canestraro, Isner, Lovejoy, R. Miller, Pushkin and Robinson.

PENSIONS AND RETIREMENT

Hamilton (*Vice Chair*), Anderson, Hollen, Storch, Walters, E. Evans and Pethtel.

POLITICAL SUBDIVISIONS

Storch (*Chair*), Blair (*Vice Chair*), R. Miller (*Minority Chair*), Williams (*Minority Vice Chair*), Anderson, Cowles, Folk, Foster, Gearheart, Graves, Hamrick, Hanshaw, Householder, Jennings, Lane,

HOUSE OF DELEGATES COMMITTEES

Rohrbach, Summers, Barrett, Byrd, Canestraro, Longstreth, Moyer, Pyles, Robinson and Rowe.

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Ellington (*Chair*), Kessinger (*Vice Chair*), Frich, Hollen Sobonya, Storch, Upson, Bates, Boggs, Campbell and Hornbuckle.

ROADS AND TRANSPORTATION

Gearheart (*Chair*), Capito (*Vice Chair*), Caputo (*Minority Chair*), E. Evans (*Minority Vice Chair*), Ambler, Butler, Criss, Dean, Espinosa, Fast, Hamrick, Howell, Lane, Maynard, Paynter, Phillips, Rohrbach, Statler, Wagner, Boggs, Canestraro, Diserio, Hartman, Moyer and Williams.

RULE MAKING REVIEW (JOINT)

Sobonya (*Cochair*), Frich (*Vice Cochair*), Hanshaw, Fleischauer and Rowe.

RULES

Armstead (*Chair*), Anderson, Cowles, Ellington, Espinosa, Foster, Hanshaw, Howell, C. Miller, Nelson, Overington, Shott, Sobonya, Boggs, Caputo, Ferro, Fleischauer, Miley, Moyer and Pethtel.

SENIOR CITIZEN ISSUES

Rowan (*Chair*), Rohrbach (*Vice Chair*), Lynch (*Minority Chair*), Pyles (*Minority Vice Chair*), A. Evans, Graves, Kelly, Martin, Maynard, Paynter, Queen, C. Romine, R. Romine, Sypolt, Walters, White, Zatezalo, Boggs, Eldridge, Ferro, Fleischauer, Love, Lovejoy, Moyer and Pethtel.

HOUSE OF DELEGATES COMMITTEES

**SMALL BUSINESS ENTREPRENEURSHIP AND
ECONOMIC DEVELOPMENT**

Hill (*Chair*), Atkinson (*Vice Chair*), Rowe (*Minority Chair*), Barrett (*Minority Vice Chair*), Blair, Espinosa, Higginbotham, Kelly, Kessinger, Martin, C. Miller, Moore, Pack, Phillips, Queen, Storch, Ward, Westfall, Zatezalo, Bates, Byrd, Marcum, Miley, Sponaugle and Thompson.

VETERANS' AFFAIRS AND HOMELAND SECURITY

Butler (*Chair, Homeland Security*), Cooper (*Chair, Veterans' Affairs*), McGeehan (*Vice Chair, Homeland Security*), Wagner (*Vice Chair, Veterans' Affairs*), Byrd (*Minority Chair, Homeland Security*), Iaquinta (*Minority Chair, Veterans' Affairs*), Baldwin (*Minority Vice Chair, Homeland Security*), Canestraro (*Minority Vice Chair, Veterans' Affairs*), Higginbotham, Hollen, Howell, Kelly, Kessinger, Pack, Paynter, Rowan, Sypolt, Upson, Campbell, Ferro, Fleischauer, Jennings, Longstreth, Lynch and Pushkin.

SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2018

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Sypolt (*Chair*), Rucker (*Vice Chair*), Clements, Cline, Mann, Maynard, Smith, Baldwin, Beach, Ojeda and Woelfel.

BANKING AND INSURANCE

Azinger (*Chair*), Clements (*Vice Chair*), Drennan, Mann, Maroney, Swope, Sypolt, Weld, Facemire, Palumbo, Prezioso, Romano and Woelfel.

CONFIRMATIONS

Boley (*Chair*), Ferns (*Vice Chair*), Azinger, Blair, Boso, Gaunch, Palumbo, Plymale and Prezioso.

ECONOMIC DEVELOPMENT

Maroney (*Chair*), Maynard (*Vice Chair*), Arvon, Cline, Drennan, Mann, Smith, Swope, Takubo, Baldwin, Jeffries, Romano, Stollings and Woelfel.

EDUCATION

Mann (*Chair*), Karnes (*Vice Chair*), Azinger, Boley, Cline, Drennan, Rucker, Swope, Trump, Beach, Plymale, Romano, Stollings and Unger.

ENERGY, INDUSTRY AND MINING

Smith (*Chair*), Sypolt (*Vice Chair*), Blair, Boley, Cline, Drennan, Ferns, Mann, Swope, Facemire, Jeffries, Ojeda and Woelfel.

SENATE COMMITTEES

ENROLLED BILLS (JOINT)

Maynard (*Chair*), Azinger, Gaunch, Palumbo and Prezioso.

FINANCE

Blair (*Chair*), Boso (*Vice Chair*), Arvon, Boley, Drennan, Ferns, Gaunch, Mann, Maroney, Sypolt, Takubo, Facemire, Palumbo, Plymale, Prezioso, Stollings and Unger.

GOVERNMENT ORGANIZATION

Gaunch (*Chair*), Maynard (*Vice Chair*), Boso, Clements, Maroney, Smith, Sypolt, Takubo, Weld, Baldwin, Facemire, Jeffries, Palumbo and Woelfel.

HEALTH AND HUMAN RESOURCES

Takubo (*Chair*), Maroney (*Vice Chair*), Arvon, Azinger, Clements, Karnes, Rucker, Weld, Palumbo, Plymale, Prezioso, Stollings and Unger.

INTERSTATE COOPERATION

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

JUDICIARY

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

MILITARY

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

SENATE COMMITTEES

NATURAL RESOURCES

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

PENSIONS

Karnes (*Chair*), Gaunch (*Vice Chair*), Arvon, Maroney, Weld, Plymale and Romano.

RULE-MAKING REVIEW (JOINT)

Maynard (*Cochair*), Weld (*Vice Cochair*), Karnes, Sypolt, Jeffries, Miller and Carmichael (*ex officio*).

RULES

Carmichael (*Chair*), Blair, Boley, Ferns, Gaunch, Sypolt, Trump, Palumbo, Plymale, Prezioso and Stollings.

TAX REFORM

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

TRANSPORTATION AND INFRASTRUCTURE

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

WORKFORCE

Swope (*Chair*), Weld (*Vice Chair*), Arvon, Boso, Karnes, Rucker, Smith, Beach, Jeffries, Ojeda and Stollings.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2018

CHAPTER 1

(Com. Sub. for S. B. 555 - By Senator Ferns)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §55-7C-3 of the Code of West Virginia, 1931, as amended, relating to liability for qualified directors of volunteer organizations and entities; and providing that a qualified director is not personally liable for the torts of a volunteer organization or entity, or the torts of the agents or employees of a volunteer organization or entity, unless he or she approved of, ratified, directed, sanctioned, or participated in the wrongful acts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7C. IMMUNITY FROM CIVIL LIABILITY FOR QUALIFIED DIRECTORS OF CERTAIN GOVERNMENTAL AND NONPROFIT ENTITIES.

§55-7C-3. Limited civil liability of qualified directors.

1 (a) Notwithstanding any other provision of this code, a
2 qualified director is not personally liable for negligence,
3 either through act or omission, or whether actual or imputed,
4 in the performance of managerial functions performed on
5 behalf of a volunteer organization or entity: *Provided*, That
6 this section shall not exempt a qualified director from

7 liability when he or she is found to be grossly negligent in
8 the performance of his or her duties.

9 (b) Notwithstanding any other provision of this code to
10 the contrary, a qualified director is not personally liable for
11 the torts of a volunteer organization or entity, or the torts of
12 the agents or employees of a volunteer organization or
13 entity, unless he or she approved of, ratified, directed,
14 sanctioned, or participated in the wrongful acts.

15 (c) Nothing in this section relieves a volunteer
16 organization or entity from imputed liability for the
17 negligent acts of a qualified director committed within the
18 scope of the qualified director's duties. Nothing in this
19 article shall be construed as a grant of immunity to any
20 person who, through his or her operation of a motor vehicle,
21 causes any injury or damage to another person.



CHAPTER 2

**(S. B. 576 - By Senators Gaunch, Palumbo, Ferns,
Trump and Plymale)**

[Passed March 8, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §29-12D-1a of the Code of West Virginia, 1931, as amended; and to amend and reenact §59-1-11 and §59-1-28a of said code, all relating to Patient Injury Compensation Fund; changing dates for collection of assessments to be deposited in Patient Injury Compensation Fund; designating person responsible for paying assessment in certain circumstances; conforming language establishing when certain assessment must be paid with current law language describing when medical malpractice claim may be asserted; providing for transfer of remaining funds; changing

the amount of certain circuit clerk filing fees; and correcting cross-references.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

§29-12D-1a. Additional funding for Patient Injury Compensation Fund; assessment on licensed physicians; assessment on hospitals; assessment on certain awards.

1 (a) *Annual assessment on licensed physicians.* —

2 (1) The Board of Medicine and the Board of Osteopathic
3 Medicine shall collect a biennial assessment in the amount
4 of \$125 from every physician licensed by each board for the
5 privilege of practicing medicine in this state. The
6 assessment is to be imposed and collected on forms
7 prescribed by each licensing board. The assessment shall be
8 collected as part of licensure or license renewal beginning
9 July 1, 2016, for licenses issued or renewed through
10 December 31, 2021: *Provided*, That the following
11 physicians shall be exempt from the assessment:

12 (A) A resident physician who is a graduate of a medical
13 school or college of osteopathic medicine enrolled and who
14 is participating in an accredited full-time program of post-
15 graduate medical education in this state;

16 (B) A physician who has presented suitable proof that
17 he or she is on active duty in the armed forces of the United
18 States and who will not be reimbursed by the armed forces
19 for the assessment;

20 (C) A physician who practices solely under a special
21 volunteer medical license authorized by §30-3-10a or §30-
22 14-12b of this code;

23 (D) A physician who holds an inactive license pursuant
24 to §30-3-12(j) or §30-14-10 of this code, or a physician who
25 voluntarily surrenders his or her license: *Provided*, That a
26 retired osteopathic physician who submits to the Board of
27 Osteopathic Medicine an affidavit asserting that he or she
28 receives no monetary remuneration for any medical services
29 provided, executed under the penalty of perjury and if
30 executed outside the State of West Virginia, verified, may
31 be considered to be licensed on an inactive basis: *Provided*,
32 *however*, That if a physician or osteopathic physician elects
33 to resume an active license to practice in the state and the
34 physician or osteopathic physician has not paid the
35 assessments during his or her inactive status, then as a
36 condition of receiving an active status license, the physician
37 or osteopathic physician shall pay the assessment due in the
38 year in which physicians or the osteopathic physician
39 resumes an active license; and

40 (E) A physician who practices less than 40 hours a year
41 providing medical genetic services to patients within this
42 state.

43 (2) The entire proceeds of the annual assessment
44 collected pursuant to §29-12D-1a(a) of this code shall be
45 dedicated to the Patient Injury Compensation Fund. The
46 Board of Medicine and the Board of Osteopathic Medicine
47 shall promptly pay over to the Board of Risk and Insurance
48 Management all amounts collected pursuant to this
49 subsection for deposit in the fund.

50 (3) Notwithstanding any provision of the code to the
51 contrary, a physician required to pay the annual assessment
52 who fails to do so shall not be granted a license or renewal
53 of an existing license by the Board of Medicine or the Board
54 of Osteopathic Medicine. Any license which expires as a
55 result of a failure to pay the required assessment shall not
56 be reinstated or reactivated until the assessment is paid in
57 full.

58 (b) *Assessment on trauma centers.* —The Board of Risk
59 and Insurance Management shall levy an assessment of \$25
60 for each trauma patient treated at a health care facility
61 designated by the Office of Emergency Medical Services as
62 a trauma center, as reported to the West Virginia Trauma
63 Registry, from January 1, 2016, through June 30, 2021. The
64 assessment is due June 30 following each calendar year for
65 which assessments are levied: *Provided,* That the
66 assessment for the period January 1, 2021, through June 30,
67 2021, shall be due by December 31, 2021.

68 (c) *Assessment on claims filed under the Medical*
69 *Professional Liability Act.* — From July 1, 2016, through
70 December 31, 2021, an assessment of one percent of the
71 gross amount of any settlement or judgment in a qualifying
72 claim shall be levied.

73 (1) For purposes of this subsection, a qualifying claim
74 is any claim for which a screening certificate of merit is
75 required, or for which a statement setting forth the basis of
76 the alleged liability of the health care provider is allowed in
77 lieu of the screening certificate of merit, as defined in §55-
78 7B-6 of this code.

79 (2) For any assessment levied pursuant to this
80 subsection for which a judgment is entered by a court, the
81 date of the entry of judgment shall be used to determine
82 applicability of this provision. The defendant or defendants
83 shall remit the assessment to the clerk of the court in which
84 the qualified claim was filed. The clerk of the court shall
85 then remit the assessment monthly to the State Treasury to
86 be deposited in the fund.

87 (3) For any assessment levied pursuant to this
88 subsection on a settlement entered into by the parties, the
89 date on which the agreement is formalized in writing by the
90 parties shall be used to determine applicability of this
91 provision. At the time that an action alleging a qualified
92 claim is dismissed by the parties, the assessment shall be
93 remitted by the plaintiff or his or her counsel to the clerk of

94 the court, who shall then remit the assessment to the State
95 Treasury to be deposited in the fund. Collected assessments
96 shall be remitted no less often than monthly. If a qualifying
97 claim is settled prior to the filing of an action, the claimant,
98 or his or her counsel, shall remit the payment to the Board
99 of Risk and Insurance Management within 60 days of the
100 date of the settlement agreement to be paid into the fund.

101 (d) *Annual Report; transfer of fund balance.* — The
102 requirements of this section shall terminate on the dates set
103 forth in this section or sooner if the liability of the Patient
104 Injury Compensation Fund has been paid or has been funded
105 in its entirety. The Board of Risk and Insurance
106 Management shall submit a report to the Joint Committee of
107 Government and Finance each year beginning January 1,
108 2018, giving recommendations based on actuarial analysis
109 of the fund's liability. The recommendations shall include,
110 but not be limited to, discontinuance of the assessments
111 provided for in this section, closure of the fund and transfer
112 of the fund's liability. Any funds remaining in the fund on
113 June 30, 2022, and determined by the Board of Risk and
114 Insurance Management to not be necessary for claim
115 payments or administrative costs of the fund, shall be
116 transferred to the General Revenue Fund.

CHAPTER 59. FEES, ALLOWANCES, AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect
2 for services rendered by the clerk the following fees which
3 shall be paid in advance by the parties for whom services
4 are to be rendered:

5 (1) Except as provided in §59-1-11(a)(2) and §59-1-
6 11(a)(3) of this code, for instituting any civil action under
7 the Rules of Civil Procedure, any statutory summary
8 proceeding, any extraordinary remedy, the docketing of

9 civil appeals or removals of civil cases from magistrate
10 court, or any other action, cause, suit or proceeding, \$200,
11 of which \$30 shall be deposited in the Courthouse Facilities
12 Improvement Fund created by §29-26-6 of this code and
13 \$45 shall be deposited in the special revenue account
14 designated the Fund for Civil Legal Services for Low
15 Income Persons, established by §59-1-10(c)(4)(B) of this
16 code, and \$20 deposited in the special revenue account
17 created in §48-26-603 of this code to provide legal services
18 for domestic violence victims;

19 (2) For instituting an action for medical professional
20 liability, \$400, of which \$10 shall be deposited in the
21 Courthouse Facilities Improvement Fund created by §29-
22 26-6 of this code: *Provided*, That after December 31, 2021,
23 the filing fee for instituting an action for medical
24 professional liability shall be \$280, of which \$10 shall be
25 deposited in the Courthouse Facilities Improvement Fund
26 created by §29-26-6 of this code;

27 (3) Beginning on and after July 1, 1999, for instituting
28 an action for divorce, separate maintenance, or annulment,
29 \$135;

30 (4) For petitioning for the modification of an order
31 involving child custody, child visitation, child support, or
32 spousal support, \$85;

33 (5) For petitioning for an expedited modification of a
34 child support order, \$35;

35 (6) For filing any pleading that includes a counterclaim,
36 cross claim, third-party complaint, or motion to intervene,
37 \$200, which shall be deposited in the special revenue
38 account designated the Fund for Civil Legal Services for
39 Low Income Persons, established by §59-1-10(c)(4)(B) of
40 this code: *Provided*, That this subdivision and the fee it
41 imposes does not apply in family court cases nor may more
42 than one such fee be imposed on any one party in any one
43 civil action; and

44 (7) Except for civil actions within the jurisdiction of
45 family courts, for each defendant or respondent named in
46 the initial pleading upon the institution of a civil action in
47 which there are two or more named defendants, and for each
48 additional defendant, respondent, or third-party defendant
49 subsequently named in a pleading filed in the civil action,
50 \$15, payable upon the institution of the civil action or upon
51 the filing of the initial pleading that names the additional
52 defendant, respondent, or third-party defendant, of which
53 \$10 shall be deposited in the general fund of the county in
54 which the office of the circuit clerk is located, and \$5 shall
55 be deposited in the State Police Forensic Laboratory Fund,
56 established under § 15-2-24d of this code: *Provided*, That for
57 purposes of this subdivision, “defendant or respondent
58 named” does not include those defendants or respondents
59 identified as “John/Jane Doe”.

60 (b) In addition to the foregoing fees, the following fees
61 shall be charged and collected:

62 (1) For preparing an abstract of judgment, \$5;

63 (2) For a transcript, copy, or paper made by the clerk for
64 use in any other court or otherwise to go out of the office,
65 for each page, \$1;

66 (3) For issuing a suggestion and serving notice to the
67 debtor by certified mail, \$25;

68 (4) For issuing an execution, \$25;

69 (5) For issuing or renewing a suggestee execution and
70 serving notice to the debtor by certified mail, \$25;

71 (6) For vacation or modification of a suggestee
72 execution, \$1;

73 (7) For docketing and issuing an execution on a
74 transcript of judgment from magistrate court, \$3;

75 (8) For arranging the papers in a certified question, writ
76 of error, appeal, or removal to any other court, \$10, of which
77 \$5 shall be deposited in the Courthouse Facilities
78 Improvement Fund created by §29-26-6 of this code;

79 (9) For each subpoena, on the part of either plaintiff or
80 defendant, to be paid by the party requesting the same, 50
81 cents;

82 (10) For additional service, plaintiff or appellant, where
83 any case remains on the docket longer than three years, for
84 each additional year or part year, \$20; and

85 (11) For administering funds deposited into a federally
86 insured interest-bearing account or interest-bearing
87 instrument pursuant to a court order, \$50, to be collected
88 from the party making the deposit. A fee collected pursuant
89 to this subdivision shall be paid into the general county
90 fund.

91 (c) In addition to the foregoing fees, a fee for the actual
92 amount of the postage and express may be charged and
93 collected for sending decrees, orders, or records that have
94 not been ordered by the court to be sent by mail or express.

95 (d) The clerk shall tax the following fees for services in
96 a criminal case against a defendant convicted in such court:

97 (1) In the case of a misdemeanor, \$85; and

98 (2) In the case of a felony, \$105, of which \$10 shall be
99 deposited in the Courthouse Facilities Improvement Fund
100 created by §29-26-6 of this code.

101 (e) The clerk of a circuit court shall charge and collect a
102 fee of \$25 per bond for services rendered by the clerk for
103 processing of criminal bonds and the fee shall be paid at the
104 time of issuance by the person or entity set forth below:

105 (1) For cash bonds, the fee shall be paid by the person
106 tendering cash as bond;

107 (2) For recognizance bonds secured by real estate, the
108 fee shall be paid by the owner of the real estate serving as
109 surety;

110 (3) For recognizance bonds secured by a surety
111 company, the fee shall be paid by the surety company;

112 (4) For 10 percent recognizance bonds with surety, the
113 fee shall be paid by the person serving as surety; and

114 (5) For 10 percent recognizance bonds without surety,
115 the fee shall be paid by the person tendering 10 percent of
116 the bail amount.

117 In instances in which the total of the bond is posted by
118 more than one bond instrument, the above fee shall be
119 collected at the time of issuance of each bond instrument
120 processed by the clerk and all fees collected pursuant to this
121 subsection shall be deposited in the Courthouse Facilities
122 Improvement Fund created by §29-26-6 of this code.
123 Nothing in this subsection authorizes the clerk to collect the
124 above fee from any person for the processing of a personal
125 recognizance bond.

126 (f) The clerk of a circuit court shall charge and collect a
127 fee of \$10 for services rendered by the clerk for processing
128 of bail piece and the fee shall be paid by the surety at the
129 time of issuance. All fees collected pursuant to this
130 subsection shall be deposited in the Courthouse Facilities
131 Improvement Fund created by §29-26-6 of this code.

132 (g) No clerk is required to handle or accept for
133 disbursement any fees, costs, or amounts of any other
134 officer or party not payable into the county treasury except
135 on written order of the court or in compliance with the
136 provisions of law governing such fees, costs, or accounts.

137 (h) Fees for removal of civil cases from magistrate court
138 shall be collected by the magistrate court when the case is
139 still properly before the magistrate court. The magistrate

140 court clerk shall forward the fees collected to the circuit
141 court clerk.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.

1 (a) Except for those payments to be made from amounts
2 equaling filing fees received for the institution of divorce
3 actions as prescribed in §59-1-28a(b) of this code, and
4 except for those payments to be made from amounts
5 equaling filing fees received for the institution of actions for
6 divorce, separate maintenance, and annulment as prescribed
7 in §59-1-28a(b) of this code, for each civil action instituted
8 under the rules of civil procedure, any statutory summary
9 proceeding, any extraordinary remedy, the docketing of
10 civil appeals, or any other action, cause, suit, or proceeding
11 in the circuit court the clerk of the court shall, at the end of
12 each month, pay into the funds or accounts described in this
13 subsection an amount equal to the amount set forth in this
14 subsection of every filing fee received for instituting the
15 action as follows:

16 (1) Into the Regional Jail and Correctional Facility
17 Authority Fund in the State Treasury established pursuant
18 to the provisions of §31-20-10 of this code the amount of
19 \$60;

20 (2) Into the Court Security Fund in the State Treasury
21 established pursuant to the provisions of §51-3-14 of this
22 code the amount of \$5; and

23 (3) Into the Regional Jail Operations Partial
24 Reimbursement Fund established pursuant to the provisions
25 of §31-20-10b of this code the amount of \$20.

26 (b) For each action for divorce, separate maintenance,
27 or annulment instituted in the circuit court, the clerk of the
28 court shall, at the end of each month, report to the Supreme
29 Court of Appeals the number of actions filed by persons
30 unable to pay and pay into the funds or accounts in this
31 subsection an amount equal to the amount set forth in this

32 subsection of every filing fee received for instituting the
33 divorce action as follows:

34 (1) Into the Regional Jail and Correctional Facility
35 Authority Fund in the State Treasury established pursuant to
36 the provisions of §31-20-10 of this code the amount of \$10;

37 (2) Into the special revenue account of the State Treasury
38 established pursuant to §48-2-604 of this code an amount of
39 \$30;

40 (3) Into the Family Court Fund established under §51-
41 2A-22 of this code an amount of \$70; and

42 (4) Into the Court Security Fund in the State Treasury
43 established pursuant to the provisions of §51-3-14 of this
44 code the amount of \$5.

45 (c) Notwithstanding any provision of §59-1-28a(a) or
46 §59-1-28a(b) of this code to the contrary, the clerk of the
47 court shall, at the end of each month, pay into the Family
48 Court Fund established under §51-2A-22 of this code an
49 amount equal to the amount of every fee received for
50 petitioning for the modification of an order involving child
51 custody, child visitation, child support, or spousal support as
52 determined by §59-1-11(a)(4) of this code and for petitioning
53 for an expedited modification of a child support order as
54 provided in §59-1-11(a)(5) of this code.

55 (d) The clerk of the court from which a protective order
56 is issued shall, at the end of each month, pay into the Family
57 Court Fund established under §51-2A-22 of this code an
58 amount equal to every fee received pursuant to the provisions
59 of §48-27-508 of this code.

60 (e) Of every fee for service received in any criminal case
61 against any respondent convicted in circuit court, the clerk of
62 each circuit court shall, at the end of each month, pay into the
63 Regional Jail and Correctional Facility Authority Fund in the
64 State Treasury an amount equal to \$40, into the Court
65 Security Fund in the State Treasury established pursuant to
66 the provisions of §51-3-14 of this code an amount equal to

67 \$5, and into the Regional Jail Operations Partial
68 Reimbursement Fund established pursuant to the provisions
69 of §31-20-10b of this code an amount equal to \$30.

70 (f) The clerk of the circuit court shall, at the end of each
71 month, pay into the Patient Injury Compensation Fund
72 established under §29-12D-1 *et seq.* of this code, an amount
73 equal to \$285 of every filing fee received for instituting a
74 medical professional liability action: *Provided*, That the
75 payments into the Patient Injury Compensation Fund
76 required by this subsection shall cease following payment by
77 the clerk based on filing fees received through December 31,
78 2021.

79 (g) The clerk of the circuit court shall, at the end of each
80 month, pay into the Courthouse Facilities Improvement Fund
81 created by §29-26-6 of this code those amounts received by
82 the clerk which are dedicated for deposit in the fund.

83 (h) The clerk of each circuit court shall, at the end of each
84 month, pay into the Regional Jail Operations Partial
85 Reimbursement Fund established in the State Treasury
86 pursuant to the provisions of §31-20-10b of this code those
87 amounts received by the clerk which are dedicated for deposit
88 in the fund.



CHAPTER 3

**(Com. Sub. for H. B. 4013 - By Delegates Hanshaw,
C. Miller, Overington, Graves, Westfall, Anderson,
Frich, Cooper, Atkinson, R. Romine and Hollen)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §6-9A-6 of the Code of West
Virginia, 1931, as amended; to amend and reenact §14-2-2a

of said code; and to amend and reenact §56-1-1 of said code, all relating to venue in West Virginia state courts; providing that the circuit court in the county where the public agency regularly meets is a proper venue for certain claims; providing that any civil action in which the governing board of any state institution of higher education or any state institution of higher education is made a party defendant shall be brought in the circuit court of the county wherein the cause of action arose, unless otherwise agreed upon; providing that nonresidents may not bring actions in the courts of this state unless all or a substantial part of the acts or omissions giving rise to the claim occurred in the state; providing an effective date; providing that nonresidents may file actions in the state courts if they cannot otherwise obtain jurisdiction in the state where the action arose, unless barred by the statute of limitations in the state the action arose; requiring the filing of an affidavit; providing that the provisions do not apply to actions filed against West Virginia citizens, residents, corporations, or other corporate entities; providing that each plaintiff must establish venue; providing that persons may not intervene or join in a pending action as plaintiff unless they independently establish venue; providing that courts shall dismiss claims without prejudice if venue is not proper as to a nonresident plaintiff; providing that venue is proper as to other defendants if venue is proper as to one defendant with respect to all actions arising out of the same transaction or occurrence; providing a definition of “nonresident”; and providing exceptions for members of the armed forces of the United States and students of any college or university of this state.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

1 The circuit court in the county where the public agency
2 regularly meets has jurisdiction and is a proper venue to
3 enforce this article upon civil action commenced by any
4 citizen of this state within 120 days after the action
5 complained of was taken or the decision complained of was
6 made. Where the action seeks injunctive relief, no bond may
7 be required unless the petition appears to be without merit
8 or made with the sole intent of harassing or delaying or
9 avoiding return by the governing body.

10 The court is empowered to compel compliance or enjoin
11 noncompliance with the provisions of this article and to
12 annul a decision made in violation of this article. An
13 injunction may also order that subsequent actions be taken
14 or decisions be made in conformity with the provisions of
15 this article: *Provided*, That no bond issue that has been
16 passed or approved by any governing body in this state may
17 be annulled under this section if notice of the meeting at
18 which the bond issue was finally considered was given at
19 least 10 days prior to the meeting by a Class I legal
20 advertisement published in accordance with the provisions
21 of §59-3-1 *et seq.* of this code in a qualified newspaper
22 having a general circulation in the geographic area
23 represented by that governing body.

24 In addition to or in conjunction with any other acts or
25 omissions which may be determined to be in violation of
26 this article, it is a violation of this article for a governing
27 body to hold a private meeting with the intention of
28 transacting public business, thwarting public scrutiny and
29 making decisions that eventually become official action.

30 Any order which compels compliance or enjoins
31 noncompliance with the provisions of this article, or which
32 annuls a decision made in violation of this article shall
33 include findings of fact and conclusions of law and shall be
34 recorded in the minutes of the governing body.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.**ARTICLE 2. CLAIMS AGAINST THE STATE.****§14-2-2a. Venue for suits and actions involving state institutions of higher education.**

1 (a) Notwithstanding the provisions of §14-2-2 of this
2 code, any civil action in which the governing board of any
3 state institution of higher education, any state institution of
4 higher education, or any department or office of any of those
5 entities, or any officer, employee, agent, intern or resident
6 of any of those entities, acting within the scope of his or her
7 employment, is made a party defendant, shall be brought in
8 the circuit court of any county wherein the cause of action
9 arose, unless otherwise agreed by the parties.

10 (b) The exclusive venue provisions of this section are
11 not applicable to:

12 (1) An action involving an entity or person named in
13 subsection (a) of this section as garnishee or suggestee; and

14 (2) A proceeding for injunctive or mandamus relief
15 involving the taking, title, or collection for or prevention of
16 damage to real property, and where general laws or court
17 rules provide that proper venue is in the county in which the
18 real property affected is situate.

19 (c) This section applies only to proceedings not
20 prohibited by the constitutional immunity of the state from
21 suit under section thirty-five, article VI of the Constitution
22 of the State.

CHAPTER 56. PLEADING AND PRACTICE.**ARTICLE 1. VENUE.****§56-1-1. Venue generally.**

1 (a) Any civil action or other proceeding, except where
2 it is otherwise specially provided, may hereafter be brought
3 in the circuit court of any county:

4 (1) Wherein any of the defendants may reside or the
5 cause of action arose, except that an action of ejectment or
6 unlawful detainer must be brought in the county wherein the
7 land sought to be recovered, or some part thereof, is;

8 (2) If a corporation or other corporate entity is a
9 defendant, wherein its principal office is or wherein its
10 mayor, president or other chief officer resides; or if its
11 principal office be not in this state, and its mayor, president
12 or other chief officer do not reside therein, wherein it does
13 business; or if it is a corporation or other corporate entity
14 organized under the laws of this state which has its principal
15 office located outside of this state and which has no office
16 or place of business within the state, the circuit court of the
17 county in which the plaintiff resides or the circuit court of
18 the county in which the seat of state government is located
19 has jurisdiction of all actions at law or suits in equity against
20 the corporation or other corporate entity, where the cause of
21 action arose in this state or grew out of the rights of
22 stockholders with respect to corporate management;

23 (3) If it is to recover land or subject it to a debt, where
24 the land or any part may be;

25 (4) If it is against one or more nonresidents of the state,
26 where any one of them may be found and served with
27 process or may have estate or debts due him, her, or them;

28 (5) If it is to recover a loss under any policy of insurance
29 upon either property, life or health or against injury to a
30 person, where the property insured was situated either at the
31 date of the policy or at the time when the right of action
32 accrued or the person insured had a legal residence at the
33 date of his or her death or at the time when the right of action
34 accrued;

35 (6) If it is on behalf of the state in the name of the
36 Attorney General or otherwise, where the seat of
37 government is; or

38 (7) If a judge of a circuit is interested in a case which,
39 but for such interest, would be proper for the jurisdiction of
40 his or her court, the action or suit may be brought in any
41 county in an adjoining circuit.

42 (b) Whenever a civil action or proceeding is brought in
43 the county where the cause of action arose under the
44 provisions of subsection (a) of this section, if no defendant
45 resides in the county, a defendant to the action or proceeding
46 may move the court before which the action is pending for
47 a change of venue to a county where one or more of the
48 defendants resides and upon a showing by the moving
49 defendant that the county to which the proposed change of
50 venue would be made would better afford convenience to
51 the parties litigant and the witnesses likely to be called, and
52 if the ends of justice would be better served by the change
53 of venue, the court may grant the motion.

54 (c) For all civil actions filed on or after July 1, 2018, a
55 nonresident of the state may not bring an action in a court of
56 this state unless all or a substantial part of the acts or omissions
57 giving rise to the claim asserted occurred in this state:
58 *Provided*, That unless barred by the statute of limitations or
59 otherwise time barred in the state where the action arose, a
60 nonresident of this state may file an action in state court in this
61 state if the nonresident cannot obtain jurisdiction in either
62 federal or state court against the defendant in the state where
63 the action arose. A nonresident bringing such an action in this
64 state shall be required to establish, by filing an affidavit with
65 the complaint for consideration by the court, that the action
66 cannot be maintained in the state where the action arose due to
67 lack of any legal basis to obtain personal jurisdiction over the
68 defendant: *Provided, however*, That the provisions of this
69 subsection do not apply to civil actions filed against West
70 Virginia citizens, residents, corporations, or other corporate
71 entities.

72 In a civil action where more than one plaintiff is joined,
73 each plaintiff must independently establish proper venue. A
74 person may not intervene or join in a pending civil action as

75 a plaintiff unless the person independently establishes
76 proper venue. If venue is not proper as to any such
77 nonresident plaintiff in any court of this state, the court shall
78 dismiss the claims of such plaintiff without prejudice to
79 refile in a court in any other state or jurisdiction. When
80 venue is proper as to one defendant, it is also proper as to
81 any other defendant with respect to all actions arising out of
82 the same transaction or occurrence.

83 For purposes of this subsection, “nonresident” means
84 any person, whether a citizen of this state or another state,
85 who was domiciled outside the State of West Virginia at the
86 time of the acts or omissions giving rise to the claim
87 asserted: *Provided*, That a member of the armed forces of
88 the United States who is stationed beyond the territorial
89 limits of this state, but who was a resident of this state at the
90 time of his or her entry into such service, and any full-time
91 student of any college or university of this state, even
92 though he or she is paying nonresident tuition, is considered
93 a resident under this subsection.



CHAPTER 4

**(Com. Sub. for H. B. 4187 - By Delegates Foster,
Graves, Butler, Summers, Zatezalo, R. Miller,
Barrett, Isner, Hollen and Blair)**

[Passed March 10, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §61-7-14 of the Code of West Virginia, 1931, as amended, relating to creating the “Business Liability Protection Act”; providing definitions; prohibiting owners, lessees, or other persons charged with the care,

custody, and control of real property from prohibiting any customer, employee, or invitee from possessing a legal owned firearm under certain circumstances; prohibiting owners, lessees, or other persons charged with the care, custody, and control of real property from violating certain privacy rights of a customer, employee, or invitee; providing that no employer may condition employment under certain circumstances; providing that no owner, lessee, or other person charged with the care, custody, and control of real property may prevent a customer, employee, or invitee from entering the parking lot because the motor vehicle contains a legal firearm; providing immunity and limitations of liability; providing that the Attorney General is authorized to enforce the such provisions; providing customers, employees, and invitees with a civil cause of action; and providing forms of relief and civil penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

1 This section may be referred to as “The Business
2 Liability Protection Act”.

3 (a) As used in this section:

4 (1) “Parking lot” means any property that is used for
5 parking motor vehicles and is available to customers,
6 employees, or invitees for temporary or long-term parking
7 or storage of motor vehicles: *Provided*, That for purposes of
8 this section, parking lot does not include the private parking
9 area at a business located at the primary residence of the
10 property owner.

11 (2) “Motor vehicle” means any privately-owned
12 automobile, truck, minivan, sports utility vehicle, motor
13 home, recreational vehicle, motorcycle, motor scooter, or

14 any other vehicle operated on the roads of this state and,
15 which is required to be registered under state law: *Provided*,
16 That for purposes of this section, motor vehicle does not
17 mean vehicles owned, rented, or leased by an employer and
18 used by the employee in the course of employment.

19 (3) “Employee” means any person, who is over 18 years
20 of age, not prohibited from possessing firearms by the
21 provisions of this code or federal law; and

22 (A) Works for salary, wages, or other remuneration;

23 (B) Is an independent contractor; or

24 (C) Is a volunteer, intern, or other similar individual for
25 an employer.

26 (4) “Employer” means any business that is a sole
27 proprietorship, partnership, corporation, limited liability
28 company, professional association, cooperative, joint
29 venture, trust, firm, institution, association, or public-sector
30 entity, that has employees.

31 (5) “Invitee” means any business invitee, including a
32 customer or visitor, who is lawfully on the premises of a
33 public or private employer.

34 (6) “Locked inside or locked to” means;

35 (A) The vehicle is locked; or

36 (B) The firearm is in a locked trunk, glove box, or other
37 interior compartment; or

38 (C) The firearm is in a locked container securely fixed
39 to the vehicle; or

40 (D) The firearm is secured and locked to the vehicle
41 itself by the use of some form of attachment and lock.

42 (b) Notwithstanding the provisions of this article, any
43 owner, lessee or other person charged with the care,

44 custody, and control of real property may prohibit the
45 carrying openly or concealing of any firearm or deadly
46 weapon on property under his or her domain: *Provided*,
47 That for purposes of this section “person” means an
48 individual or any entity which may acquire title to real
49 property: *Provided, however*, That for purposes of this
50 section “natural person” means an individual human being.

51 (c) Any natural person carrying or possessing a firearm
52 or other deadly weapon on the property of another who
53 refuses to temporarily relinquish possession of the firearm
54 or other deadly weapon, upon being requested to do so, or
55 to leave the premises, while in possession of the firearm or
56 other deadly weapon, is guilty of a misdemeanor and, upon
57 conviction thereof, shall be fined not more than \$1,000 or
58 confined in jail not more than six months, or both: *Provided*,
59 That the provisions of this section do not apply to a natural
60 person as set forth in §61-7-6(a)(5) through §61-7-6(a)(7)
61 and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while
62 acting in his or her official capacity or to a natural person as
63 set forth in §61-7-6(b)(1) through §61-7-6(b)(8) of this
64 code, while acting in his or her official capacity: *Provided*,
65 *however*, That under no circumstances, except as provided
66 for by the provisions of §61-7-11a(b)(2)(A) through (I) of
67 this code, may any natural person possess or carry or cause
68 the possession or carrying of any firearm or other deadly
69 weapon on the premises of any primary or secondary
70 educational facility in this state unless the natural person is
71 a law-enforcement officer or he or she has the express
72 written permission of the county school superintendent.

73 (d) *Prohibited acts.* – Notwithstanding the provisions of
74 subsections (b) and (c) of this section:

75 (1) No owner, lessee, or other person charged with the
76 care, custody, and control of real property may prohibit any
77 customer, employee, or invitee from possessing any legally
78 owned firearm, when the firearm is:

79 (A) Lawfully possessed;

80 (B) Out of view;

81 (C) Locked inside or locked to a motor vehicle in a
82 parking lot; and

83 (D) When the customer, employee, or invitee is lawfully
84 allowed to be present in that area.

85 (2) No owner, lessee, or other person charged with the
86 care, custody, and control of real property may violate the
87 privacy rights of a customer, employee, or invitee either:

88 (A) By verbal or written inquiry, regarding the presence
89 or absence of a firearm locked inside or locked to a motor
90 vehicle in a parking lot; or

91 (B) By conducting an actual search of a motor vehicle
92 in a parking lot to ascertain the presence of a firearm within
93 the vehicle: *Provided*, That a search of a motor vehicle in a
94 parking lot to ascertain the presence of a firearm within that
95 motor vehicle may only be conducted by on-duty, law
96 enforcement personnel, in accordance with statutory and
97 constitutional protections.

98 (C) No owner, lessee, or other person charged with the
99 care, custody, and control of real property may take any
100 action against a customer, employee, or invitee based upon
101 verbal or written statements of any party concerning
102 possession of a firearm stored inside a motor vehicle in a
103 parking lot for lawful purposes, except upon statements
104 made pertaining to unlawful purposes or threats of unlawful
105 actions involving a firearm made in violation of §61-6-24 of
106 this code.

107 (3) No employer may condition employment upon
108 either:

109 (A) The fact that an employee or prospective employee
110 holds or does not hold a license issued pursuant to §61-7-4
111 or §61-7-4a of this code; or

112 (B) An agreement with an employee or a prospective
113 employee prohibiting that natural person from keeping a
114 legal firearm locked inside or locked to a motor vehicle in a
115 parking lot when the firearm is kept for lawful purposes.

116 (4) No owner, lessee, or other person charged with the
117 care, custody, and control of real property may prohibit or
118 attempt to prevent any customer, employee, or invitee from
119 entering the parking lot of the person's place of business
120 because the customer's, employee's, or invitee's motor
121 vehicle contains a legal firearm being carried for lawful
122 purposes that is out of view within the customer's,
123 employee's, or invitee's motor vehicle.

124 (e) *Limitations on duty of care; immunity from civil*
125 *liability.* —

126 (1) When subject to the provisions of subsection (d) of
127 this section, an employer, owner, lessee, or other person
128 charged with the care, custody, and control of real property
129 has no duty of care related to the acts prohibited under said
130 subsection.

131 (2) An employer, owner, lessee, or other person charged
132 with the care, custody, and control of real property is not
133 liable in a civil action for money damages based upon any
134 actions or inactions taken in compliance with subsection (d)
135 of this section. The immunity provided in this subdivision
136 does not extend to civil actions based on actions or inactions
137 of employers, owners, lessees, or other persons charged
138 with the care, custody, and control of real property unrelated
139 to subsection (d) of this section.

140 (3) Nothing contained in this section may be interpreted
141 to expand any existing duty or create any additional duty on
142 the part of an employer, owner, lessee, or other person
143 charged with the care, custody, and control of real property.

144 (f) *Enforcement.* – The Attorney General is authorized
145 to enforce the provisions of subsection (d) of this section
146 and may bring an action seeking either:

147 (1) Injunctive or other appropriate equitable relief to
148 protect the exercise or enjoyment of the rights secured in
149 subsection (d) of any customer, employee, or invitee;

150 (2) Civil penalties of no more than \$5,000 for each
151 violation of subsection (d) and all costs and attorney’s fees
152 associated with bringing the action; or

153 (3) Both the equitable relief and civil penalties
154 described in subdivisions (1) and (2) of this section,
155 including costs and attorney’s fees. This action must be
156 brought in the name of the state and instituted in the Circuit
157 Court of Kanawha County. The Attorney General may
158 negotiate a settlement with any alleged violator in the course
159 of his or her enforcement of subsection (d) of this section.

160 (4) Notwithstanding any other provision in this section
161 to the contrary, the authority granted to the Attorney
162 General in this subsection does not affect the right of a
163 customer, employee, or invitee aggrieved under the
164 authority of subsection (d) of this section to bring an action
165 for violation of the rights protected under this section in his
166 or her own name and instituted in the circuit court for the
167 county where the alleged violator resides, has a principal
168 place of business, or where the alleged violation occurred.
169 In any successful action brought by a customer, employee,
170 or invitee aggrieved under the authority of subsection (d) of
171 this section, the court may award injunctive or other
172 appropriate equitable relief and civil penalties as set forth in
173 subdivisions one, two and three of this subsection. In any
174 action brought by a customer, employee, or invitee
175 aggrieved under the authority of subsection (d) of this
176 section, the court shall award all court costs and attorney’s
177 fees to the prevailing party.

●

CHAPTER 5

(Com. Sub. for H. B. 4242 - By Delegates Shott and Hanshaw)

[Passed February 16, 2018; in effect ninety days from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT to amend and reenact §50-4-8 of the Code of West Virginia, 1931, as amended, relating to clarifying the jurisdictional amount for removal of a civil action from magistrate court to circuit court; and providing an exception for landlord-tenant actions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-8. Removal to circuit court.

1 At any time before trial in a civil action involving less
2 than \$5,000 the action may be removed to circuit court upon
3 the concurrence of all parties and upon the payment of the
4 circuit court filing fee. At any time before trial in a civil
5 action involving \$5,000 or more, any party may, upon
6 payment of the circuit court filing fee, cause such action to
7 be removed to the circuit court: *Provided*, That at any time
8 before trial in any action for wrongful occupation or
9 unlawful detainer involving \$2,500 or more any party may,
10 upon payment of the circuit court filing fee, cause such
11 action to be removed to circuit court. All appropriate
12 documents shall then be forwarded along with the fee to the
13 clerk of the circuit court. The matter shall then be heard by
14 the circuit court.

●

CHAPTER 6

**(Com. Sub. for H. B. 4603 - By Delegates Lane,
Pushkin, Byrd, Capito, Robinson and Rowe)**

[Passed March 10, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7K-1 and §55-7K-2, relating to providing immunity from civil liability to certain facilities, including their directors, officers, employees, and agents, providing crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis; providing an effective date; and providing that the provisions of this article are to operate in addition to, and not in derogation of, any of the provisions contained in the Medical Professional Liability Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7K. IMMUNITY FROM CIVIL LIABILITY FOR BEHAVIORAL HEALTH FACILITIES AND RESIDENTIAL RECOVERY FACILITIES.

§55-7K-1. Limiting civil liability for certain behavioral health facilities and residential recovery facilities providing crisis stabilization services and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis.

1 Notwithstanding any other provision of this code, no
2 behavioral health facility that is licensed in this state,
3 another state, or operated by the state, or one of its
4 political subdivisions, and no residential recovery facility

5 certified by or meeting the standards of a national certifying
 6 body, nor any of their directors, officers, employees, and
 7 agents shall be liable for injury or civil damages related to
 8 the provision of short-term crisis stabilization and/or drug
 9 and alcohol detoxification services, substance use disorder
 10 services, drug overdose services, and/or withdrawal
 11 services to the extent the injury or damages arise from an
 12 individual's refusal of services, election to discontinue
 13 services, failure to follow the orders or instructions of a
 14 facility, voluntary departure, elopement, or abandonment
 15 from a facility, with or without notice to others, so long as
 16 the services are offered in good faith, the facility does not
 17 require payment from the individual receiving the services,
 18 and the injury or damages are not proximately caused by the
 19 gross negligence or willful or wanton misconduct of the
 20 facility, or its directors, officers, employees, or agents.

§55-7K-2. Applicability of provisions.

1 (a) The provisions of this article are applicable to all
 2 causes of action accruing on or after July 1, 2018.

3 (b) The provisions of this article operate in addition to,
 4 and not in derogation of, any of the provisions contained in
 5 §55-7B-1 *et seq.* of this code.

CHAPTER 7

**(Com. Sub. for S. B. 375 - By Senators Sypolt,
 Rucker, Takubo, Baldwin and Boso)**

[Passed March 10, 2018; in effect ninety days from passage.]
 [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §19-35-2, §19-35-3, and §19-35-4 of the Code of West Virginia, 1931, as amended; and to

amend said code by adding thereto a new section, designated §19-35-5, all relating to farmers markets; removing local health departments from farmers market vendor permit process; transferring rules and regulations for farmers markets, cottage foods, acidified foods, nonpotentially hazardous foods, and exempted foods from Department of Health and Human Resources to Department of Agriculture; requiring rules to set forth quantity limitations for cottage foods; clarifying consignment farmers markets; defining terms; requiring registration of farmers markets; expanding farmers market vendor permit to permit the sale of cottage foods; establishing fees for farmers market vendor permits; clarifying certain farm and food products require other permits; permitting local health departments to inspect and suspend food establishment permits in certain circumstances; permitting the Department of Agriculture to establish regulations permitting the sampling of certain farm and food products; permitting local health departments to sample and inspect farmers market vendors in certain circumstances; permitting local health departments to invoke cessation of production in certain circumstances; clarifying scope, labeling, and sources of cottage foods; requiring online farmers market sales be delivered in person; permitting home, farm, community, or commercial kitchen to be used by cottage foods vendor as determined by the Department of Agriculture; and clarifying that a farmers market vendor permit is not required to sell nonpotentially hazardous foods and exempted foods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. FARMERS MARKETS.

§19-35-2. Definitions.

- 1 For purposes of this article:
- 2 “Consignment farmers market” means a farmers market
- 3 in which two or more vendors deliver their own farm and
- 4 food products to a common location maintained by a third

5 party that markets the vendors' products and receives a
6 percentage share of the profits from sales, with the
7 individual vendor retaining ownership of the farm and food
8 product until it is sold. A consignment farmers market may
9 be mobile or in a stationary location.

10 "Department" means the Department of Agriculture.

11 "Farm and food product" means any agriculture,
12 horticulture, agroforestry, animal husbandry, dairy,
13 livestock, cottage food, beekeeping, or other similar
14 product. Farm and food products are to be properly labeled.

15 "Farmers market" means:

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

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

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

24 (4) A consignment farmers market as defined herein.

25 "Farmers market vendor" or "vendor" means a person
26 or entity that sells farm and food products at a farmers
27 market.

**§19-35-3. Farmers markets; farmers market vendor permits;
fees; scope.**

1 (a) Farmers markets shall register with the department
2 and provide information to the department regarding the
3 farmers market and its vendors.

4 (b) Vendors at a farmers market selling farm and food
5 products shall apply for a farmers market vendor permit and
6 pay the annual permit fee to the department. The permit is

7 valid in all counties in this state. A farmers market vendor
8 permit shall be required in lieu of the food establishment
9 permit, notwithstanding any other provisions of code or rule
10 that require a food establishment permit or any other permit
11 from a local health department. The department shall take
12 final action upon all completed permit applications within
13 30 days of receipt if the application is uncontested, or within
14 90 days if the application is contested.

15 (c) The annual farmers market vendor permit fee is \$35.

16 (d) The following vendors are exempt from obtaining a
17 farmers market vendor permit:

18 (1) Producers delivering their products to a consignment
19 farmers market only; or

20 (2) Vendors selling fresh, uncut produce.

21 (e) A consignment farmers market shall obtain a food
22 establishment permit issued by the local health department.
23 Certain farm and food product also require food
24 establishment or other permits to be sold at farmers markets
25 including, but not limited to, meat, poultry, dairy, fish, and
26 sprouted seeds. Notwithstanding the provisions of this
27 article, the local health department in the jurisdiction in
28 which the farmers market is located has the right to inspect
29 and suspend the food establishment permit of a farmers
30 market vendor that sells or serves food for which a food
31 establishment permit is required.

32 (f) All farmers market vendor permits shall be displayed
33 in a conspicuous manner.

34 (g) Nothing in this article eliminates or limits other state
35 and federal rules and regulations that apply to certain farm
36 and food products sold at a farmers market or a consignment
37 farmers market.

38 (h) The department may establish regulations permitting
39 the sampling of certain farm and food products at farmers
40 markets by vendors.

41 (i) A vendor is subject to food sampling and inspection
42 by the local health department in the jurisdiction in which
43 the farmers market is located if the local health department
44 determines that the vendor's food product is misbranded
45 pursuant to §19-35-5(c) of this code, or adulterated, or if a
46 consumer complaint has been received: *Provided*, That all
47 sampling and inspection shall be performed in consultation
48 with the Department of Agriculture.

49 (j) If the local health department in the jurisdiction in
50 which the farmers market is located has reason to believe
51 that an imminent health hazard exists it may invoke
52 cessation of production until it deems that the hazardous
53 situation has been addressed to the satisfaction of the local
54 health department: *Provided*, That a local health department
55 that invokes cessation of production under this subsection
56 shall do so in consultation with the Department of
57 Agriculture.

§19-35-4. Legislative rules.

1 (a) The Department of Agriculture shall propose
2 emergency or legislative rules for approval in accordance
3 with the provisions of §29A-3-1 *et seq.* of this code for the
4 purposes of implementing this article.

5 (b) The Department of Agriculture shall consult with the
6 Department of Health and Human Resources and shall
7 consider the guidelines established in the Farmers Market
8 Vendor Guide in promulgating the rules. The rules shall set
9 forth quantity limitations for each type of farm and food
10 product for which a farmers market vendor permit is
11 required pursuant to §19-35-5(d) of this code.

§19-35-5. Cottage foods; acidified foods; non-potentially hazardous foods; other exempted foods.

1 (a) Notwithstanding any provision of §16-1-1 *et seq.* of
2 this code or any rules or regulations to the contrary, the
3 department shall regulate cottage foods, acidified foods,
4 nonpotentially hazardous foods and other exempted foods.

5 (b) Online farmers market sales shall be delivered in
6 person and are not permitted to be shipped. A home, farm,
7 community, or commercial kitchen may be used by a
8 cottage foods vendor, as determined by the department.

9 (c) All foods for which a farmers market vendor permit
10 is required pursuant to §19-35-5(d) of this code shall be
11 labeled in compliance with the department's labeling
12 standards and provide information about its content and
13 sources. The label shall include the words "MADE IN A
14 WV _____ KITCHEN" in capital, bold, 10-point type or
15 larger words, with the blank space to state whether the
16 product was made in a home, farm, community, or
17 commercial kitchen.

18 (d) A farmers market vendor permit is required to sell
19 the following farm and food products at farmers markets:
20 Certain canned acidified foods, including, but not limited to,
21 pickled products, sauces, and salsas. Acidified foods are
22 low-acid foods to which acid or acid foods are added with a
23 water activity of greater than .085 and a finished
24 equilibrium of pH 4.6 or below. The majority of the produce
25 in canned acidified foods shall be sourced from the vendor's
26 West Virginia farm or garden, and records of the source of
27 the produce shall be maintained.

28 (e) A farmers market vendor permit is not required to
29 sell the following farm and food products at farmers
30 markets:

31 (1) Nonpotentially hazardous foods, including, but not
32 limited to: Breads, cakes, and candies; honey, tree syrup,
33 apple butter, and molasses; standardized, nondietary jams
34 and jellies; and dehydrated fruits and vegetables; and

35 (2) Other foods that are exempted from certain
36 regulations, including, but not limited to, certain fermented
37 products, certain exempted condiments, commercially
38 harvested mushrooms, and canned, whole, or chopped

39 tomatoes, tomato sauce, and tomato juice having a finished
40 equilibrium of pH 4.6 or below.

41 (f) The Department of Agriculture shall consult with the
42 Department of Health and Human Resources to promulgate
43 any rules deemed necessary by the Commissioner of
44 Agriculture to ensure the health, sanitation, and safety of the
45 products produced and sold pursuant to this section.

CHAPTER 8

**(Com. Sub. for S. B. 446 - By Senators Rucker,
Sypolt, Unger, Trump and Boso)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-36-1, §19-36-2, §19-36-3, §19-36-4, and §19-36-5, all relating to agritourism generally; creating the Agritourism Responsibility Act; making findings; establishing authority and duties of the Commissioner of Agriculture related to agritourism business; authorizing Commissioner of Agriculture, in consultation with the Secretary of Commerce, to promulgate and propose rules; defining terms; establishing duties of agritourism businesses and participants in agritourism activities; immunizing agritourism business, employees, and volunteers associated therewith from certain acts of simple negligence and creating exceptions thereto; requiring notice of certain rights, limitations on liability, and responsibilities of participants in agritourism activities; clarifying that operation of agritourism business does not change status of the facilities and property used for building code and tax purposes; and exempting structures of agritourism business occasionally used for events from building code

requirements for entities engaged in such activities on a full-time basis.

Be it enacted by the Legislature of West Virginia:

ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.

§19-36-1. Legislative purposes; authority.

1 Every year, in rapidly increasing numbers, residents and
2 nonresidents of the State of West Virginia are enjoying the
3 recreational value of the state's many agritourism venues.
4 The tourist trade is of vital importance to the State of West
5 Virginia and the services offered by agritourism
6 significantly contribute to the revenue enterprise and
7 economic development of the state. The Legislature
8 recognizes that there are inherent risks in the recreational
9 activities provided by agritourism which should be
10 understood by each participant. It is essentially impossible
11 for agritourism to eliminate these risks. It is the purpose of
12 this article to define those areas of responsibility and
13 affirmative acts for which agritourism is liable for loss,
14 damage, or injury.

15 The Commissioner of Agriculture is hereby authorized
16 to, and shall devise means of, advancing agritourism in the
17 state, and in the performance of such duty, he or she shall
18 have the authority to call upon any department, division, or
19 officer of the state or county to cooperate with him or her in
20 promoting agritourism in the state.

21 The Commissioner of Agriculture, in consultation with
22 the Secretary of Commerce, shall promulgate rules in
23 accordance with chapter 29A of this code for the promotion,
24 marketing, and regulation of agritourism business.

§19-36-2. Definitions.

1 Unless the context of usage clearly requires otherwise:

2 "Agritourism" activity means any lawful activity
3 carried out on a farm or ranch that allows members of the

4 general public for recreational, entertainment, or
5 educational purposes to view or enjoy rural activities.

6 “Agritourism business” means any person, fiduciary,
7 firm, association, partnership, limited liability company,
8 corporation, unit of government, or any other group or entity
9 which is engaged in the business of providing one or more
10 agritourism activities, whether or not for compensation.

11 “Agritourism professional” means owners, operators,
12 employees, and volunteers working for or under the
13 direction of the operators of an agritourism business.

14 “Farm” or “ranch” means an area of land used for the
15 production, cultivation, growing, harvesting, or processing
16 of agricultural products.

17 “Inherent risks of agritourism activity” are those
18 dangers or conditions that are part of an agritourism activity
19 including certain hazards, natural conditions of land and
20 terrain, vegetation, and waters, the behavior of wild or
21 domestic animals, and ordinary dangers of structures or
22 equipment ordinarily used in farming and ranching
23 operations. Inherent risks of agritourism activity also
24 include the potential of a participant to act in a negligent
25 manner that may contribute to injury to the participant or
26 others, including failing to follow instructions given by the
27 agritourism professional or failing to exercise reasonable
28 caution while engaging in the agritourism activity.

29 “Participant” as used in this article means any person,
30 other than the agritourism professional, who engages in an
31 agritourism activity.

§19-36-3. Duties of agritourism businesses and participants.

1 (a) An agritourism business, or agritourism business
2 employee or volunteer acting under the direction of the
3 agritourism business operator, is not liable for injury or
4 death of a participant, or loss or damage to a participant’s
5 property, as the result of the inherent risks of agritourism

6 activities if such agritourism business has posted the notice
7 in substantially the form as is provided in §19-36-4(b) of
8 this code.

9 (b) The provisions of §19-36-3(a) of this code shall not
10 prevent or in any way limit the liability of an agritourism
11 business that does any of the following:

12 (1) Commits an act or omission that constitutes gross
13 negligence or willful or wanton disregard for the health and
14 safety of the participant which proximately causes injury,
15 death, loss, or damage to the participant; or

16 (2) Commits an intentional act or omission which
17 proximately causes injury, death, loss, or damage to the
18 participant.

19 (c) Any limitation on legal liability afforded by this
20 section to an agritourism business is in addition to any other
21 limitations of legal liability otherwise provided by law.

22 (d) Participants have a duty to act as a reasonably
23 prudent person when engaging in recreational activities
24 offered by agritourism businesses in this state.

§19-36-4. Liability of agritourism businesses.

1 (a) To qualify for the limitation on liability afforded
2 by §19-36-3 of this code, an agritourism business shall
3 post and maintain signs that contain the notice specified
4 in §19-36-4(b) of this code. The sign must be placed in a
5 clearly visible location at the entrance to the agritourism
6 location and at the site of the agritourism activity. The
7 notice must be clearly legible, with each letter to be a
8 minimum of one inch in height. Every written contract
9 entered into by an agritourism professional for the
10 providing of professional services, instruction, or the
11 rental of equipment to a participant, whether or not the
12 contract involves agritourism activities on or off the
13 location or at the site of the agritourism activity, must

14 contain in clearly legible print the notice specified in §19-
15 36-4(b) of this code.

16 (b) The signs and contracts described in §19-36-4(a) of
17 this code must contain the following notice:

18 **NOTICE**

19 Under West Virginia law, there may be limited liability
20 for an injury to or death of a participant in an agritourism
21 activity conducted at this agritourism business if the injury
22 or death results from the inherent risks of the agritourism
23 activity. Inherent risks of agritourism activities include,
24 among others, risks of injury inherent to landscape, terrain,
25 equipment, and animals, as well as the potential for you to
26 act in a negligent manner that may contribute to your injury
27 or death. You are assuming the risk of participating in this
28 agritourism activity.

29 (c) Failure to comply with the requirements concerning
30 notices provided in this section will prevent an agritourism
31 business from invoking the privileges of immunity provided
32 by this article.

**§19-36-5. Maintenance of property status for certain
purposes; exceptions.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, the occurrence of agritourism does not change the
3 nature or use of property that otherwise qualifies as
4 agricultural for building code and property tax classification
5 purposes.

6 (b) An agritourism business may use certain of its
7 facilities for occasional events without complying with
8 building codes applicable to structures used for such
9 purposes on a full-time basis as long as such facilities are
10 deemed structurally sound and otherwise safe for the
11 intended use.

●

CHAPTER 9

(Com. Sub. for S. B. 475 - By Senators Woelfel, Baldwin and Beach)

[Passed March 7, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-16-3a, relating generally to industrial hemp; authorizing the Commissioner of Agriculture to create and administer an industrial hemp seed certification program; authorizing the commissioner to obtain and develop seed varieties for industrial hemp production; permitting holders of an industrial hemp license to obtain a license for the development of industrial hemp varieties for certification; authorizing imposition of a fee to be determined by the commissioner; authorizing emergency rulemaking and requiring legislative rulemaking; and requiring the program be consistent with state and federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA SEED LAW.

§19-16-3a. Industrial hemp seed certification program; requirements; fees; rulemaking.

1 (a) The commissioner may create and administer an
2 industrial hemp seed certification program to obtain and
3 develop varieties of seeds which meet the purposes and
4 provisions of §19-12E-1 *et seq.* of this code. The program
5 shall be consistent with this article and applicable federal
6 law. This program may include West Virginia landrace
7 cannabis seed varieties. For the purposes of this article,

8 “West Virginia landrace cannabis seed” means seed from
9 the plant *cannabis sativa* that possesses characteristics of a
10 unique and specialized cannabis seed variety that is present
11 in West Virginia or has been recognized as produced in
12 West Virginia.

13 (b) Persons or entities, licensed pursuant to §19-12E-1
14 *et seq.* of this code, may obtain a license for the
15 development of industrial hemp varieties for certification.
16 The commissioner may assess a fee, consistent with the
17 provisions of §19-12E-7 of this code, to operate and
18 administer the seed certification program. The fees shall be
19 deposited in the Agricultural Fees Fund established by §19-
20 1-4c of this code.

21 (c) The commissioner may promulgate emergency rules
22 and shall propose rules for legislative approval pursuant to
23 §29A-3-1 *et seq.* of this code for the purpose of
24 implementing the provisions of this section.



CHAPTER 10

**(Com. Sub. for H. B. 4162 - By Delegates Hanshaw,
Ambler, Kessinger, Lynch, Pethtel
and Mr. Speaker (Mr. Armstead))**

[Passed February 15, 2018; in effect ninety days from passage.]

[Approved by the Governor on February 27, 2018.]

AN ACT to amend and reenact §19-21A-4 of the Code of West Virginia, 1931, as amended, relating to the duties and powers conferred upon the State Conservation Committee; granting authority to the State Conservation Committee to contract for services directly related to natural disaster recovery and stream restoration related to flooding, on an as needed basis; permitting the State Conservation Committee to comply with present and future federal aid statutes and regulations

including execution of contracts or agreements with programs of the United States government and its proper departments, bureaus or agencies relating to natural disaster response, recovery or stream restoration related to flooding; permitting the State Conservation Committee to promulgate emergency and legislative rules to effectuate the provisions as amended during the 2018 regular session of the Legislature; and removing references to outdated and incorrect code citations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-4. State Conservation Committee; continuation.

1 (a) The State Conservation Committee is continued. It
2 serves as an agency of the state and is to perform the
3 functions conferred upon it in this article. The committee
4 consists of the following ten members:

5 (1) Four citizen members;

6 (2) The following ex officio members or his or her
7 designee:

8 (A) The Director of the state Cooperative Extension
9 Service;

10 (B) The Director of the state Agricultural and Forestry
11 Experiment Station;

12 (C) The Secretary of the Department of Environmental
13 Protection;

14 (D) The State Commissioner of Agriculture, who is the
15 chairperson of the committee;

16 (E) The Director of the Division of Forestry; and

17 (F) The President of the West Virginia Association of
18 Conservation Districts.

19 (b) The Governor shall appoint, by and with the consent
20 of the Senate, the four citizen members. Members shall be
21 appointed for four-year terms, which are staggered in
22 accordance with the initial appointments under prior
23 enactment of this section. In the event of a vacancy, the
24 appointment is for the unexpired term.

25 (c) The committee may invite the Secretary of
26 Agriculture of the United States of America to appoint one
27 person to serve with the committee as an advisory member.

28 (d) The committee shall keep a record of its official
29 actions, shall adopt a seal, which shall be judicially noticed,
30 and may perform those acts, hold public hearings and adopt
31 or propose for legislative approval rules necessary for the
32 execution of its functions under this article.

33 (e) The State Conservation Committee may employ an
34 administrative officer, technical experts and other agents
35 and employees, permanent and temporary, as it requires.
36 The administrative officer and support staff shall be known
37 as the West Virginia Conservation Agency. The committee
38 shall determine their qualifications, duties and
39 compensation. The committee may call upon the Attorney
40 General of the state for legal services it requires. It may
41 delegate to its chairperson, to one or more of its members,
42 or to one or more agents or employees powers and duties it
43 considers proper. The committee may secure necessary and
44 suitable office accommodations and the necessary supplies
45 and equipment. Upon request of the committee, for the
46 purpose of carrying out any of its functions, the supervising
47 officer of any state agency or of any state institution of
48 learning shall, insofar as may be possible, under available
49 appropriations and having due regard to the needs of the
50 agency to which the request is directed, assign or detail to
51 the committee, members of the staff or personnel of the
52 agency or institution of learning and make special reports,
53 surveys or studies required by the committee.

54 (f) A member of the committee holds office so long as
55 he or she retains the office by virtue of which he or she is
56 serving on the committee. A majority of the committee is a
57 quorum and the concurrence of a majority in any matter
58 within their duties is required for its determination. The
59 chairperson and members of the committee may receive no
60 compensation for their services on the committee, but are
61 entitled to reimbursement of expenses, including traveling
62 expenses necessarily incurred in the discharge of their
63 duties on the committee. The committee shall:

64 (1) Require the execution of surety bonds for all
65 employees and officers who are entrusted with funds or
66 property;

67 (2) Provide for the keeping of a full and accurate public
68 record of all proceedings and of all resolutions, rules and
69 orders issued or adopted; and

70 (3) Provide for an annual audit of the accounts of
71 receipts and disbursements.

72 (g) In addition to other duties and powers conferred
73 upon the state Conservation Committee, it may:

74 (1) Offer appropriate assistance to the supervisors of
75 conservation districts, organized as provided in this article,
76 in the carrying out of any of their powers and programs;

77 (2) Keep the supervisors of each of the several districts,
78 organized under the provisions of this article, informed of
79 the activities and experience of all other districts organized
80 under this article and facilitate an interchange of advice and
81 experience between the districts and cooperation between
82 them;

83 (3) Coordinate the programs of the several conservation
84 districts so far as this may be done by advice and
85 consultation;

- 86 (4) Contract for services directly related to natural
87 disaster recovery and stream restoration related to flooding,
88 on an as needed basis;
- 89 (5) Comply with provisions of present and future federal
90 aid statutes and regulations, including execution of
91 contracts or agreements with, and cooperation in, programs
92 of the United States government and any of its proper
93 departments, bureaus, or agencies relating to natural disaster
94 response, natural disaster recovery, or stream restoration
95 related to flooding;
- 96 (6) Secure the cooperation and assistance of the United
97 States and any of its agencies and of agencies of this state in
98 the work of the districts;
- 99 (7) Disseminate information throughout the state
100 concerning the activities and programs of the conservation
101 districts and encourage the formation of the districts in areas
102 where their organization is desirable;
- 103 (8) Accept and receive donations, gifts, contributions,
104 grants and appropriations in money, services, materials or
105 otherwise from the United States or any of its agencies, from
106 the State of West Virginia or from other sources and use or
107 expend the money, services, materials or other contributions
108 in carrying out the policy and provisions of this article,
109 including the right to allocate the money, services or
110 materials in part to the various conservation districts created
111 by this article in order to assist them in carrying on their
112 operations; and
- 113 (9) Obtain options upon and acquire by purchase,
114 exchange, lease, gift, grant, bequest, devise or otherwise any
115 property, real or personal, or rights or interests in the
116 property; maintain, administer, operate and improve any
117 properties acquired; receive and retain income from the
118 property and to expend the income as required for operation,
119 maintenance, administration or improvement of the
120 properties or in otherwise carrying out the purposes and
121 provisions of this article; and sell, lease or otherwise dispose
122 of any of its property or interests in the property in

123 furtherance of the purposes and the provisions of this article.
124 Money received from the sale of land acquired in the small
125 watershed program shall be deposited in the special account
126 of the state Conservation Committee and expended as
127 provided in this article.

128 (10) To promulgate emergency and legislative rules to
129 effectuate the provisions of this article as amended and
130 reenacted by the Legislature during the 2018 regular session
131 of the Legislature.

132 (11) Upon a Governor's proclamation declaring a state
133 of emergency or federal disaster declaration, the state
134 committee, its employees or agents may enter any water of
135 the state for the purpose of removing debris and other
136 obstruction which impede water flow and present additional
137 flood hazards. The agency shall make reasonable efforts to
138 secure the permission of the landowner before entering any
139 private property in connection with these removal activities.
140 The exercise of this limited authority does not constitute
141 taking of private property or trespass. This authority shall
142 continue for the duration of the Governor's proclamation or
143 the federal disaster declaration.



CHAPTER 11

**(Com. Sub. for H. B. 4214 - By Delegates Eldridge,
Maynard, Diserio, R. Miller, Campbell, Marcum,
Dean, Phillips, Ambler, Paynter and Cooper)**

[Passed March 10, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §19-1A-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-35 of said code, all relating to increasing penalties for unlawfully possessing or digging ginseng; requiring ginseng

dealers to maintain a photocopy of a valid identification card of all diggers, growers, and dealers involved in a ginseng transaction; and requiring written consent by the landowner to enter the lands of another to dig or prospect for ginseng.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.

1 (a) (1) The Legislature finds that ginseng trade must be
2 controlled in order to protect the survival of wild ginseng as
3 evidenced by its listing in Appendix II of the Convention on
4 International Trade in Endangered Species of Wild Fauna
5 and Flora. It is the policy of this state to regulate the
6 commerce in ginseng in a manner that protects the survival
7 of wild ginseng.

8 (2) For purposes of this section:

9 (A) “Certified” means the ginseng carries a certificate
10 of origin issued by the director which allows the export from
11 West Virginia of ginseng legally harvested in this state;

12 (B) “Commercial use” means to sell or to use ginseng
13 for financial gain;

14 (C) “Cultivated ginseng” means ginseng that is
15 purposefully planted in beds under artificial shade using
16 standard horticultural practices such as mechanical tillage,
17 fertilization, weed control, irrigation and pesticides;

18 (D) “Dealer” means a person who purchases ginseng for
19 purposes of commercial use;

20 (E) “Digger” means a person who digs, collects or
21 gathers wild ginseng by searching woodlands to find the
22 plants;

23 (F) “Director” means the Director of the Division of
24 Forestry;

25 (G) “Division” means the Division of Forestry;

26 (H) “Export” means the movement of ginseng from
27 state to state as well as sending it abroad;

28 (I) “Ginseng” means whole, sliced or parts of roots of
29 cultivated ginseng, woods grown ginseng, wild simulated
30 ginseng and wild ginseng, excluding manufactured parts,
31 products, and derivatives, such as powders, pills, extracts,
32 tonics, teas and confectionary;

33 (J) “Green ginseng” means a fresh wild ginseng root that
34 has not been intentionally subjected to a drying process and
35 from which most natural moisture has not been removed by
36 drying;

37 (K) “Grower” means a person who purposefully plants
38 and grows cultivated ginseng, woods-grown ginseng or wild
39 simulated ginseng for purposes of commercial use:
40 *Provided*, That a grower does not include a digger who
41 plants wild ginseng seed from the wild ginseng plants he or
42 she digs, collects or gathers;

43 (L) “Harvest” means to dig, collect or gather ginseng;

44 (M) “Person” means an individual, corporation,
45 partnership, firm or association;

46 (N) “Rootlets” means woods-grown or wild simulated
47 one-to-two year old ginseng roots commonly sold as
48 transplants to growers;

49 (O) “Wild ginseng” means *Panax quinquefolius* L. that
50 is not grown or nurtured by a person regardless of the
51 putative origin of the plants: *Provided*, That wild ginseng
52 may originate from seeds planted by a digger at the same
53 site from which the digger harvests the wild ginseng;

54 (P) “Wild simulated ginseng” means ginseng that is
55 purposefully planted in the woods without a bed being
56 prepared and without the use of any chemical weed, disease
57 or pest control agents;

58 (Q) “Woods-grown ginseng” means ginseng that is
59 purposefully planted in beds prepared in the woods in a
60 manner that uses trees to provide necessary shade and which
61 may be grown with the use of chemical or mechanical weed,
62 disease or pest control agents.

63 (3) (A) The Division of Forestry shall regulate the
64 growing, digging, collecting, gathering, possessing and
65 selling of ginseng.

66 (B) The division may propose rules for legislative
67 approval in accordance with §29A-3-1 *et seq.* of this code
68 to implement the provisions of this section including the
69 amount of any permit fee.

70 (C) For purposes of regulating the growing, harvesting
71 and commercial use of ginseng, a division employee may
72 enter upon any public or private property, other than a
73 dwelling house, at reasonable times, in order to inspect the
74 ginseng operation or records. A person may not obstruct or
75 hinder the employee in the discharge of his or her
76 enforcement duties.

77 (D) All moneys received from permit fees and civil
78 penalties assessed pursuant to this section shall be credited
79 to the special account within the Division of Forestry to be
80 used for the purposes set forth in section three of this article.

81 (E) The site plats required to be submitted to the
82 division and other information identifying the specific
83 location of ginseng plants are not open to public inspection
84 pursuant to §29B-1-1 *et seq.* of this code since they disclose
85 information having a significant commercial value.

86 (b) (1) The digging season for wild ginseng begins on
87 September 1, and ends on November 30, of each year. It is

88 unlawful for a person to dig, collect or gather wild ginseng
89 between December 1, and August 31 of the following year.

90 (2) A person digging, collecting or gathering wild
91 ginseng upon the enclosed or posted lands of another person
92 shall first obtain written permission from the landowner,
93 tenant or agent, and shall carry the written permission on his
94 or her person while digging, collecting or gathering wild
95 ginseng upon the enclosed or posted lands. It is unlawful to
96 dig, collect or gather wild ginseng from the property of
97 another without the written permission of the landowner.

98 (3) A person digging, collecting or gathering wild
99 ginseng shall plant the seeds from the wild ginseng plants at
100 the time and at the site from which the wild ginseng is
101 harvested. It is unlawful to remove wild ginseng seeds from
102 the site of collection.

103 (4) It is unlawful to dig, collect or gather wild ginseng
104 less than five years old.

105 (5) A person may not rescue wild ginseng plants
106 endangered by ground-disturbing activities unless he or she
107 has first obtained a moving permit from the division. The
108 person shall provide the reason for moving the plants, the
109 current location of the plants, the proposed new planting site
110 and other information required by the division.

111 (6) It is unlawful to plant ginseng or ginseng seed and
112 to dig, collect or gather ginseng on West Virginia public
113 lands, except by land grant university researchers
114 performing research or demonstration projects regarding the
115 growing, cultivating or harvesting of ginseng: *Provided,*
116 That it is unlawful for anyone to plant ginseng or ginseng
117 seed and to dig, collect or gather ginseng on state wildlife
118 management areas or on state parks.

119 (c) (1) A person may not act as a grower unless he or
120 she has obtained a grower's permit from the division.

121 (2) Prior to planting cultivated, woods-grown or wild
122 simulated ginseng, a grower shall:

123 (A) Submit to the director a plat of the exact planting
124 location prepared by a licensed surveyor or a registered
125 forester as defined in §30-19-1 *et seq.* of this code, along
126 with information verifying the name of the landowner:
127 *Provided*, That if the grower is not the landowner, the
128 grower shall also submit written permission from the
129 landowner to grow and harvest cultivated, woods-grown or
130 wild simulated ginseng on that property.

131 (B) Obtain a written determination from the director
132 certifying that the planting area is free from wild ginseng;
133 and

134 (C) Submit other information required by the division.

135 (3) A grower shall keep accurate and complete records
136 on each ginseng planting on forms provided by the division.
137 The records shall be available for inspection by a division
138 employee and shall be submitted to the division at intervals
139 established by rule by the division. A grower shall maintain
140 records for a period of not less than ten years. The
141 information required to be kept shall include:

142 (A) The origin of ginseng seed, rootlets or plants;

143 (B) The location of purposefully planted cultivated,
144 wild simulated and woods-grown ginseng and a site plat of
145 the planting;

146 (C) The original of the director's determination that the
147 site was free from wild ginseng at the time of planting;

148 (D) The date each site was planted;

149 (E) The number of pounds of seeds planted, or the
150 number and age of rootlets, or both; and

151 (F) Other information required by the division.

152 (4) A grower may harvest cultivated ginseng on or after
153 the effective date of this section throughout the year.

154 (5) A grower may harvest wild simulated and woods-
155 grown ginseng from September 1, through November 30, of
156 each year.

157 (6) It is unlawful for a person to dig, collect or gather
158 wild simulated and woods-grown ginseng between
159 December 1 and August 31.

160 (7) It is unlawful to dig, collect and gather wild
161 simulated and woods-grown ginseng less than five years
162 old.

163 (8) A grower shall comply with the certification
164 procedures set forth in subdivision (f) of this section.

165 (9) For planting locations in existence prior to July 1,
166 2005, provide proof of having purchased ginseng seed,
167 rootlets or plants for planting for a minimum of one or more
168 of the five years immediately prior to July 1, 2005, and sign
169 a certification that to the best of his or her knowledge, no
170 wild ginseng existed on the site at the time the ginseng was
171 planted: *Provided*, That no grower may certify a planting
172 location in existence prior to July 1, 2005, under this
173 provision after December 31, 2009.

174 (d) (1) A person may not act as a dealer unless he or she
175 has obtained a dealer's permit from the division.

176 (2) A dealer shall keep accurate and complete records
177 on his or her ginseng transactions on forms provided by the
178 division. A dealer is required to maintain a record of all
179 persons, including a digger, grower and dealer, involved in
180 each purchase or sale transaction and shall include the name,
181 address, a photocopy of a valid photo identification card
182 issued by the West Virginia Division of Motor Vehicles,
183 any other state, or the federal government, permit number
184 and a copy of each ginseng certification issued by the
185 division. All records shall be available for inspection by a

186 division employee. A dealer shall maintain records for a
187 period of not less than ten years. In addition, a dealer is
188 required to report the following information to the division
189 monthly:

190 (A) The date of the transaction;

191 (B) The type of ginseng, whether wild, cultivated,
192 woods-grown or wild simulated ginseng;

193 (C) Whether the ginseng is dried or green at the time of
194 the transaction;

195 (D) The weight of the ginseng;

196 (E) The county from which the ginseng was harvested;

197 (F) The identification number from the state ginseng
198 certification; and

199 (G) Other information required by the division.

200 (3) A dealer shall include a West Virginia export
201 certificate, numbered by the division, with each shipment of
202 ginseng transported out-of-state.

203 (4) A dealer may not import out-of-state ginseng into
204 this state unless the ginseng is accompanied by a valid
205 export certificate issued by the state of origin. A dealer must
206 return uncertified ginseng to the state of origin within fifteen
207 calendar days.

208 (5) It is unlawful to include false information on any
209 certificate or record required to be completed or maintained
210 by this section. All ginseng harvested in West Virginia must
211 be certified by the director before being transported or
212 shipped out-of-state.

213 (e) (1) A person may not act as a grower or act as a
214 dealer unless he or she has been issued the appropriate
215 permit by the division. A person must obtain a separate
216 permit for each activity. Permit applications shall be made

217 on forms provided by the division. The application for a
218 permit shall be accompanied by the applicable permit fee.
219 The division shall take final action upon all completed
220 permit applications within thirty days of receipt if the
221 application is uncontested, or within ninety days if the
222 application is contested. The division shall assign a permit
223 number to each person granted a permit and it shall keep
224 records of the permits issued.

225 (2) Permits expire on December 31 of each year for
226 growers and August 31 of each year for dealers. All permits
227 must be renewed annually. Renewal forms will be mailed to
228 current permit holders. The failure to receive a renewal form
229 does not relieve the permit holder of the obligation to renew.
230 The division may require a late fee when renewal is received
231 more than sixty days after the expiration of the current
232 permit.

233 (3) The permit holder shall notify the division of any
234 changes in the information on the permit.

235 (f) All ginseng harvested in this state shall be certified
236 as to type, whether wild, cultivated, woods-grown or wild
237 simulated, and to its origin, weight and lawful harvest.
238 Other information may be required for ginseng to be
239 certified by the division to comply with the Convention on
240 International Trade in Endangered Species of Wild Fauna
241 and Flora to allow for its export: *Provided*, That live one
242 and two-year old cultivated, woods-grown or wild
243 simulated rootlets sold by growers for propagation purposes
244 within the United States are not regarded as harvested and
245 are exempt from the certification requirement. All ginseng,
246 except cultivated ginseng, must be certified or weight
247 receipted by April 1 of the year following harvest: *Provided*,
248 *however*, That no ginseng may be certified between January
249 1 through March 31 unless the person requesting
250 certification displays a valid permit. It is unlawful for a
251 person to have in his or her possession uncertified wild
252 ginseng from April 1 through August 31.

253 (g) The director shall propose rules for legislative
254 approval in accordance with §29A-3-1 *et seq.* of this code
255 designed to implement the ginseng certification process.

256 (h) The division may, by order entered in accordance
257 with the provisions of §29A-5-1 *et seq.* of this code, deny,
258 suspend or revoke the permit of a grower or dealer and may
259 invalidate an export certificate completed by a dealer when
260 the division finds that a grower or dealer has violated any
261 provision of this section or a legislatively approved rule.

262 (i) The division may assess a civil penalty against a
263 person who violates any provision of this section or a
264 provision of a legislatively approved rule. The division may
265 assess a monetary penalty of not less than \$500 nor more
266 than \$1,000.

267 (j) Any person violating a provision of this section is
268 guilty of a misdemeanor and, upon conviction thereof, shall
269 be fined not less than \$500 nor more than \$1,000 for the first
270 offense, and for each subsequent offense, shall be fined not
271 less than \$1,000 nor more than \$2,000 or confined in jail not
272 more than six months, or both fined and confined. The court,
273 in imposing the sentence of a person convicted of an offense
274 under this section, shall order the person to forfeit all
275 ginseng involved in the offense.

276 (k) It is the duty of the prosecuting attorney of the
277 county in which the violation occurred to represent the
278 division, to institute proceedings and to prosecute the person
279 charged with the violation.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-35. Digging cultivated ginseng; penalty.

1 (a) It shall be unlawful for any person to dig cultivated
2 ginseng or prospect for the same, on the lands of another
3 without written consent of the owner or owners thereof first

4 obtained. The property must be properly posted with “No
5 Trespassing” signs, “Private Property” signs, or other signs
6 that explain to a person to stay off the property. The signs
7 must be of reasonable size to be read by an average person
8 and must be posted at reasonable intervals of at least two
9 hundred feet around the property.

10 (b) Any person violating this section shall be guilty of a
11 misdemeanor and, upon conviction thereof, shall be fined
12 not less than \$500 nor more than \$1,000, and, for each
13 subsequent offense, shall be fined not less than \$1,000.



CHAPTER 12

**(Com. Sub. for S. B. 152 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 10, 2018; in effect from passage.]
[Approved by the Governor on March 15, 2018.]

AN ACT making appropriations of public money out of the
Treasury in accordance with section 51, 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 2019.

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 2019” shall mean the period from July
10 1, 2018, through June 30, 2019.

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
28 compensation and workers compensation. Such
29 expenditures shall be 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 one
90 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 services
106 and employee benefits,” “current expenses,” “repairs and
107 alterations,” “equipment,” “other assets,” “land,” and
108 “buildings” to other appropriations within the same account
109 and no funds from other appropriations shall be transferred to
110 the “personal services and employee benefits” or the
111 “unclassified” appropriation except that for funds
112 appropriated in Title II – Section 3, 6, or 7 funds may be
113 transferred to the “personal services and employee benefits”
114 appropriation of the same fund in an amount not to exceed
115 5% of the enrolled appropriation for “personal services and
116 employee benefits”: *And provided further*, That no authority
117 exists hereunder to transfer funds into appropriations to
118 which no funds are legislatively appropriated: *And provided*
119 *further*, That if the Legislature consolidates, reorganizes or
120 terminates agencies, boards or functions, the secretary or
121 other appropriate agency head, or in the case of the
122 termination of a spending unit of the state, the Director of the
123 State Budget Office, in the absence of general law providing
124 otherwise, may transfer the funds formerly appropriated to
125 such agency, board or function, allocating items of
126 appropriation as may be necessary if only part of the item
127 may be allocated, in order to implement such consolidation,
128 reorganization or termination. No funds may be transferred
129 from a Special Revenue Account, dedicated account, capital
130 expenditure account or any other account or fund specifically
131 exempted by the Legislature from transfer, except that the use
132 of the appropriations from the State Road Fund for the office
133 of the Secretary of the Department of Transportation is not a
134 use other than the purpose for which such funds were
135 dedicated and is permitted.

136 Appropriations otherwise classified shall be expended
137 only where the distribution of expenditures for different
138 purposes cannot well be determined in advance or it is
139 necessary or desirable to permit the spending unit the
140 freedom to spend an appropriation for more than one of the
141 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.

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| §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 2019.

LEGISLATIVE

I-Senate

Fund 0165 FY 2019 Org 2100

| | Appropriation | General Revenue 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 2018 are to remain in full force and effect and are hereby
 15 reappropriated to June 30, 2019. Any balances so
 16 reappropriated may be transferred and credited to the fiscal
 17 year 2018 accounts.

18 Upon the written request of the Clerk of the Senate, the
 19 Auditor shall transfer amounts between items of the total
 20 appropriation in order to protect or increase the efficiency
 21 of the service.

22 The Clerk of the Senate, with the approval of the
23 President, is authorized to draw his or her requisitions upon
24 the Auditor, payable out of the Current Expenses and
25 Contingent Fund of the Senate, for any bills for supplies and
26 services that may have been incurred by the Senate and not
27 included in the appropriation bill, for supplies and services
28 incurred in preparation for the opening, the conduct of the
29 business and after adjournment of any regular or
30 extraordinary session, and for the necessary operation of the
31 Senate offices, the requisitions for which are to be
32 accompanied by bills to be filed with the Auditor.

33 The Clerk of the Senate, with the approval of the
34 President, or the President of the Senate shall have authority
35 to employ such staff personnel during any session of the
36 Legislature as shall be needed in addition to staff personnel
37 authorized by the Senate resolution adopted during any such
38 session. The Clerk of the Senate, with the approval of the
39 President, or the President of the Senate shall have authority
40 to employ such staff personnel between sessions of the
41 Legislature as shall be needed, the compensation of all staff
42 personnel during and between sessions of the Legislature,
43 notwithstanding any such Senate resolution, to be fixed by
44 the President of the Senate. The Clerk is hereby authorized
45 to draw his or her requisitions upon the Auditor for the
46 payment of all such staff personnel for such services,
47 payable out of the appropriation for Compensation and Per
48 Diem of Officers and Employees or Current Expenses and
49 Contingent Fund of the Senate.

50 For duties imposed by law and by the Senate, the Clerk
51 of the Senate shall be paid a monthly salary as provided by
52 the Senate resolution, unless increased between sessions
53 under the authority of the President, payable out of the
54 appropriation for Compensation and Per Diem of Officers
55 and Employees or Current Expenses and Contingent Fund
56 of the Senate.

57 The distribution of the blue book shall be by the office
58 of the Clerk of the Senate and shall include 75 copies for

59 each member of the Legislature and two copies for each
 60 classified and approved high school and junior high or
 61 middle school and one copy for each elementary school
 62 within the state.

63 Included in the above appropriation for Senate (fund
 64 0165, appropriation 02100), an amount not less than \$5,000
 65 is to be used for the West Virginia Academy of Family
 66 Physicians - Doc of the Day Program.

2-House of Delegates

Fund 0170 FY 2019 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 | 3,909,031 |
| 6 | Expenses of Members (R)..... | 39900 | 1,350,000 |
| 7 | BRIM Premium (R) | 91300 | <u>70,000</u> |
| 8 | Total..... | | \$ 8,904,031 |

9 The appropriations for the House of Delegates for the
 10 fiscal year 2018 are to remain in full force and effect and are
 11 hereby reappropriated to June 30, 2019. Any balances so
 12 reappropriated may be transferred and credited to the fiscal
 13 year 2018 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 2019 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 2018 are to remain in full force and effect and are
11 hereby reappropriated to June 30, 2019. Any balances
12 reappropriated may be transferred and credited to the fiscal
13 year 2018 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 2019 Org 2400

| | | | |
|----|-------------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits (R) | 00100 | \$102,856,258 |
| 3 | Children's Protection Act (R) | 09000 | 214,700 |
| 4 | Current Expenses (R)..... | 13000 | 32,882,879 |
| 5 | Repairs and Alterations (R) | 06400 | 236,450 |
| 6 | Equipment (R)..... | 07000 | 1,800,000 |
| 7 | Judges' Retirement System (R) | 11000 | 779,000 |
| 8 | Buildings (R)..... | 25800 | 100,000 |
| 9 | Other Assets (R)..... | 69000 | 200,000 |
| 10 | BRIM Premium (R) | 91300 | <u>690,383</u> |
| 11 | Total..... | | \$139,759,670 |

12 The appropriations to the Supreme Court of Appeals for
 13 the fiscal years 2017 and 2018 are to remain in full force
 14 and effect and are hereby reappropriated to June 30, 2019.
 15 Any balances so reappropriated may be transferred and
 16 credited to the fiscal year 2018 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 2019 Org 0100

| | | | |
|--------------------------------------|-------|----|------------------|
| 1 Personal Services and | | | |
| 2 Employee Benefits..... | 00100 | \$ | 3,171,318 |
| 3 Current Expenses (R)..... | 13000 | | 760,888 |
| 4 Repairs and Alterations..... | 06400 | | 2,000 |
| 5 National Governors Association.... | 12300 | | 60,700 |
| 6 Herbert Henderson Office of | | | |
| 7 Minority Affairs..... | 13400 | | 146,726 |
| 8 BRIM Premium..... | 91300 | | <u>183,645</u> |
| 9 Total..... | | \$ | <u>4,325,277</u> |

10 Any unexpended balances remaining in the
 11 appropriations for Unclassified (fund 0101, appropriation
 12 09900), and Current Expenses (fund 0101, appropriation
 13 13000) at the close of the fiscal year 2018 are hereby
 14 reappropriated for expenditure during the fiscal year 2019.

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 2019 Org 0100

| | | | | |
|---|------------------------------|-------|----|--------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 364,421 |
| 3 | Current Expenses (R)..... | 13000 | | 183,158 |
| 4 | Repairs and Alterations..... | 06400 | | <u>5,000</u> |
| 5 | Total..... | | \$ | 552,579 |

6 Any unexpended balance remaining in the appropriation
 7 for Current Expenses (fund 0102, appropriation 13000) at
 8 the close of the fiscal year 2018 is hereby reappropriated for
 9 expenditure during the fiscal year 2019.

10 Appropriations are to be used for current general
 11 expenses, including compensation of employees, household
 12 maintenance, cost of official functions and additional
 13 household expenses occasioned by such official functions.

7-Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2019 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 2018 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 2019 Org 1200

| | | | |
|---|---------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,694,191 |
| 3 | Current Expenses (R)..... | 13000 | 13,429 |
| 4 | BRIM Premium..... | 91300 | <u>12,077</u> |
| 5 | Total..... | | \$ 2,719,697 |

6 Any unexpended balance remaining in the appropriation
 7 for Current Expenses (fund 0116, appropriation 13000) at
 8 the close of the fiscal year 2018 is hereby reappropriated for
 9 expenditure during the fiscal year 2019.

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 2019 Org 1300

| | | | |
|---|----------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,480,419 |
| 3 | Unclassified | 09900 | 30,415 |
| 4 | Current Expenses (R)..... | 13000 | 475,100 |
| 5 | Abandoned Property Program | 11800 | 41,794 |
| 6 | Other Assets | 69000 | 10,000 |
| 7 | ABLE Program | 69202 | 150,000 |
| 8 | BRIM Premium..... | 91300 | <u>59,169</u> |
| 9 | Total..... | | \$ 3,246,897 |

10 Any unexpended balances remaining in the
 11 appropriation for Current Expenses (fund 0126,
 12 appropriation 13000) at the close of the fiscal year 2018 are
 13 hereby reappropriated for expenditure during the fiscal year
 14 2019.

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 2019 Org 1400

| | | | |
|---|-------------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 5,301,277 |
| 3 | Animal Identification Program | 03900 | 126,318 |
| 4 | State Farm Museum | 05500 | 87,759 |
| 5 | Current Expenses (R)..... | 13000 | 141,960 |
| 6 | Gypsy Moth Program (R) | 11900 | 954,230 |
| 7 | WV Farmers Market | 12801 | 150,467 |
| 8 | Black Fly Control..... | 13700 | 453,164 |
| 9 | Donated Foods Program | 36300 | 45,000 |

| | | | |
|----|-------------------------------------|-------|---------------|
| 10 | Veterans to Agriculture Program... | 36301 | 250,000 |
| 11 | Predator Control (R) | 47000 | 176,400 |
| 12 | Bee Research..... | 69100 | 67,822 |
| 13 | Microbiology Program..... | 78500 | 97,016 |
| 14 | Moorefield Agriculture Center | 78600 | 933,624 |
| 15 | Chesapeake Bay Watershed..... | 83000 | 106,803 |
| 16 | Livestock Care Standards Board.... | 84300 | 8,820 |
| 17 | BRIM Premium..... | 91300 | 138,905 |
| 18 | State FFA-FHA Camp and | | |
| 19 | Conference Center | 94101 | 613,246 |
| 20 | Threat Preparedness..... | 94200 | 70,731 |
| 21 | WV Food Banks..... | 96900 | 126,000 |
| 22 | Senior's Farmers' Market | | |
| 23 | Nutrition Coupon Program | 97000 | <u>55,835</u> |
| 24 | Total..... | | \$ 9,905,377 |

25 Any unexpended balances remaining in the
26 appropriations for Gypsy Moth Program (fund 0131,
27 appropriation 11900), Current Expenses (fund 0131,
28 appropriation 13000), Predator Control (fund 0131,
29 appropriation 47000), and Agricultural Disaster and
30 Mitigation Needs – Surplus (fund 0131, appropriation
31 85000) at the close of the fiscal year 2018 are hereby
32 reappropriated for expenditure during the fiscal year 2019.

33 Included in the above appropriation to Personal Services
34 and Employee Benefits (fund 0131, appropriation 00100),
35 is \$95,000 for the Salary of the Commissioner.

36 The above appropriation for Predator Control (fund
37 0131, appropriation 47000) is to be made available to the
38 United States Department of Agriculture, Wildlife Services
39 to administer the Predator Control Program.

40 A portion of the Current Expenses appropriation may be
41 transferred to a special revenue fund for the purpose of
42 matching federal funds for marketing and development
43 activities.

44 From the above appropriation for WV Food Banks
 45 (fund 0131, appropriation 96900), \$20,000 is for House of
 46 Hope and the remainder of the appropriation shall be
 47 allocated to the Huntington Food Bank and the Mountaineer
 48 Food Bank in Braxton County.

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2019 Org 1400

| | | | |
|---|--------------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 754,823 |
| 3 | Unclassified | 09900 | 77,059 |
| 4 | Current Expenses (R)..... | 13000 | 317,848 |
| 5 | Soil Conservation Projects (R) | 12000 | 6,649,447 |
| 6 | BRIM Premium..... | 91300 | <u>34,428</u> |
| 7 | Total..... | | \$ 7,833,605 |

8 Any unexpended balances remaining in the
 9 appropriations for Soil Conservation Projects (fund 0132,
 10 appropriation 12000), and Current Expenses (fund 0132,
 11 appropriation 13000) at the close of the fiscal year 2018 are
 12 hereby reappropriated for expenditure during the fiscal year
 13 2019.

12-Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2019 Org 1400

| | | | |
|---|------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 640,093 |
| 3 | Unclassified | 09900 | 7,090 |
| 4 | Current Expenses | 13000 | <u>82,605</u> |
| 5 | Total..... | | \$ 729,788 |

- 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 2019 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 2019 Org 1400

| | | | | |
|---|------------------------|-------|----|------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 96,735 |
| 3 | Unclassified | 09900 | | <u>950</u> |
| 4 | Total..... | | \$ | 97,685 |

15-Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2019 Org 1500

| | | | | |
|---|------------------------------|-------|----|-----------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits (R) | 00100 | \$ | 2,537,784 |
| 3 | Unclassified (R) | 09900 | | 24,428 |
| 4 | Current Expenses (R)..... | 13000 | | 762,097 |
| 5 | Repairs and Alterations..... | 06400 | | 1,000 |
| 6 | Equipment..... | 07000 | | 1,000 |

| | | | |
|----|--------------------------------|-------|----------------|
| 7 | Criminal Convictions and | | |
| 8 | Habeas Corpus Appeals (R) | 26000 | 923,582 |
| 9 | Better Government Bureau | 74000 | 275,194 |
| 10 | BRIM Premium..... | 91300 | <u>120,654</u> |
| 11 | Total..... | | \$ 4,645,739 |

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 2018 are
 20 hereby reappropriated for expenditure during the fiscal year
 21 2019.

22 Included in the above appropriation to Personal Services
 23 and Employee Benefits (fund 0150, appropriation 00100),
 24 is \$95,000 for the Salary of the Attorney General.

25 When legal counsel or secretarial help is appointed by the
 26 Attorney General for any state spending unit, this account shall
 27 be reimbursed from such spending units specifically
 28 appropriated account or from accounts appropriated by general
 29 language contained within this bill: *Provided*, That the
 30 spending unit shall reimburse at a rate and upon terms agreed
 31 to by the state spending unit and the Attorney General:
 32 *Provided, however*, That if the spending unit and the Attorney
 33 General are unable to agree on the amount and terms of the
 34 reimbursement, the spending unit and the Attorney General
 35 shall submit their proposed reimbursement rates and terms to
 36 the Governor for final determination.

16-Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2019 Org 1600

| | | | | |
|---|---------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 118,794 |
| 3 | Unclassified (R)..... | 09900 | | 9,555 |
| 4 | Current Expenses (R)..... | 13000 | | 805,948 |
| 5 | BRIM Premium..... | 91300 | | <u>23,297</u> |
| 6 | Total..... | | \$ | 957,594 |

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 2018 are hereby
11 reappropriated for expenditure during the fiscal year 2019.

12 Included in the above appropriation to Personal Services
13 and Employee Benefits (fund 0155, appropriation 00100),
14 is \$95,000 for the Salary of the Secretary of State.

17-State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2019 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 2019 Org 0201

| | | | | |
|---|------------------------|-------|----|---------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 591,118 |
| 3 | Unclassified | 09900 | | 9,177 |

| | | | |
|----|------------------------------|-------|---------------|
| 4 | Current Expenses | 13000 | 85,446 |
| 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>6,299</u> |
| 12 | Total..... | | \$ 15,724,786 |

13 Any unexpended balance remaining in the appropriation
 14 for Financial Advisor (fund 0186, appropriation 30400) at
 15 the close of the fiscal year 2018 is hereby reappropriated for
 16 expenditure during the fiscal year 2019.

17 The appropriation for Lease Rental Payments (fund
 18 0186, appropriation 51600) shall be disbursed as provided
 19 by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2019 Org 0205

1 The Division of Highways, Division of Motor
 2 Vehicles, Public Service Commission and other
 3 departments, bureaus, divisions, or commissions
 4 operating from special revenue funds and/or federal funds
 5 shall pay their proportionate share of the retirement costs
 6 for their respective divisions. When specific
 7 appropriations are not made, such payments may be made
 8 from the balances in the various special revenue funds in
 9 excess of specific appropriations.

20-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2019 Org 0209

| | | | |
|---|------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 64,696 |
| 3 | Unclassified | 09900 | 1,400 |
| 4 | Current Expenses | 13000 | 66,721 |
| 5 | GAAP Project (R)..... | 12500 | 593,684 |
| 6 | BRIM Premium..... | 91300 | <u>7,517</u> |
| 7 | Total..... | | \$ 734,018 |

8 Any unexpended balance remaining in the
9 appropriation for GAAP Project (fund 0203, appropriation
10 12500) at the close of the fiscal year 2018 is hereby
11 reappropriated for expenditure during the fiscal year 2019.

21-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2019 Org 0211

| | | | |
|----|---------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,593,147 |
| 3 | Unclassified | 09900 | 20,000 |
| 4 | Current Expenses | 13000 | 728,849 |
| 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 and | | |
| 13 | Equipment (R) | 58900 | 14,078,888 |
| 14 | Other Assets..... | 69000 | 500 |
| 15 | Land (R)..... | 73000 | 500 |
| 16 | BRIM Premium..... | 91300 | <u>129,983</u> |
| 17 | Total..... | | \$ 17,639,867 |

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 2018 are hereby reappropriated for expenditure
 25 during the fiscal year 2019.

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
 33 and 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 2019 Org 0213

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,023,307 |
| 3 | Unclassified | 09900 | 144 |
| 4 | Current Expenses | 13000 | 1,285 |
| 5 | Repairs and Alterations..... | 06400 | 200 |
| 6 | BRIM Premium..... | 91300 | <u>6,922</u> |
| 7 | Total..... | | \$ 1,031,858 |

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-13.

23-Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2019 Org 0215

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 779,867 |
| 3 | Unclassified | 09900 | 12,032 |
| 4 | Current Expenses | 13000 | 440,247 |
| 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..... | | \$ 1,238,346 |

10 Any unexpended balance remaining in the
 11 appropriation for Buildings (fund 0615, appropriation
 12 25800) at the close of the fiscal year 2018 is hereby
 13 reappropriated for expenditure during the fiscal year
 14 2019.

24-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2019 Org 0217

| | | | |
|---|--|-------|-----------|
| 1 | Current Expenses | 13000 | \$ 45,550 |
| 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 2019 Org 0219

| | | | |
|---|------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 935,883 |
| 3 | Unclassified | 09900 | 1,000 |
| 4 | Current Expenses | 13000 | 143,754 |
| 5 | Equipment..... | 07000 | 50 |
| 6 | BRIM Premium..... | 91300 | <u>10,281</u> |
| 7 | Total..... | | \$ 1,090,968 |

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2019 Org 0220

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 588,831 |
| 3 | Unclassified | 09900 | 2,200 |
| 4 | Current Expenses | 13000 | 104,501 |
| 5 | Repairs and Alterations..... | 06400 | 500 |
| 6 | Other Assets | 69000 | 100 |
| 7 | BRIM Premium..... | 91300 | <u>5,574</u> |
| 8 | Total..... | | \$ 701,706 |

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2019 Org 0221

| | | | |
|---|------------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,367,785 |
| 3 | Unclassified | 09900 | 314,700 |
| 4 | Current Expenses | 13000 | 12,740 |
| 5 | Public Defender Corporations | 35200 | 19,204,999 |
| 6 | Appointed Counsel Fees (R)..... | 78800 | 10,723,115 |
| 7 | BRIM Premium..... | 91300 | <u>10,575</u> |
| 8 | Total..... | | \$31,633,914 |

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 2018 is
12 hereby reappropriated for expenditure during the fiscal year
13 2019.

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 2019 Org 0224

| | | | | |
|---|------------------------|-------|----|-------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 3,187 |
| 3 | Current Expenses | 13000 | | 868 |
| 4 | Total..... | | \$ | 4,055 |

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2019 Org 0225

| | | | | |
|---|-------------------|-------|--|--------------|
| 1 | PEIA Subsidy..... | 80100 | | \$21,000,000 |
|---|-------------------|-------|--|--------------|

2 The Division of Highways, Division of Motor Vehicles,
3 Public Service Commission and other departments,
4 bureaus, divisions, or commissions operating from special
5 revenue funds and/or federal funds shall pay their
6 proportionate share of the public employees health
7 insurance cost for their respective divisions.

8 The above appropriation for PEIA Subsidy (fund 0200,
9 appropriation 80100) may be transferred to a special
10 revenue fund and shall be utilized by the West Virginia
11 Public Employees Insurance Agency for the purposes of
12 offsetting benefit changes to offset the aggregate premium
13 cost-sharing percentage requirements between employers
14 and employees. Such amount shall not be included in the
15 calculation of the plan year aggregate premium cost-sharing
16 percentages between employers and employees.

30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2019 Org 0228

| | | | |
|----|---|-------|----------------|
| 1 | Forensic Medical | | |
| 2 | Examinations (R)..... | 68300 | \$ 139,611 |
| 3 | Federal Funds/Grant Match (R)..... | 74900 | <u>101,418</u> |
| 4 | Total..... | | \$ 241,029 |
| 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 2018 are hereby reappropriated for expenditure during | | |
| 10 | the fiscal year 2019. | | |

31-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2019 Org 0233

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 660,855 |
| 3 | Unclassified | 09900 | 1,000 |
| 4 | Current Expenses | 13000 | 138,631 |
| 5 | Repairs and Alterations..... | 06400 | 100 |
| 6 | Equipment..... | 07000 | 2,500 |
| 7 | BRIM Premium..... | 91300 | <u>8,534</u> |
| 8 | Total..... | | \$ 811,620 |

DEPARTMENT OF COMMERCE*32-Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2019 Org 0305

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,743,667 |
| 3 | Unclassified | 09900 | 21,435 |
| 4 | Current Expenses | 13000 | 338,953 |
| 5 | Repairs and Alterations..... | 06400 | 80,000 |

| | | | |
|---|--------------------|-------|---------------|
| 6 | Equipment (R)..... | 07000 | 2,061 |
| 7 | BRIM Premium..... | 91300 | <u>98,754</u> |
| 8 | Total..... | | \$ 3,284,870 |

9 Any unexpended balance remaining in the
 10 appropriation for Equipment (fund 0250, Appropriation
 11 07000) at the close of the fiscal year 2018 is hereby
 12 reappropriated for expenditure during the fiscal year
 13 2019.

14 Out of the above appropriations a sum may be used to
 15 match federal funds for cooperative studies or other funds
 16 for similar purposes.

33-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2019 Org 0306

| | | | |
|---|----------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,614,784 |
| 3 | Unclassified | 09900 | 27,678 |
| 4 | Current Expenses | 13000 | 51,524 |
| 5 | Repairs and Alterations..... | 06400 | 968 |
| 6 | Mineral Mapping System (R) | 20700 | 1,114,009 |
| 7 | BRIM Premium..... | 91300 | <u>24,486</u> |
| 8 | Total..... | | \$ 2,833,449 |

9 Any unexpended balance remaining in the
 10 appropriation for Mineral Mapping System (fund 0253,
 11 appropriation 20700) at the close of the fiscal year 2018 is
 12 hereby reappropriated for expenditure during the fiscal year
 13 2019.

14 The above Unclassified and Current Expense
 15 appropriations include funding to secure federal and other
 16 contracts and may be transferred to a special revolving fund
 17 (fund 3105) for the purpose of providing advance funding
 18 for such contracts.

34-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2019 Org 0307

| | | | |
|----|----------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 4,204,485 |
| 3 | Unclassified | 09900 | 108,687 |
| 4 | Current Expenses | 13000 | 3,769,645 |
| 5 | National Youth Science Camp..... | 13200 | 241,570 |
| 6 | Local Economic Development | | |
| 7 | Partnerships (R)..... | 13300 | 792,000 |
| 8 | ARC Assessment | 13600 | 152,585 |
| 9 | Infrastructure and Economic | | |
| 10 | Development Projects..... | 23401 | 3,000,000 |
| 11 | Guaranteed Work Force Grant (R) | 24200 | 970,955 |
| 12 | Mainstreet Program..... | 79400 | 164,655 |
| 13 | BRIM Premium..... | 91300 | 3,157 |
| 14 | Hatfield McCoy | | |
| 15 | Recreational Trail | 96000 | <u>198,415</u> |
| 16 | Total..... | | \$13,606,154 |

17 Any unexpended balances remaining in the
18 appropriations for Unclassified – Surplus (fund 0256,
19 appropriation 09700), Partnership Grants (fund 0256,
20 appropriation 13100), Local Economic Development
21 Partnerships (fund 0256, appropriation 13300), Guaranteed
22 Work Force Grant (fund 0256, appropriation 24200),
23 Industrial Park Assistance (fund 0256, appropriation
24 48000), and Local Economic Development Assistance
25 (fund 0256, appropriation 81900) at the close of the fiscal
26 year 2018 are hereby reappropriated for expenditure during
27 the fiscal year 2019.

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 Labor -

Weights and Measures Fund

(WV Code Chapter 47)

Fund 0260 FY 2019 Org 0308

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,500,000 |
| 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..... | | \$ 1,778,500 |

36-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2019 Org 0310

| | | | |
|----|-----------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 16,193,634 |
| 3 | Unclassified | 09900 | 184,711 |
| 4 | Current Expenses | 13000 | 196,302 |
| 5 | Repairs and Alterations..... | 06400 | 100 |
| 6 | Equipment..... | 07000 | 100 |
| 7 | Buildings..... | 25800 | 100 |
| 8 | Capital Outlay – Parks | 28800 | 3,000,000 |
| 9 | Litter Control | | |
| 10 | Conservation Officers..... | 56400 | 142,712 |
| 11 | Upper Mud River Flood Control ... | 65400 | 163,385 |

| | | | |
|----|----------------------|-------|---------------|
| 12 | Other Assets..... | 69000 | 100 |
| 13 | Land (R)..... | 73000 | 100 |
| 14 | Law Enforcement..... | 80600 | 2,473,246 |
| 15 | BRIM Premium..... | 91300 | <u>45,141</u> |
| 16 | Total..... | | \$ 22,399,631 |

17 Any unexpended balances remaining in the
 18 appropriations for Buildings (fund 0265, appropriation
 19 25800), Land (fund 0265, appropriation 73000), and State
 20 Park Improvements – Surplus (fund 0265, appropriation
 21 76300) at the close of the fiscal year 2018 are hereby
 22 reappropriated for expenditure during the fiscal year
 23 2019.

24 Any revenue derived from mineral extraction at any
 25 state park shall be deposited in a special revenue account of
 26 the Division of Natural Resources, first for bond debt
 27 payment purposes and with any remainder to be for park
 28 operation and improvement purposes.

37-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2019 Org 0314

| | | | |
|---|-------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 9,249,358 |
| 3 | Unclassified | 09900 | 111,016 |
| 4 | Current Expenses | 13000 | 1,396,141 |
| 5 | Coal Dust and | | |
| 6 | Rock Dust Sampling..... | 27000 | 482,128 |
| 7 | BRIM Premium..... | 91300 | <u>80,668</u> |
| 8 | Total..... | | \$11,319,311 |

9 Included in the above appropriation for Current
 10 Expenses (fund 0277, appropriation 13000) is \$500,000
 11 to be used for coal mine training activities at an
 12 established mine training facility in southern West
 13 Virginia.

38-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2019 Org 0319

| | | | | |
|---|------------------------|-------|----|----------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 231,169 |
| 3 | Unclassified | 09900 | | 3,480 |
| 4 | Current Expenses | 13000 | | <u>118,138</u> |
| 5 | Total..... | | \$ | 352,787 |

6 Included in the above appropriation for Current
7 Expenses (fund 0280, appropriation 13000) up to \$29,000
8 shall be used for the Coal Mine Safety and Technical
9 Review Committee.

39-WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2019 Org 0323

| | | | | |
|---|------------------------|-------|----|--------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 51,433 |
| 3 | Unclassified | 09900 | | 593 |
| 4 | Current Expenses | 13000 | | <u>7,337</u> |
| 5 | Total..... | | \$ | 59,363 |

*40-Department of Commerce –**Office of the Secretary*

(WV Code Chapter 19)

Fund 0606 FY 2019 Org 0327

| | | | | |
|---|------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 555,128 |
| 3 | Unclassified | 09900 | | 3,500 |
| 4 | Current Expenses | 13000 | | <u>15,089</u> |
| 5 | Total..... | | \$ | 573,717 |

41-Office of Energy

(WV Code Chapter 5B)

Fund 0612 FY 2019 Org 0328

| | | | |
|----|--|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 195,487 |
| 3 | Unclassified | 09900 | 12,395 |
| 4 | Current Expenses | 13000 | 1,029,679 |
| 5 | BRIM Premium..... | 91300 | <u>3,894</u> |
| 6 | Total..... | | \$ 1,241,455 |
| 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*42-State Board of Education –**School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2019 Org 0402

| | | | |
|---|------------------------|-------|------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 335,494 |
| 3 | Current Expenses | 13000 | <u>2,118,865</u> |
| 4 | Total..... | | \$ 2,454,359 |
| 1 | | | |

*43-State Board of Education –**State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2019 Org 0402

| | | | |
|----|------------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 4,387,599 |
| 3 | Teachers' Retirement | | |
| 4 | Savings Realized..... | 09500 | 35,000,000 |
| 5 | Unclassified (R)..... | 09900 | 300,000 |
| 6 | Current Expenses (R)..... | 13000 | 2,572,000 |
| 7 | Equipment..... | 07000 | 5,000 |
| 8 | Increased Enrollment..... | 14000 | 2,910,000 |
| 9 | Safe Schools..... | 14300 | 4,869,447 |
| 10 | Teacher Mentor..... | 15800 | 550,000 |
| 11 | National Teacher Certification (R) | 16100 | 300,000 |
| 12 | Buildings (R)..... | 25800 | 1,000 |
| 13 | Technology Repair | | |
| 14 | and Modernization..... | 29800 | 951,003 |
| 15 | HVAC Technicians..... | 35500 | 506,851 |
| 16 | Early Retirement | | |
| 17 | Notification Incentive..... | 36600 | 300,000 |
| 18 | MATH Program..... | 36800 | 336,532 |
| 19 | Assessment Programs..... | 39600 | 1,339,588 |
| 20 | 21st Century Fellows..... | 50700 | 274,899 |
| 21 | English as a Second Language..... | 52800 | 96,000 |
| 22 | Teacher Reimbursement..... | 57300 | 297,188 |
| 23 | Hospitality Training..... | 60000 | 270,103 |
| 24 | Hi-Y Youth in Government..... | 61600 | 100,000 |
| 25 | High Acuity Special Needs (R)..... | 63400 | 1,500,000 |
| 26 | Foreign Student Education..... | 63600 | 100,013 |
| 27 | Principals Mentorship..... | 64900 | 69,250 |
| 28 | State Board of Education | | |
| 29 | Administrative Costs..... | 68400 | 271,779 |
| 30 | Other Assets..... | 69000 | 1,000 |
| 31 | IT Academy (R)..... | 72100 | 500,000 |
| 32 | Land (R)..... | 73000 | 1,000 |
| 33 | Early Literacy Program..... | 75600 | 5,700,000 |
| 34 | School Based | | |
| 35 | Truancy Prevention (R)..... | 78101 | 2,015,366 |
| 36 | Communities in Schools..... | 78103 | 400,000 |
| 37 | 21st Century Learners (R)..... | 88600 | 1,726,944 |
| 38 | BRIM Premium..... | 91300 | 342,859 |
| 39 | 21st Century Assessment and | | |

| | | | |
|----|-----------------------------------|-------|----------------|
| 40 | Professional Development..... | 93100 | 2,004,447 |
| 41 | 21st Century Technology | | |
| 42 | Infrastructure Network | | |
| 43 | Tools and Support..... | 93300 | 7,636,586 |
| 44 | Educational Program Allowance ... | 99600 | <u>516,250</u> |
| 45 | Total..... | | \$78,152,704 |

46 The above appropriations include funding for the state
47 board of education and their executive office.

48 Any unexpended balances remaining in the
49 appropriations for Unclassified (fund 0313, appropriation
50 09900), Current Expenses (fund 0313, appropriation
51 13000), National Teacher Certification (fund 0313,
52 appropriation 16100), Buildings (fund 0313, appropriation
53 25800), High Acuity Special Needs (fund 0313,
54 appropriation 63400), IT Academy (fund 0313,
55 appropriation 72100), Land (fund 0313, appropriation
56 73000), School Based Truancy Prevention (fund 0313,
57 appropriation 78101), and 21st Century Learners (fund
58 0313, appropriation 88600) at the close of the fiscal year
59 2018 are hereby reappropriated for expenditure during the
60 fiscal year 2019.

61 The above appropriation for Teachers' Retirement
62 Savings Realized (fund 0313, appropriation 09500) shall be
63 transferred to the Employee Pension and Health Care
64 Benefit Fund (fund 2044).

65 The above appropriation for Hospitality Training (fund
66 0313, appropriation 60000), shall be allocated only to
67 entities that have a plan approved for funding by the
68 Department of Education, at the funding level determined
69 by the State Superintendent of Schools. Plans shall be
70 submitted to the State Superintendent of Schools to be
71 considered for funding.

72 From the above appropriation for Educational Program
73 Allowance (fund 0313, appropriation 99600), \$100,000
74 shall be expended for Webster County Board of Education

75 for Hacker Valley; \$150,000 shall be for the Randolph
 76 County Board of Education for Pickens School; \$100,000
 77 shall be for the Preston County Board of Education for the
 78 Aurora School; \$100,000 shall be for the Fayette County
 79 Board of Education for Meadow Bridge; and \$66,250 is for
 80 Project Based Learning in STEM fields.

44-State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2019 Org 0402

| | | | |
|---|---------------------------------------|-------|-------------------|
| 1 | Special Education – Counties | 15900 | \$ 7,271,757 |
| 2 | Special Education – Institutions..... | 16000 | 3,858,654 |
| 3 | Education of Juveniles | | |
| 4 | Held in Predispositional | | |
| 5 | Juvenile Detention Centers | 30200 | 625,614 |
| 6 | Education of Institutionalized | | |
| 7 | Juveniles and Adults (R)..... | 47200 | <u>18,472,954</u> |
| 8 | Total..... | | \$30,228,979 |

9 Any unexpended balance remaining in the
 10 appropriation for Education of Institutionalized Juveniles
 11 and Adults (fund 0314, appropriation 47200) at the close of
 12 the fiscal year 2018 is hereby reappropriated for expenditure
 13 during the fiscal year 2019.

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.

45-State Board of Education –

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2019 Org 0402

| | | | |
|----|-------------------------------------|-------|------------------------|
| 1 | Other Current Expenses | 02200 | \$ 149,651,626 |
| 2 | Advanced Placement..... | 05300 | 595,663 |
| 3 | Professional Educators..... | 15100 | 876,075,903 |
| 4 | Service Personnel..... | 15200 | 297,680,615 |
| 5 | Fixed Charges | 15300 | 103,542,614 |
| 6 | Transportation..... | 15400 | 73,375,145 |
| 7 | Professional Student | | |
| 8 | Support Services..... | 65500 | 38,686,260 |
| 9 | Improved Instructional Programs.... | 15600 | 49,544,683 |
| 10 | 21st Century Strategic Technology | | |
| 11 | Learning Growth..... | 93600 | <u>21,584,131</u> |
| 12 | Basic Foundation Allowances | | 1,610,736,640 |
| 13 | Less Local Share | | (458,622,709) |
| 14 | Adjustments | | <u>(1,694,701)</u> |
| 15 | Total Basic State Aid | | 1,150,419,230 |
| 16 | Public Employees' | | |
| 17 | Insurance Matching | 01200 | 232,810,116 |
| 18 | Teachers' Retirement System | 01900 | 72,719,190 |
| 19 | School Building Authority..... | 45300 | 23,420,520 |
| 20 | Retirement Systems – | | |
| 21 | Unfunded Liability | 77500 | <u>353,640,000</u> |
| 22 | Total..... | | <u>\$1,833,009,056</u> |

46-State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2019 Org 0402

| | | | |
|---|--------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,305,125 |
| 3 | Unclassified | 09900 | 268,800 |
| 4 | Current Expenses | 13000 | 883,106 |
| 5 | Wood Products – Forestry | | |
| 6 | Vocational Program..... | 14600 | 73,715 |
| 7 | Albert Yanni | | |
| 8 | Vocational Program..... | 14700 | 132,123 |
| 9 | Vocational Aid..... | 14800 | 23,239,266 |

| | | | |
|----|-----------------------------|-------|----------------|
| 10 | Adult Basic Education | 14900 | 4,894,607 |
| 11 | Program Modernization | 30500 | 884,313 |
| 12 | High School Equivalency | | |
| 13 | Diploma Testing (R)..... | 72600 | 790,743 |
| 14 | FFA Grant Awards..... | 83900 | 11,496 |
| 15 | Pre-Engineering | | |
| 16 | Academy Program | 84000 | <u>265,294</u> |
| 17 | Total..... | | \$32,748,588 |

18 Any unexpended balance remaining in the
 19 appropriation for High School Equivalency Diploma
 20 Testing (fund 0390, appropriation 72600) at the close of the
 21 fiscal year 2018 is hereby reappropriated for expenditure
 22 during the fiscal year 2019.

47-State Board of Education –

West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2019 Org 0403

| | | | |
|----|------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$11,588,010 |
| 3 | Unclassified | 09900 | 110,000 |
| 4 | Current Expenses | 13000 | 2,145,469 |
| 5 | Repairs and Alterations..... | 06400 | 85,000 |
| 6 | Equipment..... | 07000 | 70,000 |
| 7 | Buildings (R)..... | 25800 | 50,000 |
| 8 | Capital Outlay and | | |
| 9 | Maintenance (R) | 75500 | 82,500 |
| 10 | BRIM Premium..... | 91300 | <u>140,842</u> |
| 11 | Total..... | | \$14,271,821 |

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 2018 are
 16 hereby reappropriated for expenditure during the fiscal year
 17 2019.

DEPARTMENT OF EDUCATION AND THE ARTS*48-Department of Education and the Arts –**Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2019 Org 0431

| | | | |
|----|-----------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 533,834 |
| 3 | Unclassified | 09900 | 35,000 |
| 4 | Center for Professional | | |
| 5 | Development (R) | 11500 | 1,511,331 |
| 6 | Current Expenses | 13000 | 7,162 |
| 7 | WV Humanities Council..... | 16800 | 250,000 |
| 8 | Benedum Professional Development | | |
| 9 | Collaborative (R) | 42700 | 429,775 |
| 10 | Governor's Honors Academy (R).... | 47800 | 1,059,270 |
| 11 | Educational Enhancements | 69500 | 573,500 |
| 12 | S.T.E.M. Education and | | |
| 13 | Grant Program (R)..... | 71900 | 492,262 |
| 14 | Energy Express | 86100 | 382,935 |
| 15 | BRIM Premium..... | 91300 | 5,336 |
| 16 | Special Olympic Games..... | 96600 | <u>25,000</u> |
| 17 | Total..... | | \$ 5,305,405 |

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 2018 are hereby reappropriated for
 26 expenditure during the fiscal year 2019.

27 From the above appropriation for Educational
 28 Enhancements (fund 0294, appropriation 69500), \$73,500

29 shall be used for the Clay Center and \$500,000 for Save the
30 Children.

49-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2019 Org 0432

| | | | |
|----|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 3,299,919 |
| 3 | Current Expenses | 13000 | 610,843 |
| 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 | | |
| 11 | History Programming | 73200 | 231,573 |
| 12 | Capital Outlay and | | |
| 13 | Maintenance (R) | 75500 | 19,600 |
| 14 | Historical Highway | | |
| 15 | Marker Program..... | 84400 | 57,548 |
| 16 | BRIM Premium..... | 91300 | <u>39,337</u> |
| 17 | Total..... | | \$ 4,288,307 |

18 Any unexpended balances remaining in the
19 appropriations for Unclassified (fund 0293, appropriation
20 09900), Buildings (fund 0293, appropriation 25800),
21 Capital Outlay, Repairs and Equipment (fund 0293,
22 appropriation 58900), Capital Improvements – Surplus
23 (fund 0293, appropriation 66100), Capital Outlay, Repairs
24 and Equipment – Surplus (fund 0293, appropriation 67700),
25 Land (fund 0293, appropriation 73000), and Capital Outlay
26 and Maintenance (fund 0293, appropriation 75500) at the
27 close of the fiscal year 2018 are hereby reappropriated for
28 expenditure during the fiscal year 2019.

29 The Current Expense appropriation includes funding for
 30 the arts funds, department programming funds, grants, fairs
 31 and festivals and Camp Washington Carver and shall be
 32 expended only upon authorization of the Division of Culture
 33 and History and in accordance with the provisions of
 34 Chapter 5A, Article 3, and Chapter 12 of the Code.

50-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2019 Org 0433

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,261,316 |
| 3 | Current Expenses | 13000 | 139,624 |
| 4 | Repairs and Alterations..... | 06400 | 6,500 |
| 5 | Services to | | |
| 6 | Blind & Handicapped | 18100 | 161,717 |
| 7 | BRIM Premium..... | 91300 | <u>18,205</u> |
| 8 | Total..... | | \$ 1,587,362 |

51-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2019 Org 0439

| | | | |
|---|------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,767,321 |
| 3 | Current Expenses | 13000 | 1,591,805 |
| 4 | Mountain Stage | 24900 | 300,000 |
| 5 | Capital Outlay and | | |
| 6 | Maintenance (R) | 75500 | 50,000 |
| 7 | BRIM Premium..... | 91300 | <u>48,453</u> |
| 8 | Total..... | | \$ 3,757,579 |

9 Any unexpended balance remaining in the
 10 appropriation for Capital Outlay and Maintenance (fund
 11 0300, appropriation 75500) at the close of the fiscal year

12 2018 is hereby reappropriated for expenditure during the
 13 fiscal year 2019.

52-State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2019 Org 0932

| | | | |
|----|-----------------------------------|-------|---------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$10,953,816 |
| 3 | Independent Living Services | 00900 | 429,418 |
| 4 | Current Expenses | 13000 | 558,815 |
| 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>77,464</u> |
| 13 | Total..... | | <u>\$14,380,303</u> |

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
 19 used to continue the support of the program, services, and
 20 individuals with disabilities currently in place at those
 21 organizations.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

53-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2019 Org 0311

| | | | |
|---|------------------------------|-------|------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 76,915 |
| 3 | Current Expenses | 13000 | 29,353 |
| 4 | Repairs and Alterations..... | 06400 | 100 |
| 5 | Equipment..... | 07000 | 300 |
| 6 | Other Assets | 69000 | 400 |
| 7 | BRIM Premium..... | 91300 | <u>791</u> |
| 8 | Total..... | | \$ 107,859 |

54-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2019 Org 0313

| | | | |
|----|--------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 4,051,891 |
| 3 | Water Resources | | |
| 4 | Protection and Management | 06800 | 570,654 |
| 5 | Current Expenses | 13000 | 96,916 |
| 6 | Repairs and Alterations..... | 06400 | 1,500 |
| 7 | Unclassified | 09900 | 14,825 |
| 8 | Dam Safety | 60700 | 212,186 |
| 9 | West Virginia Stream | | |
| 10 | Partners Program | 63700 | 77,396 |
| 11 | Meth Lab Cleanup | 65600 | 199,616 |
| 12 | WV Contributions to | | |
| 13 | River Commissions..... | 77600 | 148,485 |
| 14 | Office of Water Resources | | |
| 15 | Non-Enforcement Activity | 85500 | <u>934,525</u> |
| 16 | Total..... | | \$ 6,307,994 |

17 A portion of the appropriations for Current Expense
 18 (fund 0273, appropriation 13000) and Dam Safety (fund
 19 0273, appropriation 60700) may be transferred to the
 20 special revenue fund Dam Safety Rehabilitation Revolving
 21 Fund (fund 3025) for the state deficient dams rehabilitation
 22 assistance program.

55-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2019 Org 0325

| | | | | |
|---|------------------------------|-------|----|--------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 60,737 |
| 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>2,304</u> |
| 8 | Total..... | | \$ | 76,053 |

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*56-Department of Health and Human Resources –**Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 2019 Org 0501

| | | | | |
|---|--------------------------------|-------|----|----------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 379,014 |
| 3 | Unclassified | 09900 | | 6,459 |
| 4 | Current Expenses | 13000 | | 50,613 |
| 5 | Commission for the | | | |
| 6 | Deaf and Hard of Hearing | 70400 | | <u>219,910</u> |
| 7 | Total..... | | \$ | 655,996 |

8 Any unexpended balance remaining in the appropriation
9 for the Women's Commission (fund 0400, appropriation
10 19100) at the close of the fiscal year 2018 is hereby
11 reappropriated for expenditure during the fiscal year 2019.

*57-Division of Health –**Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2019 Org 0506

| | | | |
|----|-------------------------------------|-------|------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$12,446,690 |
| 3 | Chief Medical Examiner..... | 04500 | 6,618,003 |
| 4 | Unclassified | 09900 | 671,795 |
| 5 | Current Expenses | 13000 | 4,677,059 |
| 6 | State Aid for Local and | | |
| 7 | Basic Public Health Services..... | 18400 | 12,652,756 |
| 8 | Safe Drinking Water Program (R) ... | 18700 | 2,188,827 |
| 9 | Women, Infants and Children..... | 21000 | 38,621 |
| 10 | Early Intervention | 22300 | 8,134,060 |
| 11 | Cancer Registry..... | 22500 | 200,682 |
| 12 | Statewide EMS | | |
| 13 | Program Support (R) | 38300 | 1,835,429 |
| 14 | Black Lung Clinics | 46700 | 170,885 |
| 15 | Vaccine for Children..... | 55100 | 335,423 |
| 16 | Tuberculosis Control..... | 55300 | 372,366 |
| 17 | Maternal and Child Health Clinics, | | |
| 18 | Clinicians Medical Contracts | | |
| 19 | and Fees (R)..... | 57500 | 6,335,115 |
| 20 | Epidemiology Support | 62600 | 1,513,869 |
| 21 | Primary Care Support | 62800 | 4,245,849 |
| 22 | Sexual Assault Intervention | | |
| 23 | and Prevention | 72300 | 125,000 |
| 24 | Health Right Free Clinics | 72700 | 2,750,000 |
| 25 | Capital Outlay | | |
| 26 | and Maintenance (R) | 75500 | 100,000 |
| 27 | Maternal Mortality Review..... | 83400 | 47,712 |
| 28 | Diabetes Education | | |
| 29 | and Prevention | 87300 | 97,125 |
| 30 | BRIM Premium..... | 91300 | 169,791 |
| 31 | State Trauma and | | |
| 32 | Emergency Care System..... | 91800 | <u>2,004,450</u> |
| 33 | Total..... | | \$67,731,507 |

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).

43 From the above appropriation for Current Expenses
 44 (fund 0407, appropriation 13000), an amount not less than
 45 \$100,000 is for the West Virginia Cancer Coalition;
 46 \$50,000 shall be expended for the West Virginia Aids
 47 Coalition; \$100,000 is for Adolescent Immunization
 48 Education; \$73,065 is for informal dispute resolution
 49 relating to nursing home administrative appeals; and
 50 \$50,000 is for Hospital Hospitality House of Huntington.

51 From the above appropriation for Maternal and Child
 52 Health Clinics, Clinicians and Medical Contracts and Fees
 53 (fund 0407, appropriation 57500) up to \$400,000 may be
 54 transferred to the Breast and Cervical Cancer Diagnostic
 55 Treatment Fund (fund 5197) and \$11,000 is for the Marshall
 56 County Health Department for dental services.

58-Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2019 Org 0506

| | | | |
|----|-------------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,590,408 |
| 3 | Current Expenses | 13000 | 14,113 |
| 4 | Behavioral Health Program (R) | 21900 | 64,462,622 |
| 5 | Family Support Act..... | 22100 | 251,226 |
| 6 | Institutional Facilities | | |
| 7 | Operations (R) | 33500 | 134,223,239 |
| 8 | Substance Abuse | | |
| 9 | Continuum of Care (R)..... | 35400 | 5,000,000 |
| 10 | Capital Outlay and | | |
| 11 | Maintenance (R)..... | 75500 | 950,000 |

| | | | |
|----|--------------------------|-------|------------------|
| 12 | Renaissance Program..... | 80400 | 165,996 |
| 13 | BRIM Premium..... | 91300 | <u>1,296,098</u> |
| 14 | Total..... | | \$207,953,702 |

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), and
 20 Capital Outlay and Maintenance (fund 0525, appropriation
 21 75500) at the close of the fiscal year 2018 are hereby
 22 reappropriated for expenditure during the fiscal year 2019.

23 Notwithstanding the provisions of Title I, section three
 24 of this bill, the secretary of the Department of Health and
 25 Human Resources shall have the authority to transfer funds
 26 within the above appropriations: *Provided*, That no more
 27 than five percent of the funds appropriated to one
 28 appropriation may be transferred to other appropriations:
 29 *Provided, however*, That no funds from other appropriations
 30 shall be transferred to the personal services and employee
 31 benefits appropriation.

32 Included in the above appropriation for Behavioral
 33 Health Program (fund 0525, appropriation 21900) is
 34 \$100,000 for the Healing Place of Huntington.

35 From the above appropriation for Institutional Facilities
 36 Operations (fund 0525, appropriation 33500), together with
 37 available funds from the Division of Health – Hospital
 38 Services Revenue Account (fund 5156, appropriation 33500),
 39 on July 1, 2018, the sum of *\$0 shall be transferred to the
 40 Department of Agriculture – Land Division – Farm Operating
 41 Fund (1412) as advance payment for the purchase of food
 42 products; actual payments for such purchases shall not be
 43 required until such credits have been completely expended.

*NOTE: The Governor reduced Item 58, line 39, by \$160,000 to \$0.

44 The above appropriation for Institutional Facilities
 45 Operations (fund 0525, appropriation 33500) contains prior
 46 year salary increases due to the Hartley court order in the
 47 amount of \$2,202,013 for William R. Sharpe Jr. Hospital,
 48 and \$2,067,984 for Mildred Mitchel-Bateman Hospital.

49 From the above appropriation for Substance Abuse
 50 Continuum of Care (fund 0525, appropriation 35400), the
 51 funding will be consistent with the goal areas outlined in the
 52 Comprehensive Substance Abuse Strategic Action Plan.

53 Additional funds have been appropriated in fund 5156,
 54 fiscal year 2019, organization 0506, for the operation of the
 55 institutional facilities. The secretary of the Department of
 56 Health and Human Resources is authorized to utilize up to
 57 ten percent of the funds from the Institutional Facilities
 58 Operations appropriation to facilitate cost effective and cost
 59 saving services at the community level.

59-Division of Health –

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2019 Org 0506

| | | | | |
|---|-------------------------------|-------|----|---------|
| 1 | West Virginia Drinking | | | |
| 2 | Water Treatment | | | |
| 3 | Revolving Fund-Transfer | 68900 | \$ | 647,500 |

4 The above appropriation for Drinking Water Treatment
 5 Revolving Fund – Transfer shall be transferred to the West
 6 Virginia Drinking Water Treatment Revolving Fund or
 7 appropriate bank depository and the Drinking Water
 8 Treatment Revolving – Administrative Expense Fund as
 9 provided by Chapter 16 of the Code.

60-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2019 Org 0510

| | | | |
|---|------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,028,561 |
| 3 | Unclassified | 09900 | 4,024 |
| 4 | Current Expenses | 13000 | 331,304 |
| 5 | BRIM Premium..... | 91300 | <u>10,764</u> |
| 6 | Total..... | | \$ 1,374,653 |

61-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2019 Org 0511

| | | | |
|----|------------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$45,354,625 |
| 3 | Unclassified | 09900 | 5,688,944 |
| 4 | Current Expenses | 13000 | 11,404,008 |
| 5 | Child Care Development | 14400 | 4,090,908 |
| 6 | Medical Services..... | 18900 | 413,957,363 |
| 7 | Social Services..... | 19500 | 154,183,734 |
| 8 | Family Preservation Program | 19600 | 1,565,000 |
| 9 | Family Resource Networks..... | 27400 | 1,762,464 |
| 10 | Domestic Violence | | |
| 11 | Legal Services Fund | 38400 | 400,000 |
| 12 | James "Tiger" Morton | | |
| 13 | Catastrophic Illness Fund | 45500 | 102,883 |
| 14 | I/DD Waiver | 46600 | 88,753,483 |
| 15 | Child Protective Services | | |
| 16 | Case Workers..... | 46800 | 23,473,825 |
| 17 | OSCAR and RAPIDS | 51500 | 6,453,502 |
| 18 | Title XIX Waiver for Seniors | 53300 | 13,593,620 |
| 19 | WV Teaching Hospitals | | |
| 20 | Tertiary/Safety Net | 54700 | 6,356,000 |
| 21 | Child Welfare System..... | 60300 | 1,291,873 |
| 22 | In-Home Family Education | 68800 | 1,000,000 |
| 23 | WV Works | | |
| 24 | Separate State Program..... | 69800 | 1,935,000 |
| 25 | Child Support Enforcement | 70500 | 6,487,501 |
| 26 | Temporary Assistance | | |
| 27 | for Needy Families/ | | |
| 28 | Maintenance of Effort..... | 70700 | 25,819,096 |

| | | | |
|----|---------------------------------------|-------|----------------|
| 29 | Child Care – | | |
| 30 | Maintenance of Effort Match | 70800 | 5,693,743 |
| 31 | Grants for Licensed | | |
| 32 | Domestic Violence Programs | | |
| 33 | and Statewide Prevention | 75000 | 2,500,000 |
| 34 | Capital Outlay and | | |
| 35 | Maintenance (R) | 75500 | 11,875 |
| 36 | Community Based Services and | | |
| 37 | Pilot Programs for Youth..... | 75900 | 1,000,000 |
| 38 | Medical Services | | |
| 39 | Administrative Costs | 78900 | 38,127,412 |
| 40 | Traumatic Brain Injury Waiver..... | 83500 | 800,000 |
| 41 | Indigent Burials (R) | 85100 | 2,050,000 |
| 42 | BRIM Premium..... | 91300 | 892,642 |
| 43 | Rural Hospitals Under 150 Beds..... | 94000 | 2,596,000 |
| 44 | Children’s Trust Fund – Transfer..... | 95100 | <u>220,000</u> |
| 45 | Total..... | | \$ 867,565,501 |

46 Any unexpended balances remaining in the
47 appropriations for Capital Outlay and Maintenance (fund
48 0403, appropriation 75500) and Indigent Burials (fund
49 0403, appropriation 85100) at the close of the fiscal year
50 2018 are hereby reappropriated for expenditure during the
51 fiscal year 2019.

52 Notwithstanding the provisions of Title I, section three
53 of this bill, the secretary of the Department of Health and
54 Human Resources shall have the authority to transfer funds
55 within the above appropriations: *Provided*, That no more
56 than five percent of the funds appropriated to one
57 appropriation may be transferred to other appropriations:
58 *Provided, however*, That no funds from other appropriations
59 shall be transferred to the personal services and employee
60 benefits appropriation.

61 The secretary shall have authority to expend funds for
62 the educational costs of those children residing in out-of-
63 state placements, excluding the costs of special education
64 programs.

65 Included in the above appropriation for Social Services
66 (fund 0403, appropriation 19500) is funding for continuing
67 education requirements relating to the practice of social
68 work.

69 The above appropriation for Domestic Violence Legal
70 Services Fund (fund 0403, appropriation 38400) shall be
71 transferred to the Domestic Violence Legal Services Fund
72 (fund 5455).

73 The above appropriation for James “Tiger” Morton
74 Catastrophic Illness Fund (fund 0403, appropriation 45500)
75 shall be transferred to the James “Tiger” Morton
76 Catastrophic Illness Fund (fund 5454) as provided by
77 Article 5Q, Chapter 16 of the Code.

78 The above appropriation for WV Works Separate State
79 Program (fund 0403, appropriation 69800), shall be
80 transferred to the WV Works Separate State College
81 Program Fund (fund 5467), and the WV Works Separate
82 State Two-Parent Program Fund (fund 5468) as determined
83 by the secretary of the Department of Health and Human
84 Resources.

85 From the above appropriation for Child Support
86 Enforcement (fund 0403, appropriation 70500) an amount
87 not to exceed \$300,000 may be transferred to a local
88 banking depository to be utilized to offset funds determined
89 to be uncollectible.

90 From the above appropriation for the Grants for
91 Licensed Domestic Violence Programs and Statewide
92 Prevention (fund 0403, appropriation 75000), 50% of the
93 total shall be divided equally and distributed among the
94 fourteen (14) licensed programs and the West Virginia
95 Coalition Against Domestic Violence (WVCADV). The
96 balance remaining in the appropriation for Grants for
97 Licensed Domestic Violence Programs and Statewide
98 Prevention (fund 0403, appropriation 75000), shall be

99 distributed according to the formula established by the
100 Family Protection Services Board.

101 The above appropriation for Children's Trust Fund –
102 Transfer (fund 0403, appropriation 95100) shall be
103 transferred to the Children's Trust Fund (fund 5469, org
104 0511).

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

62-Department of Military Affairs and Public Safety –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2019 Org 0601

| | | | |
|----|--------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 732,256 |
| 3 | Unclassified (R)..... | 09900 | 18,949 |
| 4 | Current Expenses..... | 13000 | 58,320 |
| 5 | Repairs and Alterations..... | 06400 | 2,500 |
| 6 | Equipment..... | 07000 | 2,500 |
| 7 | Fusion Center (R)..... | 46900 | 542,430 |
| 8 | Other Assets..... | 69000 | 2,500 |
| 9 | Directed Transfer..... | 70000 | 32,000 |
| 10 | BRIM Premium..... | 91300 | 18,190 |
| 11 | WV Fire and EMS | | |
| 12 | Survivor Benefit (R)..... | 93900 | 200,000 |
| 13 | Homeland State Security | | |
| 14 | Administrative Agency (R)..... | 95300 | <u>318,890</u> |
| 15 | Total..... | | \$ 1,928,535 |

16 Any unexpended balances remaining in the
17 appropriations for Unclassified (fund 0430, appropriation
18 09900), Fusion Center (fund 0430, appropriation 46900),
19 Justice Reinvestment Training – Surplus (fund 0430,
20 appropriation 69900), WV Fire and EMS Survivor Benefit
21 (fund 0430, appropriation 93900), and Homeland State

22 Security Administrative Agency (fund 0430, appropriation
 23 95300) at the close of the fiscal year 2018 are hereby
 24 reappropriated for expenditure during the fiscal year 2019.

25 The above appropriation for Directed Transfer (fund
 26 0430, appropriation 70000) shall be transferred to the Law-
 27 Enforcement, Safety and Emergency Worker Funeral
 28 Expense Payment Fund (fund 6003).

63-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2019 Org 0603

| | | | |
|---|------------------------------------|-------|------------------|
| 1 | Unclassified (R) | 09900 | \$ 106,798 |
| 2 | College Education Fund..... | 23200 | 4,000,000 |
| 3 | Civil Air Patrol..... | 23400 | 249,664 |
| 4 | Mountaineer ChalleNGe Academy | 70900 | 1,500,000 |
| 5 | Armory Board Transfer | 70015 | 2,317,555 |
| 6 | Military Authority (R) | 74800 | 6,029,611 |
| 7 | Drug Enforcement and Support | 74801 | <u>1,500,000</u> |
| 8 | Total..... | | \$15,703,628 |

9 Any unexpended balance remaining in the
 10 appropriations for Unclassified (fund 0433, appropriation
 11 09900) and Military Authority (fund 0433, appropriation
 12 74800) at the close of the fiscal year 2018 is hereby
 13 reappropriated for expenditure during the fiscal year 2019.

14 From the above appropriations an amount approved by
 15 the Adjutant General and the secretary of Military Affairs
 16 and Public Safety may be transferred to the State Armory
 17 Board for operation and maintenance of National Guard
 18 Armories.

19 The adjutant general shall have the authority to transfer
 20 between appropriations.

21 From the above appropriation and other state and
 22 federal funding, the Adjutant General shall provide an
 23 amount not less than \$4,500,000 to the Mountaineer
 24 ChalleNGe Academy to meet anticipated program demand.

64-Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2019 Org 0603

| | | | |
|---|------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 100,000 |
| 3 | Current Expenses | 13000 | <u>57,775</u> |
| 4 | Total..... | | \$ 157,775 |

65-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2019 Org 0605

| | | | |
|---|---------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 402,254 |
| 3 | Current Expenses | 13000 | 365,234 |
| 4 | Salaries of Members of | | |
| 5 | West Virginia Parole Board..... | 22700 | 609,833 |
| 6 | BRIM Premium..... | 91300 | <u>6,149</u> |
| 7 | Total..... | | \$ 1,383,470 |

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.

66-Division of Homeland Security and

Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2019 Org 0606

| | | | |
|----|-------------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,268,402 |
| 3 | Unclassified | 09900 | 26,342 |
| 4 | Current Expenses | 13000 | 53,024 |
| 5 | Repairs and Alterations..... | 06400 | 600 |
| 6 | Radiological Emergency | | |
| 7 | Preparedness | 55400 | 17,052 |
| 8 | SIRN | 55401 | 600,000 |
| 9 | Federal Funds/Grant Match (R)..... | 74900 | 663,463 |
| 10 | Mine and Industrial Accident Rapid | | |
| 11 | Response Call Center..... | 78100 | 461,355 |
| 12 | Early Warning Flood System (R) | 87700 | 475,832 |
| 13 | BRIM Premium..... | 91300 | 96,529 |
| 14 | WVU Charleston | | |
| 15 | Poison Control Hotline | 94400 | <u>712,942</u> |
| 16 | Total..... | | \$ 4,375,541 |

17 Any unexpended balances remaining in the
 18 appropriations for Federal Funds/Grant Match (fund 0443,
 19 appropriation 74900), Early Warning Flood System (fund
 20 0443, appropriation 87700), and Disaster Mitigation (fund
 21 0443, appropriation 95200) at the close of the fiscal year
 22 2018 are hereby reappropriated for expenditure during the
 23 fiscal year 2019.

*67-Division of Corrections –**Central Office*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0446 FY 2019 Org 0608

| | | |
|------------------------|-------|--------------|
| Personal Services and | | |
| Employee Benefits..... | 00100 | \$ 621,000 |
| Current Expenses | 13000 | <u>2,400</u> |
| Total..... | | \$ 623,400 |

*68-Division of Corrections –**Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 2019 Org 0608

| | | | |
|----|--------------------------------------|-------|------------------|
| 1 | Employee Benefits..... | 01000 | \$ 1,258,136 |
| 2 | Children's Protection Act (R)..... | 09000 | 838,437 |
| 3 | Unclassified | 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 | 3,026,773 |
| 8 | Beckley Correctional Center..... | 49000 | 2,027,265 |
| 9 | Anthony Correctional Center..... | 50400 | 5,468,335 |
| 10 | Huttonsville Correctional Center... | 51400 | 20,907,772 |
| 11 | Northern Correctional Center | 53400 | 7,205,041 |
| 12 | Inmate Medical Expenses (R)..... | 53500 | 21,226,064 |
| 13 | Pruntytown Correctional Center | 54300 | 7,630,256 |
| 14 | Corrections Academy | 56900 | 1,666,247 |
| 15 | Information Technology Services.... | 59901 | 2,259,052 |
| 16 | Martinsburg Correctional Center... | 66300 | 3,856,727 |
| 17 | Parole Services..... | 68600 | 5,361,413 |
| 18 | Special Services | 68700 | 7,100,452 |
| 19 | Investigative Services | 71600 | 3,129,759 |
| 20 | Capital Outlay and | | |
| 21 | Maintenance (R)..... | 75500 | 2,000,000 |
| 22 | Salem Correctional Center..... | 77400 | 10,260,770 |
| 23 | McDowell County | | |
| 24 | Correctional Center | 79000 | 2,542,590 |
| 25 | Stevens Correctional Center | 79100 | 7,863,195 |
| 26 | Parkersburg Correctional Center ... | 82800 | 3,412,708 |
| 27 | St. Mary's Correctional Center..... | 88100 | 12,939,805 |
| 28 | Denmar Correctional Center..... | 88200 | 4,666,171 |
| 29 | Ohio County Correctional Center.. | 88300 | 1,874,033 |
| 30 | Mt. Olive Correctional Complex ... | 88800 | 20,063,054 |
| 31 | Lakin Correctional Center | 89600 | 9,510,551 |
| 32 | BRIM Premium | 91300 | <u>2,527,657</u> |
| 33 | Total..... | | \$ 194,626,274 |

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), Current Expenses (fund 0450,
38 appropriation 13000), Facilities Planning and Administration
39 (fund 0450, appropriation 38600), Inmate Medical Expenses
40 (fund 0450, appropriation 53500), Capital Improvements –
41 Surplus (fund 0450, appropriation 66100), Capital Outlay,
42 Repairs and Equipment – Surplus (fund 0450, appropriation
43 67700), Capital Outlay and Maintenance (fund 0450,
44 appropriation 75500), and Security System Improvements –
45 Surplus (fund 0450, appropriation 75501) at the close of the
46 fiscal year 2018 are hereby reappropriated for expenditure
47 during the fiscal year 2019.

48 The Commissioner of Corrections shall have the
49 authority to transfer between appropriations to the
50 individual correctional units above and may transfer funds
51 from the individual correctional units to Current Expenses
52 (fund 0450, appropriation 13000) or Inmate Medical
53 Expenses (fund 0450, appropriation 53500).

54 From the above appropriation to Unclassified (fund
55 0450, appropriation 09900), on July 1, 2018, the sum of *\$0
56 shall be transferred to the Department of Agriculture – Land
57 Division – Farm Operating Fund (1412) as advance
58 payment for the purchase of food products; actual payments
59 for such purchases shall not be required until such credits
60 have been completely expended.

61 From the above appropriation to Current Expenses
62 (fund 0450, appropriation 13000) payment shall be made to
63 house Division of Corrections inmates in federal, county,
64 and /or regional jails.

65 Any realized savings from Energy Savings Contract
66 may be transferred to Facilities Planning and
67 Administration (fund 0450, appropriation 38600).

*NOTE: The Governor reduced Item 68, line 55, by \$300,000 to \$0.

69-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2019 Org 0612

| | | | |
|----|---------------------------------|-------|------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$58,857,744 |
| 3 | Children's Protection Act | 09000 | 972,973 |
| 4 | Current Expenses | 13000 | 10,384,394 |
| 5 | Repairs and Alterations..... | 06400 | 450,523 |
| 6 | Trooper Class..... | 52100 | 4,000,000 |
| 7 | Barracks Lease Payments | 55600 | 237,898 |
| 8 | Communications and | | |
| 9 | Other Equipment (R) | 55800 | 570,968 |
| 10 | Trooper Retirement Fund..... | 60500 | 5,584,775 |
| 11 | Handgun Administration Expense. | 74700 | 72,268 |
| 12 | Capital Outlay and | | |
| 13 | Maintenance (R) | 75500 | 250,000 |
| 14 | Retirement Systems – | | |
| 15 | Unfunded Liability | 77500 | 15,415,000 |
| 16 | Automated Fingerprint | | |
| 17 | Identification System..... | 89800 | 3,185,756 |
| 18 | BRIM Premium..... | 91300 | <u>5,743,921</u> |
| 19 | Total..... | | \$ 105,726,220 |

20 Any unexpended balances remaining in the
 21 appropriations for Communications and Other Equipment
 22 (fund 0453, appropriation 55800), and Capital Outlay and
 23 Maintenance (fund 0453, appropriation 75500) at the close
 24 of the fiscal year 2018 are hereby reappropriated for
 25 expenditure during the fiscal year 2019.

26 From the above appropriation for Personal Services and
 27 Employee Benefits (fund 0453, appropriation 00100), an
 28 amount not less than \$25,000 shall be expended to offset the
 29 costs associated with providing police services for the West
 30 Virginia State Fair.

70-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2019 Org 0619

| | | | | |
|---|------------------------|-------|----|--------|
| 1 | Current Expenses | 13000 | \$ | 64,021 |
|---|------------------------|-------|----|--------|

71-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2019 Org 0620

| | | | | |
|----|-----------------------------------|-------|----|------------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 550,620 |
| 3 | Current Expenses | 13000 | | 133,360 |
| 4 | Repairs and Alterations..... | 06400 | | 1,804 |
| 5 | Child Advocacy Centers (R)..... | 45800 | | 1,704,001 |
| 6 | Community Corrections (R) | 56100 | | 6,919,589 |
| 7 | Statistical Analysis Program..... | 59700 | | 48,272 |
| 8 | Sexual Assault Forensic | | | |
| 9 | Examination Commission (R)..... | 71400 | | 76,963 |
| 10 | Qualitative Analysis and Training | | | |
| 11 | for Youth Services (R)..... | 76200 | | 332,446 |
| 12 | Law Enforcement | | | |
| 13 | Professional Standards..... | 83800 | | 157,692 |
| 14 | BRIM Premium..... | 91300 | | <u>2,123</u> |
| 15 | Total..... | | \$ | <u>9,926,870</u> |

16 Any unexpended balances remaining in the
 17 appropriations for Child Advocacy Centers (fund 0546,
 18 appropriation 45800), Community Corrections (fund 0546,
 19 appropriation 56100), Sexual Assault Forensic Examination
 20 Commission (fund 0546, appropriation 71400), and
 21 Qualitative Analysis and Training for Youth Services (fund
 22 0546, appropriation 76200) at the close of the fiscal year
 23 2018 are hereby reappropriated for expenditure during the
 24 fiscal year 2019.

25 From the above appropriation for Child Advocacy
 26 Centers (fund 0546, appropriation 45800), the division may
 27 retain an amount not to exceed four percent of the
 28 appropriation for administrative purposes.

72-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2019 Org 0621

| | | | |
|----|---------------------------------------|-------|------------------|
| 1 | Statewide Reporting Centers | 26200 | \$ 6,730,137 |
| 2 | Robert L. Shell Juvenile Center | 26700 | 2,183,169 |
| 3 | Resident Medical Expenses (R) | 53501 | 3,604,999 |
| 4 | Central Office | 70100 | 2,496,733 |
| 5 | Capital Outlay and | | |
| 6 | Maintenance (R) | 75500 | 250,000 |
| 7 | Gene Spadaro Juvenile Center | 79300 | 2,356,207 |
| 8 | BRIM Premium | 91300 | 115,967 |
| 9 | Kenneth Honey Rubenstein | | |
| 10 | Juvenile Center (R) | 98000 | 5,325,233 |
| 11 | Vicki Douglas Juvenile Center | 98100 | 2,083,190 |
| 12 | Northern Regional Juvenile Center .. | 98200 | 2,876,302 |
| 13 | Lorrie Yeager Jr. Juvenile Center .. | 98300 | 2,118,510 |
| 14 | Sam Perdue Juvenile Center | 98400 | 2,220,766 |
| 15 | Tiger Morton Center | 98500 | 2,322,188 |
| 16 | Donald R. Kuhn Juvenile Center ... | 98600 | 4,465,381 |
| 17 | J.M. "Chick" Buckbee | | |
| 18 | Juvenile Center | 98700 | <u>2,227,993</u> |
| 19 | Total | | \$41,376,775 |

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 2018 are hereby
 26 reappropriated for expenditure during the fiscal year 2019.

27 From the above appropriations, on July 1, 2018, the sum
 28 of *\$0 shall be transferred to the Department of Agriculture
 29 – Land Division – Farm Operating Fund (1412) as advance
 30 payment for the purchase of food products; actual payments
 31 for such purchases shall not be required until such credits
 32 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).

73-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2019 Org 0622

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,894,483 |
| 3 | Unclassified (R) | 09900 | 21,991 |
| 4 | Current Expenses | 13000 | 443,357 |
| 5 | Repairs and Alterations..... | 06400 | 8,500 |
| 6 | Equipment (R)..... | 07000 | 64,171 |
| 7 | BRIM Premium..... | 91300 | <u>12,226</u> |
| 8 | Total..... | | \$ 3,444,728 |

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 2018 are hereby reappropriated
 13 for expenditure during the fiscal year 2019.

DEPARTMENT OF REVENUE

74-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2019 Org 0701

*NOTE: The Governor reduced Item 72, line 28, by \$50,000 to \$0.

| | | | |
|---|------------------------------|-------|------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 502,846 |
| 3 | Unclassified | 09900 | 5,837 |
| 4 | Current Expenses | 13000 | 81,594 |
| 5 | Repairs and Alterations..... | 06400 | 1,262 |
| 6 | Equipment..... | 07000 | 8,000 |
| 7 | Other Assets..... | 69000 | 500 |
| 8 | Total..... | | \$ 600,039 |

9 Any unexpended balance remaining in the
10 appropriation for Unclassified – Total (fund 0465,
11 appropriation 09600) at the close of the fiscal year 2018 is
12 hereby reappropriated for expenditure during the fiscal year
13 2019.

75-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2019 Org 0702

| | | | |
|----|----------------------------------|-------|---------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits (R) | 00100 | \$18,211,688 |
| 3 | Unclassified (R)..... | 09900 | 224,578 |
| 4 | Current Expenses (R)..... | 13000 | 5,770,589 |
| 5 | Repairs and Alterations..... | 06400 | 10,000 |
| 6 | Equipment..... | 07000 | 50,000 |
| 7 | Tax Technology Upgrade | 09400 | 3,700,000 |
| 8 | Integrated Tax Assessment System | 29200 | 5,000,000 |
| 9 | Multi State Tax Commission | 65300 | 77,958 |
| 10 | Other Assets..... | 69000 | 10,000 |
| 11 | BRIM Premium..... | 91300 | <u>15,579</u> |
| 12 | Total..... | | <u>\$33,070,392</u> |

13 Any unexpended balances remaining in the appropriations
14 for Personal Services and Employee Benefits (fund 0470,
15 appropriation 00100), Unclassified (fund 0470, appropriation
16 09900), and Current Expenses (fund 0470, appropriation
17 13000) at the close of the fiscal year 2018 are hereby
18 reappropriated for expenditure during the fiscal year 2019.

76-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2019 Org 0703

| | | | | |
|---|------------------------|-------|----|--------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 672,446 |
| 3 | Unclassified (R)..... | 09900 | | <u>1,199</u> |
| 4 | Total..... | | \$ | 673,645 |

5 Any unexpended balance remaining in the
6 appropriation for Unclassified (fund 0595, appropriation
7 09900) at the close of the fiscal year 2018 is hereby
8 reappropriated for expenditure during the fiscal year 2019.

77-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2019 Org 0709

| | | | | |
|---|---------------------------|-------|----|--------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 438,046 |
| 3 | Current Expenses (R)..... | 13000 | | 93,022 |
| 4 | Unclassified | 09900 | | 5,255 |
| 5 | BRIM Premium..... | 91300 | | <u>3,062</u> |
| 6 | Total..... | | \$ | 539,385 |

7 Any unexpended balance remaining in the
8 appropriation for Current Expenses (fund 0593,
9 appropriation 13000) at the close of the fiscal year 2018 is
10 hereby reappropriated for expenditure during the fiscal year
11 2019.

*78-Division of Professional and Occupational Licenses –**State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 2019 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

79-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2019 Org 0804

| | | | |
|---|------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 319,933 |
| 3 | Current Expenses | 13000 | 287,707 |
| 4 | Other Assets (R)..... | 69000 | 1,303,277 |
| 5 | BRIM Premium..... | 91300 | <u>201,541</u> |
| 6 | Total..... | | \$ 2,112,458 |

7 Any unexpended balance remaining in the
8 appropriation Other Assets (fund 0506, appropriation
9 69000) at the close of the fiscal year 2018 is hereby
10 reappropriated for expenditure during the fiscal year 2019.

80-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2019 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 2018 are hereby reappropriated for
10 expenditure during the fiscal year 2019.

81-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2019 Org 0806

| | | | |
|---|------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 200,000 |
| 3 | Current Expenses..... | 13000 | <u>300,000</u> |
| 4 | Total..... | | \$ 500,000 |

82-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2019 Org 0807

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 170,304 |
| 3 | Current Expenses (R)..... | 13000 | 591,839 |
| 4 | Repairs and Alterations..... | 06400 | 100 |
| 5 | BRIM Premium..... | 91300 | <u>4,438</u> |
| 6 | Total..... | | \$ 766,681 |

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 2018 are hereby
 11 reappropriated for expenditure during the fiscal year 2019.

DEPARTMENT OF VETERANS' ASSISTANCE

83-Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2019 Org 0613

| | | | |
|---|------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,887,475 |
| 3 | Unclassified | 09900 | 20,000 |
| 4 | Current Expenses | 13000 | 140,161 |

| | | | |
|----|------------------------------------|-------|---------------|
| 5 | Repairs and Alterations..... | 06400 | 5,000 |
| 6 | Veterans' Field Offices..... | 22800 | 248,345 |
| 7 | Veterans' Nursing Home (R)..... | 28600 | 5,770,950 |
| 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 | 162,107 |
| 16 | Memorial Day Patriotic Exercise... | 69700 | 20,000 |
| 17 | Veterans Cemetery..... | 80800 | 382,085 |
| 18 | BRIM Premium..... | 91300 | <u>25,530</u> |
| 19 | Total..... | | \$ 9,359,165 |

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 2018 are hereby reappropriated for expenditure during the
 29 fiscal year 2019.

84-Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2019 Org 0618

| | | | |
|---|------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,148,764 |
| 3 | Current Expenses | 13000 | <u>46,759</u> |
| 4 | Total..... | | \$ 1,195,523 |

BUREAU OF SENIOR SERVICES

85-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2019 Org 0508

1 Transfer to Division of Human Services
 2 for Health Care and Title XIX
 3 Waiver for Senior Citizens 53900 \$29,950,955

4 The above appropriation for Transfer to Division of
 5 Human Services for Health Care and Title XIX Waiver for
 6 Senior Citizens (fund 0420, appropriation 53900) along
 7 with the federal moneys generated thereby shall be used for
 8 reimbursement for services provided under the program.

9 The above appropriation is in addition to funding
 10 provided in fund 5405 for this program.

**WEST VIRGINIA COUNCIL FOR COMMUNITY
 AND TECHNICAL COLLEGE EDUCATION**

*86-West Virginia Council for**Community and Technical College Education –**Control Account*

(WV Code Chapter 18B)

Fund 0596 FY 2019 Org 0420

| | | | |
|----|-------------------------------------|-------|------------------|
| 1 | West Virginia Council for Community | | |
| 2 | and Technical Education (R)... | 39200 | \$ 730,800 |
| 3 | Transit Training Partnership | 78300 | 34,293 |
| 4 | Community College Workforce | | |
| 5 | Development (R) | 87800 | 2,784,901 |
| 6 | College Transition Program..... | 88700 | 278,222 |
| 7 | West Virginia Advance | | |
| 8 | Workforce Development (R)... | 89300 | 3,118,172 |
| 9 | Technical Program | | |
| 10 | Development (R) | 89400 | <u>1,800,735</u> |
| 11 | Total..... | | \$ 8,747,123 |

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
 19 Technical Program Development (fund 0596, appropriation
 20 89400) at the close of the fiscal year 2018 are hereby
 21 reappropriated for expenditure during the fiscal year 2019.

22 From the above appropriation for the Community
 23 College Workforce Development (fund 0596, appropriation
 24 87800), \$200,000 shall be expended on the Mine Training
 25 Program in Southern West Virginia.

26 Included in the above appropriation for West Virginia
 27 Advance Workforce Development (fund 0596,
 28 appropriation 89300) is \$200,000 to be used exclusively for
 29 advanced manufacturing and energy industry specific
 30 training programs.

87-Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2019 Org 0444

| | | | |
|---|-------------------------|-------|--------------|
| 1 | Mountwest Community and | | |
| 2 | Technical College..... | 48700 | \$ 5,505,121 |

88-New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2019 Org 0445

| | | | |
|---|-------------------------|-------|--------------|
| 1 | New River Community and | | |
| 2 | Technical College..... | 35800 | \$ 5,452,807 |

89-Pierpont Community and Technical College

(WV Code Chapter 18B)

Fund 0597 FY 2019 Org 0446

- 1 Pierpont Community and
- 2 Technical College..... 93000 \$ 7,244,243

90-Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2019 Org 0447

- 1 Blue Ridge Community and
- 2 Technical College..... 88500 \$ 5,099,246

91-West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2019 Org 0464

- 1 West Virginia University –
- 2 Parkersburg..... 47100 \$ 9,495,037

92-Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2019 Org 0487

- 1 Southern West Virginia Community and
- 2 Technical College..... 44600 \$ 7,944,214

93-West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2019 Org 0489

| | | | |
|---|--------------------------------------|-------|--------------|
| 1 | West Virginia Northern Community and | | |
| 2 | Technical College | 44700 | \$ 6,833,499 |

94-Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2019 Org 0492

| | | | |
|---|-------------------------------------|-------|--------------|
| 1 | Eastern West Virginia Community and | | |
| 2 | Technical College | 41200 | \$ 1,812,537 |

95-BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2019 Org 0493

| | | | |
|---|----------------------------|-------|--------------|
| 1 | BridgeValley Community and | | |
| 2 | Technical College | 71700 | \$ 7,420,648 |

HIGHER EDUCATION POLICY COMMISSION

96-Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2019 Org 0441

| | | | |
|---|-----------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,646,406 |
| 3 | Current Expenses | 13000 | 1,114,959 |
| 4 | Higher Education Grant Program .. | 16400 | 40,619,864 |
| 5 | Tuition Contract Program (R)..... | 16500 | 1,224,839 |
| 6 | Underwood-Smith Scholarship | | |
| 7 | Program-Student Awards | 16700 | 328,349 |
| 8 | Facilities Planning | | |
| 9 | and Administration | 38600 | 1,760,254 |

| | | | |
|----|------------------------------|-------|---------------|
| 10 | Higher Education | | |
| 11 | System Initiatives | 48801 | 1,630,000 |
| 12 | PROMISE Scholarship – | | |
| 13 | Transfer..... | 80000 | 18,500,000 |
| 14 | HEAPS Grant Program (R)..... | 86700 | 5,011,298 |
| 15 | BRIM Premium..... | 91300 | <u>17,817</u> |
| 16 | Total..... | | \$72,853,786 |

17 Any unexpended balances remaining in the
18 appropriations for Unclassified – Surplus (fund 0589,
19 appropriation 09700), Tuition Contract Program (fund
20 0589, appropriation 16500), Capital Improvements –
21 Surplus (fund 0589, appropriation 66100), Capital Outlay
22 and Maintenance (fund 0589, appropriation 75500), and
23 HEAPS Grant Program (fund 0589, appropriation 86700) at
24 the close of the fiscal year 2018 are hereby reappropriated
25 for expenditure during the fiscal year 2019.

26 The above appropriation for Facilities Planning and
27 Administration (fund 0589, appropriation 38600) is for
28 operational expenses of the West Virginia Education,
29 Research and Technology Park between construction and
30 full occupancy.

31 The above appropriation for Higher Education Grant
32 Program (fund 0589, appropriation 16400) shall be
33 transferred to the Higher Education Grant Fund (fund 4933,
34 org 0441) established by W.Va. Code §18C-5-3.

35 The above appropriation for Underwood-Smith
36 Scholarship Program-Student Awards (fund 0589,
37 appropriation 16700) shall be transferred to the
38 Underwood-Smith Teacher Scholarship and Loan
39 Assistance Fund (fund 4922, org 0441) established by
40 W.Va. Code §18C-4-1.

41 The above appropriation for PROMISE Scholarship –
42 Transfer (fund 0589, appropriation 80000) shall be
43 transferred to the PROMISE Scholarship Fund (fund 4296,
44 org 0441) established by W.Va. Code §18C-7-7.

97-Higher Education Policy Commission –
Administration -

West Virginia Network for Educational Telecomputing
(WVNET)

(WV Code Chapter 18B9)

Fund 0551 FY 2019 Org 0495

1 WVNET..... 16900 \$ 1,681,744

98-West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2019 Org 0463

| | | | |
|----|-----------------------------------|-------|------------------|
| 1 | WVU School of Health Science – | | |
| 2 | Eastern Division | 05600 | \$ 2,158,359 |
| 3 | WVU – School of Health Sciences | 17400 | 16,778,145 |
| 4 | WVU – School of Health Sciences – | | |
| 5 | Charleston Division | 17500 | 2,218,598 |
| 6 | Rural Health Outreach Programs... | 37700 | 162,520 |
| 7 | West Virginia University | | |
| 8 | School of Medicine | | |
| 9 | BRIM Subsidy | 46000 | <u>1,203,087</u> |
| 10 | Total..... | | \$22,520,709 |

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.

99-West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2019 Org 0463

| | | | |
|---|--------------------------------|-------|-----------------------|
| 1 | West Virginia University | 45900 | \$93,559,659 |
| 2 | Jackson’s Mill | 46100 | 480,879 |
| 3 | West Virginia University | | |
| 4 | Institute of Technology..... | 47900 | 7,717,964 |
| 5 | State Priorities – Brownfield | | |
| 6 | Professional Development..... | 53100 | 316,556 |
| 7 | West Virginia University – | | |
| 8 | Potomac State | 99400 | <u>3,834,937</u> |
| 9 | Total..... | | \$ <u>105,909,995</u> |

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.

100-Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2019 Org 0471

| | | | |
|---|-------------------------------|-------|----------------------|
| 1 | Marshall Medical School | 17300 | \$11,774,743 |
| 2 | Rural Health | | |
| 3 | Outreach Programs (R)..... | 37700 | 156,022 |
| 4 | Forensic Lab | 37701 | 226,009 |
| 5 | Center for Rural Health..... | 37702 | 153,075 |
| 6 | Marshall University | | |
| 7 | Medical School | | |
| 8 | BRIM Subsidy | 44900 | <u>872,612</u> |
| 9 | Total..... | | \$ <u>13,182,461</u> |

10 Any unexpended balance remaining in the
 11 appropriation for Rural Health Outreach Program (fund
 12 0347, appropriation 37700) at the close of the fiscal year
 13 2018 is hereby reappropriated for expenditure during the
 14 fiscal year 2019.

15 The above appropriation for Rural Health Outreach
 16 Programs (fund 0347, appropriation 37700) includes rural
 17 health activities and programs; rural residency development
 18 and education; and rural outreach activities.

19 The above appropriation for Marshall University
 20 Medical School BRIM Subsidy (fund 0347, appropriation
 21 44900) shall be paid to the Board of Risk and Insurance
 22 Management as a general revenue subsidy against the
 23 “Total Premium Billed” to the institution as part of the full
 24 cost of their malpractice insurance coverage.

101-Marshall University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2019 Org 0471

| | | | |
|----|-----------------------------------|-------|------------------|
| 1 | Marshall University | 44800 | \$44,273,845 |
| 2 | Luke Lee Listening Language and | | |
| 3 | Learning Lab..... | 44801 | 96,203 |
| 4 | Vista E-Learning (R) | 51900 | 229,019 |
| 5 | State Priorities – Brownfield | | |
| 6 | Professional Development (R)... | 53100 | 309,606 |
| 7 | Marshall University Graduate | | |
| 8 | College Writing Project (R)..... | 80700 | 25,412 |
| 9 | WV Autism Training Center (R) ... | 93200 | <u>1,742,215</u> |
| 10 | Total..... | | \$46,676,300 |

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 2018 are hereby reappropriated for
 19 expenditure during the fiscal year 2019.

102-West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2019 Org 0476

| | | | |
|---|-------------------------------------|-------|----------------|
| 1 | West Virginia School of | | |
| 2 | Osteopathic Medicine..... | 17200 | \$ 6,683,018 |
| 3 | Rural Health Outreach | | |
| 4 | Programs (R)..... | 37700 | 163,299 |
| 5 | West Virginia School of Osteopathic | | |
| 6 | Medicine BRIM Subsidy..... | 40300 | 153,405 |
| 7 | Rural Health Initiative – | | |
| 8 | Medical Schools Support..... | 58100 | <u>391,968</u> |
| 9 | Total..... | | \$ 7,391,690 |

10 Any unexpended balance remaining in the
 11 appropriation for Rural Health Outreach Programs (fund
 12 0336, appropriation 37700) at the close of fiscal year 2018
 13 is hereby reappropriated for expenditure during the fiscal
 14 year 2019.

15 The above appropriation for Rural Health Outreach
 16 Programs (fund 0336, appropriation 37700) includes rural
 17 health activities and programs; rural residency development
 18 and education; and rural outreach activities.

19 The above appropriation for West Virginia School of
 20 Osteopathic Medicine BRIM Subsidy (fund 0336,
 21 appropriation 40300) shall be paid to the Board of Risk
 22 and Insurance Management as a general revenue subsidy
 23 against the “Total Premium Billed” to the institution as
 24 part of the full cost of their malpractice insurance
 25 coverage.

103-Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2019 Org 0482

1 Bluefield State College 40800 \$ 5,600,993

104-Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2019 Org 0483

1 Concord University 41000 \$ 8,552,843

105-Fairmont State University

(WV Code Chapter 18B)

Fund 0360 FY 2019 Org 0484

1 Fairmont State University 41400 \$ 15,111,777

106-Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2019 Org 0485

1 Glenville State College 42800 \$ 5,885,700

107-Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2019 Org 0486

1 Shepherd University 43200 \$ 9,671,542

108-West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2019 Org 0488

1 West Liberty University..... 43900 \$ 7,823,727

109-West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2019 Org 0490

1 West Virginia State University 44100 \$ 9,861,240

2 West Virginia State University

3 Land Grant Match..... 95600 1,586,340

4 Total..... \$11,447,580

5 Total TITLE II, Section 1 – General Revenue

6 (Including claims

7 against the state)..... \$4,381,808,884

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 2019.

DEPARTMENT OF TRANSPORTATION

110-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2019 Org 0802

| | Appropriation | State Road Fund |
|--------------------------------|----------------------|------------------------|
| 1 Personal Services and | | |
| 2 Employee Benefits..... | 00100 | \$23,378,949 |
| 3 Current Expenses | 13000 | 16,181,042 |
| 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>84,738</u> |
| 9 | Total..... | | \$43,478,729 |

111-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2019 Org 0803

| | | | |
|----|----------------------------------|-------|------------------|
| 1 | Debt Service..... | 04000 | \$89,000,000 |
| 2 | Maintenance..... | 23700 | 386,386,000 |
| 3 | Nonfederal Improvements | 23701 | 156,500,000 |
| 4 | Inventory Revolving | 27500 | 4,000,000 |
| 5 | Equipment Revolving | 27600 | 22,500,000 |
| 6 | General Operations | 27700 | 68,295,000 |
| 7 | Interstate Construction..... | 27800 | 95,000,000 |
| 8 | Other Federal Aid Programs | 27900 | 370,000,000 |
| 9 | Appalachian Programs..... | 28000 | 110,000,000 |
| 10 | Highway Litter Control..... | 28200 | 1,719,000 |
| 11 | Courtesy Patrol | 28201 | <u>5,000,000</u> |
| 12 | Total..... | | \$ 1,308,400,000 |

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 all
 28 federal funds available for expenditure on the Appalachian
 29 highway system at the earliest possible time. Therefore,
 30 should amounts in excess of those appropriated be required
 31 for the purposes of Appalachian programs, funds in excess of
 32 the amount appropriated may be made available upon
 33 recommendation of the commissioner and approval of the
 34 Governor. Further, for the purpose of Appalachian programs,
 35 funds appropriated by appropriation may be transferred to
 36 other appropriations upon recommendation of the
 37 commissioner and approval of the Governor.

112-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2019 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 | | |
| 10 | against the state) | | <u>\$1,354,239,538</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 2019.

LEGISLATIVE

113-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2019 Org 2300

| | Appropriation | Other 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*114-Supreme Court –**Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2019 Org 2400

| | | |
|--------------------------|-------|--------------|
| 1 Current Expenses | 13000 | \$ 1,600,000 |
|--------------------------|-------|--------------|

*115-Supreme Court –**Court Advanced Technology Subscription Fund*

(WV Code Chapter 51)

Fund 1704 FY 2019 Org 2400

| | | |
|--------------------------|-------|------------|
| 1 Current Expenses | 13000 | \$ 500,000 |
|--------------------------|-------|------------|

*116-Supreme Court –**Adult Drug Court Participation Fund*

(WV Code Chapter 62)

Fund 1705 FY 2019 Org 2400

| | | | | |
|---|------------------------|-------|----|---------|
| 1 | Current Expenses | 13000 | \$ | 300,000 |
|---|------------------------|-------|----|---------|

EXECUTIVE*117-Governor's Office –**Minority Affairs Fund*

(WV Code Chapter 5)

Fund 1058 FY 2019 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..... | | \$ | <u>684,926</u> |

*118-Auditor's Office –**Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2019 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..... | | \$ | <u>3,250,236</u> |

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.

119-Auditor's Office –

Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2019 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>2,350,000</u> |
| 8 | Total..... | | \$ 3,287,118 |

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.

120-Auditor's Office –

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2019 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 |

*121-Auditor's Office – Technology Support
and Acquisition Fund*

(WV Code Chapter 12)

Fund 1233 FY 2019 Org 1200

| | | | |
|---|------------------------|-------|--------------|
| 1 | Current Expenses | 13000 | \$ 10,000 |
| 2 | Other Assets..... | 69000 | <u>5,000</u> |
| 3 | Total..... | | \$ 15,000 |

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.

122-Auditor's Office –

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2019 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>8,000,000</u> |
| 8 | Total..... | | \$13,935,405 |

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.

123-Auditor's Office –

Chief Inspector's Fund

(WV Code Chapter 6)

Fund 1235 FY 2019 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 |

124-Auditor's Office –

Volunteer Fire Department Workers'

Compensation Premium Subsidy Fund

(WV Code Chapters 12 and 33)

Fund 1239 FY 2019 Org 1200

| | | | |
|---|-----------------------------------|-------|--------------|
| 1 | Volunteer Fire Department | | |
| 2 | Workers' Compensation Subsidy ... | 83200 | \$ 2,500,000 |

125-Treasurer's Office

College Prepaid Tuition and Savings Program

Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2019 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 |

126-Department of Agriculture –

Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2019 Org 1400

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,244,245 |
| 3 | Unclassified | 09900 | 37,425 |
| 4 | Current Expenses | 13000 | 1,856,184 |
| 5 | Repairs and Alterations..... | 06400 | 158,500 |
| 6 | Equipment..... | 07000 | 436,209 |
| 7 | Other Assets..... | 69000 | <u>10,000</u> |
| 8 | Total..... | | \$ 4,742,563 |

127-Department of Agriculture –

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2019 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 |

128-Department of Agriculture –

General John McCausland Memorial Farm Fund

(WV Code Chapter 19)

Fund 1409 FY 2019 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.

129-Department of Agriculture –

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2019 Org 1400

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 809,248 |
| 3 | Unclassified | 09900 | 15,173 |
| 4 | Current Expenses | 13000 | 1,367,464 |
| 5 | Repairs and Alterations..... | 06400 | 388,722 |
| 6 | Equipment..... | 07000 | 399,393 |
| 7 | Other Assets..... | 69000 | <u>20,000</u> |
| 8 | Total..... | | \$ 3,000,000 |

130-Department of Agriculture –

Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2019 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 |

*131-Department of Agriculture –
Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2019 Org 1400

| | | | |
|---|------------------------|-------|------------|
| 1 | Current Expenses | 13000 | \$ 100,000 |
|---|------------------------|-------|------------|

*132-Department of Agriculture –
West Virginia Spay Neuter Assistance Fund*

(WV Code Chapter 19)

Fund 1481 FY 2019 Org 1400

| | | | |
|---|------------------------|-------|------------|
| 1 | Current Expenses | 13000 | \$ 500,000 |
|---|------------------------|-------|------------|

*133-Department of Agriculture –
Veterans and Warriors to Agriculture Fund*

(WV Code Chapter 19)

Fund 1483 FY 2019 Org 1400

| | | | |
|---|------------------------|-------|----------|
| 1 | Current Expenses | 13000 | \$ 7,500 |
|---|------------------------|-------|----------|

*134-Department of Agriculture –
State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2019 Org 1400

| | | | |
|---|------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,169,194 |

| | | | |
|----|------------------------------|-------|--------------|
| 3 | Unclassified | 09900 | 17,000 |
| 4 | Current Expenses | 13000 | 1,143,306 |
| 5 | Repairs and Alterations..... | 06400 | 82,500 |
| 6 | Equipment..... | 07000 | 76,000 |
| 7 | Buildings..... | 25800 | 1,000 |
| 8 | Other Assets..... | 69000 | 10,000 |
| 9 | Land | 73000 | <u>1,000</u> |
| 10 | Total..... | | \$ 2,500,000 |

135-Attorney General –

Antitrust Enforcement Fund

(WV Code Chapter 47)

Fund 1507 FY 2019 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 |

136-Attorney General –

Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2019 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 |

*137-Attorney General –**Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2019 Org 1500

| | | | | |
|---|------------------------|-------|----|---------|
| 1 | Current Expenses | 13000 | \$ | 901,135 |
|---|------------------------|-------|----|---------|

*138-Secretary of State –**Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2019 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 |

*139-Secretary of State –**General Administrative Fees Account*

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2019 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

140-Department of Administration –

Office of the Secretary –

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2019 Org 0201

| | | | |
|---|-----------------------------------|-------|--------------|
| 1 | Tobacco Settlement Securitization | | |
| 2 | Trustee Pass Thru | 65000 | \$80,000,000 |

141-Department of Administration –

Office of the Secretary –

Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2019 Org 0201

| | | | |
|---|--|-------|--------------|
| 1 | Current Expenses | 13000 | \$35,000,000 |
| 2 | The above appropriation for Current Expenses (fund | | |
| 3 | 2044, appropriation 13000) shall be transferred to the | | |
| 4 | Consolidated Public Retirement Board – Teachers’ | | |
| 5 | Accumulation Fund (fund 2600). | | |

142-Department of Administration –

Division of Finance –

Shared Services Section Fund

(WV Code Chapter 5A)

Fund FY 2019 Org 0209

| | | | |
|---|------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,500,000 |
| 3 | Current Expenses | 13000 | <u>500,000</u> |
| 4 | Total..... | | \$ 2,000,000 |

143-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2019 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 shall
16 be charged monthly for all postage meter service and shall
17 reimburse the revolving fund monthly for all such amounts.

144-Division of Purchasing –

Vendor Fee Fund

(WV Code Chapter 5A)

Fund 2263 FY 2019 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 |

145-Division of Purchasing –

Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2019 Org 0213

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 739,272 |
| 3 | Unclassified | 09900 | 5,562 |
| 4 | Current Expenses | 13000 | 393,066 |
| 5 | Repairs and Alterations..... | 06400 | 500 |
| 6 | Equipment..... | 07000 | 500 |
| 7 | Other Assets..... | 69000 | 500 |
| 8 | BRIM Premium..... | 91300 | <u>850</u> |
| 9 | Total..... | | \$ 1,140,250 |

146-Travel Management –

Fleet Management Office Fund

(WV Code Chapter 5A)

Fund 2301 FY 2019 Org 0215

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 722,586 |
| 3 | Unclassified | 09900 | 4,000 |
| 4 | Current Expenses | 13000 | 8,130,614 |
| 5 | Repairs and Alterations..... | 06400 | 12,000 |
| 6 | Equipment..... | 07000 | 800,000 |
| 7 | Other Assets..... | 69000 | <u>2,000</u> |
| 8 | Total..... | | \$ 9,671,200 |

*147-Travel Management –**Aviation Fund*

(WV Code Chapter 5A)

Fund 2302 FY 2019 Org 0215

| | | | | |
|---|------------------------------|-------|----|------------|
| 1 | Unclassified | 09900 | \$ | 1,000 |
| 2 | Current Expenses | 13000 | | 149,700 |
| 3 | Repairs and Alterations..... | 06400 | | 1,175,237 |
| 4 | Equipment..... | 07000 | | 1,000 |
| 5 | Buildings..... | 25800 | | 100 |
| 6 | Other Assets..... | 69000 | | 100 |
| 7 | Land..... | 73000 | | <u>100</u> |
| 8 | Total..... | | \$ | 1,327,237 |

148-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2019 Org 0222

| | | | | |
|---|------------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 4,442,590 |
| 3 | Unclassified | 09900 | | 51,418 |
| 4 | Current Expenses | 13000 | | 1,262,813 |
| 5 | Repairs and Alterations..... | 06400 | | 5,000 |
| 6 | Equipment..... | 07000 | | 20,000 |
| 7 | Other Assets..... | 69000 | | <u>60,000</u> |
| 8 | Total..... | | \$ | 5,841,821 |

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.

149-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2019 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 |

150-Office of Technology –

Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2019 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

151-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2019 Org 0305

| | | | |
|---|------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,464,328 |
| 3 | Current Expenses | 13000 | 282,202 |

| | | | |
|---|------------------------------|-------|----------------|
| 4 | Repairs and Alterations..... | 06400 | 53,000 |
| 5 | Equipment..... | 07000 | <u>300,000</u> |
| 6 | Total..... | | \$ 2,099,530 |

152-Division of Forestry –

Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2019 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 |

153-Division of Forestry –

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2019 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 |

154-Geological and Economic Survey –

Geological and Analytical Services Fund

(WV Code Chapter 29)

Fund 3100 FY 2019 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.

155-West Virginia Development Office –

Department of Commerce –

Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2019 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 |

156-West Virginia Development Office –

Office of Coalfield Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2019 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 |

157-Division of Labor –

HVAC Fund

(WV Code Chapter 21)

Fund 3186 FY 2019 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 |

*158-Division of Labor –**Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2019 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 |

*159-Division of Labor –**Elevator Safety Fund*

(WV Code Chapter 21)

Fund 3188 FY 2019 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 |

*160-Division of Labor –**Steam Boiler Fund*

(WV Code Chapter 21)

Fund 3189 FY 2019 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 |

*161-Division of Labor –**Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2019 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 |

*162-Division of Labor –**Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2019 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 |

*163-Division of Labor –**State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2019 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 |

*164-Division of Labor -**Weights and Measures Fund*

(WV Code Chapter 47)

Fund 3196 FY 2019 Org 0308

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,500,000 |
| 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..... | | \$ 1,778,500 |

165-Division of Labor –

Bedding and Upholstery Fund

(WV Code Chapter 21)

Fund 3198 FY 2019 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 |

166-Division of Labor –

Psychophysiological Examiners Fund

(WV Code Chapter 21)

Fund 3199 FY 2019 Org 0308

| | | | |
|---|------------------------|-------|----------|
| 1 | Current Expenses | 13000 | \$ 4,000 |
|---|------------------------|-------|----------|

167-Division of Natural Resources –

License Fund – Wildlife Resources

(WV Code Chapter 20)

Fund 3200 FY 2019 Org 0310

| | | | |
|---|--------------------------|-------|------------------|
| 1 | Wildlife Resources..... | 02300 | \$ 7,064,884 |
| 2 | Administration | 15500 | 1,766,221 |
| 3 | Capital Improvements and | | |
| 4 | Land Purchase (R) | 24800 | 1,766,220 |
| 5 | Law Enforcement..... | 80600 | <u>7,064,884</u> |
| 6 | Total..... | | \$17,662,209 |

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
11 appropriation for Capital Improvements and Land Purchase
12 (fund 3200, appropriation 24800) at the close of the fiscal
13 year 2018 is hereby reappropriated for expenditure during
14 the fiscal year 2019.

168-Division of Natural Resources –

Natural Resources Game Fish and Aquatic Life Fund

(WV Code Chapter 22)

Fund 3202 FY 2019 Org 0310

| | | | |
|---|------------------------|-------|------------|
| 1 | Current Expenses | 13000 | \$ 125,000 |
|---|------------------------|-------|------------|

169-Division of Natural Resources –

Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2019 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 |

*170-Division of Natural Resources –
Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2019 Org 0310

| | | | | |
|---|------------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 437,496 |
| 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..... | | \$ | 2,658,676 |

*171-Division of Natural Resources –
Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2019 Org 0310

| | | | | |
|---|------------------------|-------|----|--------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 62,704 |
| 3 | Current Expenses | 13000 | | 64,778 |
| 4 | Equipment..... | 07000 | | 1,297 |
| 5 | Buildings..... | 25800 | | <u>6,969</u> |
| 6 | Total..... | | \$ | 135,748 |

*172-Division of Natural Resources –
Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2019 Org 0310

| | | | | |
|---|------------------------|-------|----|---------------|
| 1 | Unclassified | 09900 | \$ | 200 |
| 2 | Current Expenses | 13000 | | <u>19,800</u> |
| 3 | Total..... | | \$ | 20,000 |

173-Division of Miners' Health, Safety and Training –

Special Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2019 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 |

174-Department of Commerce –

Office of the Secretary –

Broadband Enhancement Fund

Fund 3013 FY 2019 Org 0327

| | | | | |
|---|------------------------|-------|----|-----------|
| 1 | Current Expenses | 13000 | \$ | 1,431,043 |
|---|------------------------|-------|----|-----------|

175-Office of Energy –

Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2019 Org 0328

| | | | | |
|---|---------------------------------|-------|----|-------|
| 1 | Energy Assistance – Total | 64700 | \$ | 7,211 |
|---|---------------------------------|-------|----|-------|

DEPARTMENT OF EDUCATION*176-State Board of Education –**Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2019 Org 0402

| | | | | |
|---|------------------------|-------|----|----------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 134,000 |
| 3 | Unclassified | 09900 | | 1,000 |
| 4 | Current Expenses | 13000 | | <u>765,000</u> |
| 5 | Total..... | | \$ | 900,000 |

*177-State Board of Education –**School Construction Fund*

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2019 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.

178-School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2019 Org 0402

| | | | |
|---|------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,085,152 |

| | | | |
|---|------------------------------|-------|---------------|
| 3 | Current Expenses | 13000 | 244,100 |
| 4 | Repairs and Alterations..... | 06400 | 13,150 |
| 5 | Equipment..... | 07000 | <u>26,000</u> |
| 6 | Total..... | | \$ 1,368,402 |

DEPARTMENT OF EDUCATION AND THE ARTS

179-Office of the Secretary –

Lottery Education Fund Interest Earnings –

Control Account

(WV Code Chapter 29)

Fund 3508 FY 2019 Org 0431

1 Any unexpended balance remaining in the
2 appropriation for Educational Enhancements (fund 3508,
3 appropriation 69500) at the close of the fiscal year 2018 is
4 hereby reappropriated for expenditure during the fiscal year
5 2019.

180-Division of Culture and History –

Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2019 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 |

*181-State Board of Rehabilitation –
Division of Rehabilitation Services –*

West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

Fund 8664 FY 2019 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

182-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2019 Org 0312

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 802,269 |
| 3 | Current Expenses | 13000 | 2,060,997 |
| 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 |

183-Division of Environmental Protection –

Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 692,784 |
| 3 | Current Expenses | 13000 | 190,569 |
| 4 | Repairs and Alterations..... | 06400 | 500 |
| 5 | Equipment..... | 07000 | 1,505 |
| 6 | Unclassified | 09900 | 8,072 |
| 7 | Other Assets..... | 69000 | <u>2,000</u> |
| 8 | Total..... | | \$ 895,430 |

184-Division of Environmental Protection –

Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 935,324 |
| 3 | Current Expenses | 13000 | 1,226,863 |
| 4 | Repairs and Alterations..... | 06400 | 13,000 |
| 5 | Equipment..... | 07000 | 53,105 |
| 6 | Unclassified | 09900 | 14,647 |
| 7 | Other Assets..... | 69000 | <u>20,000</u> |
| 8 | Total..... | | \$ 2,262,939 |

185-Division of Environmental Protection –

Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2019 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 |

*186-Division of Environmental Protection –**Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2019 Org 0313

| | | | |
|---|------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 143,906 |
| 3 | Current Expenses | 13000 | <u>356,094</u> |
| 4 | Total..... | | \$ 500,000 |

*187-Division of Environmental Protection –**Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 3,321,164 |
| 3 | Current Expenses | 13000 | 1,237,758 |
| 4 | Repairs and Alterations..... | 06400 | 40,600 |
| 5 | Equipment..... | 07000 | 8,000 |
| 6 | Unclassified | 09900 | 44,700 |
| 7 | Other Assets..... | 69000 | <u>15,000</u> |
| 8 | Total..... | | \$ 4,667,222 |

*188-Division of Environmental Protection –**Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 4,035,449 |
| 3 | Current Expenses | 13000 | 2,302,231 |
| 4 | Repairs and Alterations..... | 06400 | 60,260 |

| | | | |
|---|--------------------|-------|---------------|
| 5 | Equipment..... | 07000 | 83,000 |
| 6 | Unclassified | 09900 | 920 |
| 7 | Other Assets..... | 69000 | <u>57,500</u> |
| 8 | Total..... | | \$ 6,539,360 |

189-Division of Environmental Protection –

Underground Storage Tank

Administrative Fund

(WV Code Chapter 22)

Fund 3325 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 466,543 |
| 3 | Current Expenses | 13000 | 318,420 |
| 4 | Repairs and Alterations..... | 06400 | 5,350 |
| 5 | Equipment..... | 07000 | 3,610 |
| 6 | Unclassified | 09900 | 7,520 |
| 7 | Other Assets..... | 69000 | <u>3,500</u> |
| 8 | Total..... | | \$ 804,943 |

190-Division of Environmental Protection –

Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)

Fund 3331 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 6,000 |
| 3 | Current Expenses | 13000 | 1,067,905 |
| 4 | Repairs and Alterations..... | 06400 | 7,014 |
| 5 | Equipment..... | 07000 | 9,000 |
| 6 | Unclassified | 09900 | 10,616 |
| 7 | Other Assets..... | 69000 | <u>3,500</u> |
| 8 | Total..... | | \$ 1,104,035 |

*191-Division of Environmental Protection –**Solid Waste Reclamation and
Environmental Response Fund*

(WV Code Chapter 22)

Fund 3332 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 793,967 |
| 3 | Current Expenses | 13000 | 3,604,737 |
| 4 | Repairs and Alterations..... | 06400 | 25,000 |
| 5 | Equipment..... | 07000 | 31,500 |
| 6 | Unclassified | 09900 | 22,900 |
| 7 | Buildings..... | 25800 | 500 |
| 8 | Other Assets..... | 69000 | <u>1,000</u> |
| 9 | Total..... | | \$ 4,479,604 |

*192-Division of Environmental Protection –**Solid Waste Enforcement Fund*

(WV Code Chapter 22)

Fund 3333 FY 2019 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 |

*193-Division of Environmental Protection –**Air Pollution Control Fund*

(WV Code Chapter 22)

Fund 3336 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 5,643,421 |
| 3 | Current Expenses | 13000 | 1,489,467 |
| 4 | Repairs and Alterations..... | 06400 | 84,045 |
| 5 | Equipment..... | 07000 | 103,601 |
| 6 | Unclassified | 09900 | 70,572 |
| 7 | Other Assets..... | 69000 | <u>52,951</u> |
| 8 | Total..... | | \$ 7,444,057 |

*194-Division of Environmental Protection –**Environmental Laboratory**Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 311,044 |
| 3 | Current Expenses | 13000 | 208,188 |
| 4 | Repairs and Alterations..... | 06400 | 1,000 |
| 5 | Equipment..... | 07000 | 1,000 |
| 6 | Unclassified | 09900 | 1,120 |
| 7 | Other Assets..... | 69000 | <u>177,000</u> |
| 8 | Total..... | | \$ 699,352 |

*195-Division of Environmental Protection –**Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2019 Org 0313

| | | | |
|---|------------------------|-------|--------------|
| 1 | Current Expenses | 13000 | \$ 9,298,205 |
|---|------------------------|-------|--------------|

*196-Division of Environmental Protection –**Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2019 Org 0313

| | | | | |
|---|------------------------|-------|----|--------|
| 1 | Current Expenses | 13000 | \$ | 60,000 |
|---|------------------------|-------|----|--------|

*197-Division of Environmental Protection –**Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2019 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 |

*198-Division of Environmental Protection –**Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2019 Org 0313

| | | | | |
|---|------------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 1,228,345 |
| 3 | Current Expenses | 13000 | | 642,934 |
| 4 | Repairs and Alterations..... | 06400 | | 30,112 |
| 5 | Equipment..... | 07000 | | 23,500 |
| 6 | Unclassified | 09900 | | 1,180 |
| 7 | Other Assets..... | 69000 | | <u>11,520</u> |
| 8 | Total..... | | \$ | 1,937,591 |

*199-Oil and Gas Conservation Commission –**Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2019 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***200-Division of Health –**Ryan Brown Addiction Prevention and Recovery Fund*

(WV Code Chapter 19)

Fund 5111 FY 2019 Org 0506

| | | | | |
|---|------------------------|-------|----|------------|
| 1 | Current Expenses | 13000 | \$ | 13,588,654 |
|---|------------------------|-------|----|------------|

*201-Division of Health –**The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2019 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 |

202-Division of Health –

Hospital Services Revenue Account

Special Fund

Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

Fund 5156 FY 2019 Org 0506

| | | | |
|---|--|-------|-------------------|
| 1 | Institutional Facilities Operations | 33500 | \$35,555,221 |
| 2 | Medical Services Trust Fund – | | |
| 3 | Transfer..... | 51200 | <u>27,800,000</u> |
| 4 | Total..... | | \$63,355,221 |

5

6 The total amount of these appropriations shall be paid

7 from the Hospital Services Revenue Account Special Fund

8 created by W.Va. Code §16-1-13, and shall be used for

9 operating expenses and for improvements in connection

10 with existing facilities.

11 Additional funds have been appropriated in fund 0525,

12 fiscal year 2019, organization 0506, for the operation of the

13 institutional facilities. The Secretary of the Department of

14 Health and Human Resources is authorized to utilize up to

15 ten percent of the funds from the appropriation for

16 Institutional Facilities Operations to facilitate cost effective

17 and cost saving services at the community level.

18 Necessary funds from the above appropriation may be

19 used for medical facilities operations, either in connection with

20 this fund or in connection with the appropriation designated

21 Institutional Facilities Operations in the Consolidated Medical

22 Service Fund (fund 0525, 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, 2018, the sum of *\$0 shall

*NOTE: The Governor reduced Item 202, line 26, by \$160,000 to \$0.

27 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.

203-Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2019 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 |

204-Division of Health –

The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172 FY 2019 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 |

205-Division of Health –

Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2019 Org 0506

| | | | | |
|---|------------------------|-------|----|-------|
| 1 | Current Expenses | 13000 | \$ | 9,740 |
|---|------------------------|-------|----|-------|

*206-Division of Health –**Lead Abatement Account*

(WV Code Chapter 16)

Fund 5204 FY 2019 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 |

*207-Division of Health –**West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2019 Org 0506

| | | | | |
|---|------------------------|-------|----|-------------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 647,545 |
| 3 | Unclassified | 09900 | | 223,999 |
| 4 | Current Expenses | 13000 | | <u>28,053,549</u> |
| 5 | Total..... | | \$ | \$28,925,093 |

*208-Division of Health –**Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2019 Org 0506

| | | | | |
|---|------------------------|-------|----|-------|
| 1 | Current Expenses | 13000 | \$ | 7,579 |
|---|------------------------|-------|----|-------|

*209-Division of Health –**Medical Cannabis Program Fund*

(WV Code Chapter 16A)

Fund 5420 FY 2019 Org 0506

| | | | |
|---|------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 509,658 |
| 3 | Current Expenses | 13000 | 1,151,040 |
| 4 | Other Assets..... | 69000 | <u>895,000</u> |
| 5 | Total..... | | \$ 2,555,698 |

210-West Virginia Health Care Authority –

Health Care Cost Review Fund

(WV Code Chapter 16)

Fund 5375 FY 2019 Org 0507

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,310,821 |
| 3 | Hospital Assistance..... | 02500 | 50,000 |
| 4 | Unclassified | 09900 | 100 |
| 5 | Current Expenses | 13000 | 754,645 |
| 6 | Repairs and Alterations..... | 06400 | 500 |
| 7 | Equipment..... | 07000 | <u>300</u> |
| 8 | Total..... | | \$ 2,116,366 |
| 9 | | | |

10 The above appropriation is to be expended in
 11 accordance with and pursuant to the provisions of W.Va.
 12 Code §16-29B and from the special revolving fund
 13 designated Health Care Cost Review Fund.

211-West Virginia Health Care Authority –

Certificate of Need Program Fund

(WV Code Chapter 16)

Fund 5377 FY 2019 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 |

212-Division of Human Services –

Health Care Provider Tax –

Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2019 Org 0511

| | | | |
|---|----------------------------|-------|----------------|
| 1 | Medical Services..... | 18900 | \$ 198,568,451 |
| 2 | Medical Services | | |
| 3 | Administrative Costs | 78900 | <u>231,549</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
10 of all moneys deposited in the fund shall be transferred
11 to the West Virginia Medical Services Fund (fund
12 5084.)

213-Division of Human Services –

Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2019 Org 0511

| | | | |
|---|------------------------|------------|-------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ |
| 3 | | 24,809,509 | |
| 4 | Unclassified | 09900 | 380,000 |
| 5 | Current Expenses | 13000 | <u>12,810,491</u> |
| 6 | Total..... | | \$38,000,000 |

214-Division of Human Services –

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2019 Org 0511

| | | | |
|---|----------------------------|-------|----------------|
| 1 | Medical Services..... | 18900 | \$73,477,905 |
| 2 | Medical Services | | |
| 3 | Administrative Costs | 78900 | <u>548,723</u> |
| 4 | Total..... | | \$74,026,628 |

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.

*215-Division of Human Services –**James “Tiger” Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2019 Org 0511

| | | | |
|---|------------------------|-------|----------------|
| 1 | Unclassified | 09900 | \$ 7,000 |
| 2 | Current Expenses | 13000 | <u>693,000</u> |
| 3 | Total..... | | \$ 700,000 |

*216-Division of Human Services –**Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2019 Org 0511

| | | | |
|---|------------------------|-------|------------|
| 1 | Current Expenses | 13000 | \$ 900,000 |
|---|------------------------|-------|------------|

217-Division of Human Services –

West Virginia Works Separate State College Program Fund
(WV Code Chapter 9)

Fund 5467 FY 2019 Org 0511

1 Current Expenses 13000 \$ 1,000,000

218-Division of Human Services –

West Virginia Works Separate State Two-Parent Program Fund
(WV Code Chapter 9)

Fund 5468 FY 2019 Org 0511

1 Current Expenses 13000 \$ 2,000,000

219-Division of Human Services –

Marriage Education Fund

(WV Code Chapter 9)

Fund 5490 FY 2019 Org 0511

| | | | | |
|---|------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 10,000 |
| 3 | Current Expenses | 13000 | | <u>25,000</u> |
| 4 | Total..... | | \$ | 35,000 |

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

220-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 2019 Org 0601

| | | | |
|---|------------------------|-------|--------|
| 1 | Current Expenses | 13000 | 32,000 |
|---|------------------------|-------|--------|

221-State Armory Board –

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2019 Org 0603

| | | | |
|---|------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,643,528 |
| 3 | Current Expenses | 13000 | 650,000 |
| 4 | Repairs and Alterations..... | 06400 | 385,652 |
| 5 | Equipment..... | 07000 | 250,000 |
| 6 | Buildings..... | 25800 | 770,820 |
| 7 | Other Assets..... | 69000 | 100,000 |
| 8 | Land | 73000 | <u>200,000</u> |
| 9 | Total..... | | \$ 4,000,000 |

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).

222-Division of Homeland Security

And Emergency Management –

Statewide Interoperable Radio Network Account

(WV Code Chapter 15)

Fund 6208 FY 2019 Org 0606

| | | | |
|---|------------------------|-------|-----------|
| 1 | Current Expenses | 13000 | \$ 80,000 |
|---|------------------------|-------|-----------|

223-Division of Homeland Security and

Emergency Management –

West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2019 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) at | | |
| 4 | the close of fiscal year 2018 is hereby reappropriated for | | |
| 5 | expenditure during the fiscal year 2019. | | |

224-West Virginia Division of Corrections –

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2019 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 |

225-West Virginia State Police –

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2019 Org 0612

| | | | |
|---|------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,786,923 |
| 3 | Current Expenses | 13000 | 1,488,211 |

| | | | |
|---|------------------------------|-------|----------------|
| 4 | Repairs and Alterations..... | 06400 | 204,500 |
| 5 | Equipment..... | 07000 | 3,770,751 |
| 6 | Buildings..... | 25800 | 534,000 |
| 7 | Other Assets..... | 69000 | 5,000 |
| 8 | BRIM Premium..... | 91300 | <u>302,432</u> |
| 9 | Total..... | | \$ 8,091,817 |

10 The total amount of these appropriations shall be paid
 11 from the special revenue fund out of fees collected for
 12 inspection stickers as provided by law.

226-West Virginia State Police –

Forensic Laboratory Fund

(WV Code Chapter 15)

Fund 6511 FY 2019 Org 0612

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 100,000 |
| 3 | Current Expenses | 13000 | 90,000 |
| 4 | Repairs and Alterations..... | 06400 | 5,000 |
| 5 | Equipment..... | 07000 | <u>45,000</u> |
| 6 | Total..... | | \$ 240,000 |

227-West Virginia State Police –

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2019 Org 0612

| | | | |
|---|------------------------|-------|----------------|
| 1 | Current Expenses | 13000 | \$ 1,327,000 |
| 2 | Equipment..... | 07000 | 3,491,895 |
| 3 | BRIM Premium..... | 91300 | <u>154,452</u> |
| 4 | Total..... | | \$ 4,973,347 |

5 The total amount of these appropriations shall be paid
 6 from the special revenue fund out of receipts collected
 7 pursuant to W.Va. Code §11-15-9a and 16 and paid into a
 8 revolving fund account in the State Treasury.

228-West Virginia State Police –

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2019 Org 0612

| | | | |
|---|-------------------|-------|---------------|
| 1 | Buildings..... | 25800 | \$ 1,022,778 |
| 2 | Land..... | 73000 | 1,000 |
| 3 | BRIM Premium..... | 91300 | <u>77,222</u> |
| 4 | Total..... | | \$ 1,101,000 |

229-West Virginia State Police –

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2019 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 |

230-West Virginia State Police –

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2019 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 | | 18,524 |
| 8 | Total..... | | \$ | 908,348 |

231-West Virginia State Police –

Bail Bond Enforcer Account

(WV Code Chapter 15)

Fund 6532 FY 2019 Org 0612

| | | | | |
|---|------------------------|-------|----|-------|
| 1 | Current Expenses | 13000 | \$ | 8,300 |
|---|------------------------|-------|----|-------|

232-West Virginia State Police –

State Police Academy Post Exchange

(WV Code Chapter 15)

Fund 6544 FY 2019 Org 0612

| | | | | |
|---|------------------------------|-------|----|---------------|
| 1 | Current Expenses | 13000 | \$ | 160,000 |
| 2 | Repairs and Alterations..... | 06400 | | <u>40,000</u> |
| 3 | Total..... | | \$ | 200,000 |

233-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2019 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 |

*234-Fire Commission –**Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2019 Org 0619

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 3,233,683 |
| 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 | 2,000 |
| 8 | BRIM Premium..... | 91300 | <u>60,000</u> |
| 9 | Total..... | | \$ 4,748,333 |

*235-Division of Justice and Community Services –**WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2019 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 |

*236-Division of Justice and Community Services –**Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2019 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 |

237-Division of Justice and Community Services –

Second Chance Driver's License Program Account

(WV Code Chapter 17B)

Fund 6810 FY 2019 Org 0620

| | | | |
|---|------------------------|-------|-----------|
| 1 | Current Expenses | 13000 | \$ 25,000 |
|---|------------------------|-------|-----------|

DEPARTMENT OF REVENUE

238-Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2019 Org 0303

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,511,101 |
| 3 | Current Expenses | 13000 | 705,875 |
| 4 | Repairs and Alterations..... | 06400 | 100 |
| 5 | Equipment..... | 07000 | <u>12,000</u> |
| 6 | Total..... | | \$ 3,229,076 |

239-Office of the Secretary –

State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2019 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).

240-Tax Division –

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2019 Org 0702

| | | | |
|---|------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 23,459 |
| 3 | Current Expenses | 13000 | <u>7,717</u> |
| 4 | Total..... | | \$ 31,176 |

241-Tax Division –

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2019 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 |

242-Tax Division –

Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2019 Org 0702

| | | | |
|---|------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 254,162 |
| 3 | Current Expenses | 13000 | <u>5,406</u> |
| 4 | Total..... | | \$ 259,568 |

243-Tax Division –

Reduced Cigarette Ignition Propensity

Standard and Fire Prevention Act Fund

(WV Code Chapter 47)

Fund 7092 FY 2019 Org 0702

| | | | |
|---|------------------------|-------|---------------|
| 1 | Current Expenses | 13000 | \$ 35,000 |
| 2 | Equipment..... | 07000 | <u>15,000</u> |
| 3 | Total..... | | \$ 50,000 |

244-Tax Division –

Local Sales Tax and Excise Tax

Administration Fund

(WV Code Chapter 11)

Fund 7099 FY 2019 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 |

245-State Budget Office –

Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2019 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.

246-State Budget Office –

Public Employees Insurance Agency

Financial Stability Fund

(WV Code Chapter 11B)

Fund 7401 FY 2019 Org 0703

1 Retiree Premium Offset 80101 \$ 5,000,000
 2 PEIA Reserve..... 80102 10,000,000
 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.

247-Insurance Commissioner –

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2019 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 |

248-Insurance Commissioner –

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2019 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 |

249-Insurance Commissioner –

Insurance Commission Fund

(WV Code Chapter 33)

Fund 7152 FY 2019 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

250-Insurance Commissioner –

Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2019 Org 0704

| | | | |
|---|------------------------|-------|--------------------|
| 1 | Employee Benefits..... | 01000 | \$ 50,000 |
| 2 | Current Expenses | 13000 | <u>250,500,000</u> |
| 3 | Total..... | | \$ 250,550,000 |

251-Insurance Commissioner –

Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2019 Org 0704

| | | | |
|---|------------------------|-------|--------------|
| 1 | Current Expenses | 13000 | \$15,000,000 |
|---|------------------------|-------|--------------|

252-Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2019 Org 0704

| | | | |
|---|------------------------|-------|--------------|
| 1 | Current Expenses | 13000 | \$ 9,000,000 |
|---|------------------------|-------|--------------|

253-Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2019 Org 0704

| | | | |
|---|------------------------|-------|--------------|
| 1 | Current Expenses | 13000 | \$14,000,000 |
|---|------------------------|-------|--------------|

254-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2019 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 |

*255-Racing Commission –**Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2019 Org 0707

| | | | | |
|---|-------------------------------|-------|----|--------|
| 1 | Medical Expenses – Total..... | 24500 | \$ | 57,000 |
|---|-------------------------------|-------|----|--------|

2 The total amount of this appropriation shall be paid
3 from the special revenue fund out of collections of license
4 fees 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.

*256-Racing Commission –**Administration and Promotion Account*

(WV Code Chapter 19)

Fund 7304 FY 2019 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 |

*257-Racing Commission –**General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2019 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 |

*258-Racing Commission –**Administration, Promotion, Education, Capital Improvement
and Greyhound Adoption Programs**to include Spaying and Neutering Account*

(WV Code Chapter 19)

Fund 7307 FY 2019 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 |

*259-Alcohol Beverage Control Administration –**Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2019 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.

260-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2019 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 |
| 9 | Other Assets..... | 69000 | 125,100 |
| 10 | Land..... | 73000 | <u>100</u> |
| 11 | Total..... | | \$ 102,303,114 |

12 The total amount of these appropriations shall be paid
13 from a special revenue fund out of liquor revenues and any
14 other revenues available.

15 The above appropriations include the salary of the
16 commissioner and the salaries, expenses and equipment of
17 administrative offices, warehouses and inspectors.

18 The above appropriations include funding for the
19 Tobacco/Alcohol Education Program.

20 There is hereby appropriated from liquor revenues, in
21 addition to the above appropriations as needed, the

22 necessary amount for the purchase of liquor as provided by
 23 law and the remittance of profits and taxes to the General
 24 Revenue Fund.

261-State Athletic Commission Fund

(WV Code Chapter 29)

Fund 7009 FY 2019 Org 0933

| | | | | |
|---|------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 2,900 |
| 3 | Current Expenses | 13000 | | <u>37,100</u> |
| 4 | Total | | \$ | 40,000 |

DEPARTMENT OF TRANSPORTATION

262-Division of Motor Vehicles –

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2019 Org 0802

| | | | | |
|---|------------------------|-------|----|---------|
| 1 | Current Expenses | 13000 | \$ | 189,000 |
|---|------------------------|-------|----|---------|

263-Division of Motor Vehicles –

Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2019 Org 0802

| | | | | |
|---|------------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 3,362,799 |
| 3 | Current Expenses | 13000 | | 4,362,975 |
| 4 | Repairs and Alterations..... | 06400 | | 16,000 |
| 5 | Equipment..... | 07000 | | 75,000 |
| 6 | Other Assets..... | 69000 | | 10,000 |
| 7 | BRIM Premium..... | 91300 | | <u>84,737</u> |

| | | | |
|---|------------|--|--------------|
| 8 | Total..... | | \$ 7,911,511 |
|---|------------|--|--------------|

264-Division of Highways –

A. James Manchin Fund

(WV Code Chapter 22)

Fund 8319 FY 2019 Org 0803

| | | | |
|---|------------------------|-------|--------------|
| 1 | Current Expenses | 13000 | \$ 1,650,000 |
|---|------------------------|-------|--------------|

DEPARTMENT OF VETERANS' ASSISTANCE

265-Veterans' Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2019 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 |

266-Department of Veterans' Assistance –

WV Veterans' Home –

Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2019 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

267-Bureau of Senior Services –

Community Based Service Fund

(WV Code Chapter 22)

Fund 5409 FY 2019 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

268-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 2019 Org 0442

| | | | |
|---|------------------------------------|-------|----------------|
| 1 | Debt Service..... | 04000 | \$27,713,123 |
| 2 | General Capital Expenditures | 30600 | 5,000,000 |
| 3 | Facilities Planning | | |
| 4 | and Administration | 38600 | <u>421,082</u> |
| 5 | Total..... | | \$ 33,134,205 |

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.

269-Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2019 Org 0442

1 Any unexpended balance remaining in the
2 appropriation for Capital Outlay (fund 4906, appropriation
3 51100) at the close of the fiscal year 2018 is hereby
4 reappropriated for expenditure during the fiscal year 2019.

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
12 from the unexpended proceeds of revenue bonds previously
13 issued pursuant to W.Va. Code §18-12B-8, which have
14 since been refunded.

270-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2019 Org 0442

1 Any unexpended balance remaining in the
2 appropriation for Capital Improvements – Total (fund 4908,

3 appropriation 95800) at the close of fiscal year 2018 is
 4 hereby reappropriated for expenditure during the fiscal year
 5 2019.

6 The total amount of this appropriation shall be paid
 7 from the sale of the Series 2017 Community and Technical
 8 College Capital Improvement Refunding Revenue Bonds
 9 and anticipated interest earnings.

271-West Virginia University –

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2019 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

272-Board of Barbers and Cosmetologists –

Barbers and Beauticians Special Fund

(WV Code Chapters 16 and 30)

Fund 5425 FY 2019 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.

273-Hospital Finance Authority –

Hospital Finance Authority Fund

(WV Code Chapter 16)

Fund 5475 FY 2019 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.

274-WV State Board of Examiners for Licensed

Practical Nurses –

Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2019 Org 0906

| | | | | |
|---|------------------------|-------|----|----------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 455,324 |
| 3 | Current Expenses | 13000 | | <u>128,133</u> |
| 4 | Total..... | | \$ | 583,457 |

275-WV Board of Examiners for Registered

Professional Nurses –

Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2019 Org 0907

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,226,557 |
| 3 | Current Expenses | 13000 | 312,655 |
| 4 | Repairs and Alterations..... | 06400 | 3,000 |
| 5 | Equipment..... | 07000 | 25,000 |
| 6 | Other Assets..... | 69000 | <u>4,500</u> |
| 7 | Total..... | | \$ 1,571,712 |

*276-Public Service Commission**(WV Code Chapter 24)*Fund 8623 FY 2019 Org 0926

| | | | |
|----|-----------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$11,807,314 |
| 3 | Unclassified | 09900 | 147,643 |
| 4 | Current Expenses | 13000 | 2,572,222 |
| 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>172,216</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.

*277-Public Service Commission –**Gas Pipeline Division –**Public Service Commission Pipeline Safety Fund*

(WV Code Chapter 24B)

Fund 8624 FY 2019 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.

*278-Public Service Commission –**Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2019 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 by
10 the Public Service Commission pursuant to and in the exercise
11 of regulatory authority over motor carriers as provided by law.

*279-Public Service Commission –**Consumer Advocate Fund*

(WV Code Chapter 24)

Fund 8627 FY 2019 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 |

7 The total amount of these appropriations shall be
 8 supported by cash from a special revenue fund out of
 9 collections made by the Public Service Commission.

*280-Real Estate Commission –**Real Estate License Fund*

(WV Code Chapter 30)

Fund 8635 FY 2019 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.

*281-WV Board of Examiners for Speech-Language**Pathology and Audiology –**Speech-Language Pathology and Audiology Operating Fund*

(WV Code Chapter 30)

Fund 8646 FY 2019 Org 0930

| | | | | |
|---|------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 73,190 |
| 3 | Current Expenses | 13000 | | <u>65,623</u> |
| 4 | Total..... | | \$ | 138,813 |

*282-WV Board of Respiratory Care –**Board of Respiratory Care Fund*

(WV Code Chapter 30)

Fund 8676 FY 2019 Org 0935

| | | | | |
|---|------------------------------|-------|----|------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 82,803 |
| 3 | Current Expenses | 13000 | | 50,387 |
| 4 | Repairs and Alterations..... | 06400 | | <u>400</u> |
| 5 | Total..... | | \$ | 133,590 |

*283-WV Board of Licensed Dietitians –**Dietitians Licensure Board Fund*

(WV Code Chapter 30)

Fund 8680 FY 2019 Org 0936

| | | | | |
|---|------------------------|-------|----|---------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 15,950 |
| 3 | Current Expenses | 13000 | | <u>17,050</u> |
| 4 | Total..... | | \$ | 33,000 |

*284-Massage Therapy Licensure Board –**Massage Therapist Board Fund*

(WV Code Chapter 30)

Fund 8671 FY 2019 Org 0938

| | | | | |
|---|------------------------|-------|----|---------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 104,418 |

| | | | |
|---|------------------------|-------|---------------|
| 3 | Current Expenses | 13000 | <u>42,648</u> |
| 4 | Total..... | | \$ 147,066 |

285-Board of Medicine –

Medical Licensing Board Fund

(WV Code Chapter 30)

Fund 9070 FY 2019 Org 0945

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,287,752 |
| 3 | Current Expenses | 13000 | 1,113,789 |
| 4 | Repairs and Alterations..... | 06400 | <u>20,000</u> |
| 5 | Total..... | | \$ 2,421,541 |

286-West Virginia Enterprise Resource Planning Board –

Enterprise Resource Planning System Fund

(WV Code Chapter 12)

Fund 9080 FY 2019 Org 0947

| | | | |
|---|------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 6,713,066 |
| 3 | Unclassified | 09900 | 232,000 |
| 4 | Current Expenses | 13000 | 17,640,134 |
| 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..... | | \$25,000,000 |

287-Board of Treasury Investments –

Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

Fund 9152 FY 2019 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) \$1,485,773,568

1 **Sec. 4. Appropriations from lottery net profits.** —
2 Net profits of the lottery are to be deposited by the Director
3 of the Lottery to the following accounts in the amounts
4 indicated. The Director of the Lottery shall prorate each
5 deposit of net profits in the proportion the appropriation for
6 each account bears to the total of the appropriations for all
7 accounts.

8 After first satisfying the requirements for Fund 2252,
9 Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-
10 18, the Director of the Lottery shall make available from the
11 remaining net profits of the lottery any amounts needed to
12 pay debt service for which an appropriation is made for
13 Fund 9065, Fund 4297, Fund 3390, and Fund 3514 and is
14 authorized to transfer any such amounts to Fund 9065, Fund
15 4297, Fund 3390, and Fund 3514 for that purpose. Upon
16 receipt of reimbursement of amounts so transferred, the

17 Director of the Lottery shall deposit the reimbursement
18 amounts to the following accounts as required by this
19 section.

288-Education, Arts, Sciences and Tourism –

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2019 Org 0211

| | Appropriation | Lottery Funds |
|------------------------------|----------------------|----------------------|
| 1 Debt Service – Total | 31000 | \$10,000,000 |

289-West Virginia Development Office –

West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 3067 FY 2019 Org 0304

| | | |
|---------------------------------------|-------|------------------|
| 1 Tourism – Telemarketing Center | 46300 | \$ 82,080 |
| 2 Tourism – Advertising (R)..... | 61800 | 2,422,407 |
| 3 Tourism – Operations (R)..... | 66200 | <u>4,045,269</u> |
| 4 Total..... | | \$ 6,549,756 |

5 Any unexpended balances remaining in the
6 appropriations for Tourism – Advertising (fund 3067,
7 appropriation 61800), and Tourism – Operations (fund
8 3067, appropriation 66200) at the close of the fiscal year
9 2018 are hereby reappropriated for expenditure during the
10 fiscal year 2019.

290-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2019 Org 0310

| | | | |
|---|---------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,196,139 |
| 3 | Current Expenses | 13000 | 26,900 |
| 4 | Pricketts Fort State Park | 32400 | 106,560 |
| 5 | Non-Game Wildlife (R)..... | 52700 | 372,124 |
| 6 | State Parks and Recreation | | |
| 7 | Advertising (R)..... | 61900 | <u>494,578</u> |
| 8 | Total..... | | \$ 3,196,301 |

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 2018 are hereby reappropriated for expenditure during the
16 fiscal year 2019.

291-State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2019 Org 0402

| | | | |
|---|--|-------|-------------------|
| 1 | FBI Checks | 37200 | \$ 111,611 |
| 2 | Vocational Education | | |
| 3 | Equipment Replacement..... | 39300 | 800,000 |
| 4 | Assessment Program (R) | 39600 | 2,969,690 |
| 5 | 21st Century Technology Infrastructure | | |
| 6 | Network Tools and Support (R)..... | 93300 | <u>14,295,591</u> |
| 7 | Total..... | | \$ 18,176,892 |

8 Any unexpended balances remaining in the
9 appropriations for Unclassified (fund 3951, appropriation
10 09900), Current Expenses (fund 3951, appropriation
11 13000), Assessment Program (fund 3951, appropriation
12 39600), and 21st Century Technology Infrastructure
13 Network Tools and Support (fund 3951, appropriation
14 93300) at the close of the fiscal year 2018 are hereby
15 reappropriated for expenditure during the fiscal year 2019.

*292-State Department of Education –**School Building Authority –**Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2019 Org 0402

| | | | |
|---|----------------------------|-------|---------------|
| 1 | Debt Service – Total | 31000 | \$ 15,320,363 |
| 2 | Directed Transfer | 70000 | 2,679,637 |
| 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.

*293-Department of Education and the Arts –**Office of the Secretary –**Control Account –**Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2019 Org 0431

| | | | |
|---|-----------------------------|-------|----------------|
| 1 | Unclassified (R) | 09900 | \$ 9,483 |
| 2 | Current Expenses | 13000 | 110,617 |
| 3 | Commission for National and | | |
| 4 | Community Service | 19300 | 357,084 |
| 5 | Statewide STEM | | |
| 6 | 21st Century Academy | 89700 | 130,000 |
| 7 | Literacy Project (R) | 89900 | <u>350,000</u> |
| 8 | Total..... | | \$ 957,184 |

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 2018 are
 15 hereby reappropriated for expenditure during the fiscal year
 16 2019.

294-Division of Culture and History –

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2019 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 | | 32,079 |
| 6 | Historic Preservation Grants (R).... | 31100 | | 368,428 |
| 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 Arts | | | |
| 12 | Program (R) | 62400 | | 726,000 |
| 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..... | | \$ | <u>3,720,523</u> |

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)
27 \$29,703, Arts Monongahela (Monongalia) \$11,881,
28 Barbour County Arts and Humanities Council \$891,
29 Beckley Main Street (Raleigh) \$2,970, Buffalo Creek
30 Memorial (Logan) \$2,970, Carnegie Hall (Greenbrier)
31 \$46,899, Ceredo Historical Society (Wayne) \$1,188,
32 Ceredo Kenova Railroad Museum (Wayne) \$1,188,
33 Ceredo Museum (Wayne) \$720, Children's Theatre of
34 Charleston (Kanawha) \$3,127, Chuck Mathena Center
35 (Mercer) \$62,532, Collis P. Huntington Railroad
36 Historical Society (Cabell) \$5,941, Country Music Hall of
37 Fame and Museum (Marion) \$4,159, First Stage
38 Children's Theater Company \$1,188, Flannigan Murrell
39 House (Summers) \$3,781, Fort Ashby Fort (Mineral)
40 \$891, Fort New Salem (Harrison) \$2,198, Fort Randolph
41 (Mason) \$2,970, General Adam Stephen Memorial
42 Foundation (Berkeley) \$11,006, Grafton Mother's Day
43 Shrine Committee (Taylor) \$5,049, Hardy County Tour
44 and Crafts Association \$11,881, Heartwood in the Hills
45 (Calhoun) \$5,040, Heritage Farm Museum & Village
46 (Cabell) \$29,703, Historic Fayette Theater (Fayette)
47 \$3,267, Historic Middleway Conservancy (Jefferson)
48 \$594, Jefferson County Black History Preservation Society
49 \$2,970, Jefferson County Historical Landmark
50 Commission \$4,753, Maddie Carroll House (Cabell)
51 \$4,455, Marshall County Historical Society \$5,049,
52 McCoy Theater (Hardy) \$11,881, Morgantown Theater
53 Company (Monongalia) \$11,881, Mountaineer Boys'
54 State (Lewis) \$5,941, Nicholas Old Main Foundation
55 (Nicholas) \$1,188, Norman Dillon Farm Museum
56 (Berkeley) \$5,941, Old Opera House Theater Company
57 (Jefferson) \$8,911, Parkersburg Arts Center (Wood)
58 \$11,881, Pocahontas Historic Opera House \$3,564,
59 Raleigh County All Wars Museum \$5,941, Rhododendron
60 Girl's State (Ohio) \$5,941, Roane County 4-H and FFA
61 Youth Livestock Program \$2,970, Scottish Heritage
62 Society/N. Central WV (Harrison) \$2,970, Society for the
63 Preservation of McGrew House (Preston) \$2,079,
64 Southern West Virginia Veterans' Museum \$3,393,

65 Summers County Historic Landmark Commission \$2,970,
66 Those Who Served War Museum (Mercer) \$2,376, Three
67 Rivers Avian Center (Summers) \$5,311, Tug Valley Arts
68 Council (Mingo) \$2,970, Tug Valley Chamber of
69 Commerce Coal House (Mingo) \$1,188, Tunnelton
70 Historical Society (Preston) \$1,188, Veterans Committee
71 for Civic Improvement of Huntington (Wayne) \$2,970,
72 West Virginia Museum of Glass (Lewis) \$2,970, West
73 Virginia Music Hall of Fame (Kanawha) \$20,792, YMCA
74 Camp Horseshoe (Tucker) \$59,406, Youth Museum of
75 Southern West Virginia (Raleigh) \$7,129, Z.D. Ramsdell
76 House (Wayne) \$720.

77 From the above appropriation for Fairs and Festivals
78 (fund 3534, appropriation 12200) funding shall be provided
79 to A Princeton 4th (Mercer) \$1,800, African-American
80 Cultural Heritage Festival (Jefferson) \$2,970, Alderson 4th
81 of July Celebration (Greenbrier) \$2,970, Allegheny Echo
82 (Pocahontas) \$4,456, Alpine Festival/Leaf Peepers
83 Festival (Tucker) \$6,683, American Civil War (Grant)
84 \$3,127, American Legion Post 8 Veterans Day Parade
85 (McDowell) \$1,250, Angus Beef and Cattle Show (Lewis)
86 \$891, Annual Birch River Days (Nicholas) \$1,296, Annual
87 Don Redman Heritage Concert & Awards (Jefferson)
88 \$938, Annual Ruddle Park Jamboree (Pendleton) \$4,690,
89 Antique Market Fair (Lewis) \$1,188, Apollo Theater-
90 Summer Program (Berkeley) \$1,188, Apple Butter Festival
91 (Morgan) \$3,564, Arkansaw Homemaker's Heritage
92 Weekend (Hardy) \$2,079, Armed Forces Day-South
93 Charleston (Kanawha) \$1,782, Arthurdale Heritage New
94 Deal Festival (Preston) \$2,970, Athens Town Fair
95 (Mercer) \$1,188, Augusta Fair (Randolph) \$2,970,
96 Autumn Harvest Fest (Monroe) \$2,448, Barbour County
97 Fair \$14,851, Barboursville Octoberfest (Cabell) \$2,970,
98 Bass Festival (Pleasants) \$1,099, Battelle District Fair
99 (Monongalia) \$2,970, Battle of Dry Creek (Greenbrier)
100 \$891, Battle of Point Pleasant Memorial Committee
101 (Mason) \$2,970, Belle Town Fair (Kanawha) \$2,673,
102 Belleville Homecoming (Wood) \$11,881, Bergoo Down

103 Home Days (Webster) \$1,485, Berkeley County Youth
104 Fair \$10,990, Black Bear 4K Mountain Bike Race
105 (Kanawha) \$684, Black Heritage Festival (Harrison)
106 \$3,564, Black Walnut Festival (Roane) \$5,940, Blast from
107 the Past (Upshur) \$1,440, Blue-Gray Reunion (Barbour)
108 \$2,079, Boone County Fair \$5,940, Boone County Labor
109 Day Celebration \$2,376, Bradshaw Fall Festival
110 (McDowell) \$1,188, Brandonville Heritage Day (Preston)
111 \$1,048, Braxton County Fair \$6,832, Braxton County
112 Monster Fest / West Virginia Autumn Festival \$1,485,
113 Brooke County Fair \$2,079, Bruceton Mills Good
114 Neighbor Days (Preston) \$1,188, Buckwheat Festival
115 (Preston) \$5,050, Buffalo 4th of July Celebration (Putnam)
116 \$400, Buffalo October Fest (Putnam) \$3,240, Burlington
117 Apple Harvest Festival (Mineral) \$17,821, Burlington
118 Pumpkin Harvest Festival (Raleigh) \$2,970, Burnsville
119 Harvest Festival (Braxton) \$1,407, Cabell County Fair
120 \$5,940, Calhoun County Wood Festival \$1,188,
121 Campbell's Creek Community Fair (Kanawha) \$1,485,
122 Cape Coalwood Festival Association (McDowell) \$1,485,
123 Capon Bridge Founders Day Festival (Hampshire) \$1,188,
124 Capon Springs Ruritan 4th of July (Hampshire) \$684, Cass
125 Homecoming (Pocahontas) \$1,188, Cedarville Town
126 Festival (Gilmer) \$684, Celebration in the Park (Wood)
127 \$2,376, Celebration of America (Monongalia) \$3,564,
128 Ceredo Freedom Festival (Wayne) \$700, Chapmanville
129 Apple Butter Festival (Logan) \$684, Chapmanville Fire
130 Department 4th of July (Logan) \$1,782, Charles Town
131 Christmas Festival (Jefferson) \$2,970, Charles Town
132 Heritage Festival (Jefferson) \$2,970, Cherry River Festival
133 (Nicholas) \$3,861, Chester Fireworks (Hancock) \$891,
134 Chester 4th of July Festivities (Hancock) \$2,970, Chief
135 Logan State Park-Civil War Celebration (Logan) \$4,752,
136 Chilifest West Virginia State Chili Championship (Cabell)
137 \$1,563, Christmas In Our Town (Marion) \$3,127,
138 Christmas in Shepherdstown (Jefferson) \$2,376, Christmas
139 in the Park (Brooke) \$2,970, Christmas in the Park (Logan)
140 \$14,851, City of Dunbar Critter Dinner (Kanawha) \$5,940,
141 City of Logan Polar Express (Logan) \$4,456, City of New

142 Martinsville Festival of Memories (Wetzel) \$6,534, Clay
143 County Golden Delicious Apple Festival \$4,158, Clay
144 District Fair (Monongalia) \$1,080, Coal Field Jamboree
145 (Logan) \$20,792, Coalton Days Fair (Randolph) \$4,158,
146 Country Roads Festival (Fayette) \$1,188, Cowen Railroad
147 Festival (Webster) \$2,079, Craigsville Fall Festival
148 (Nicholas) \$2,079, Cruise into Princeton (Mercer) \$2,160,
149 Culturefest World Music & Arts Festival (Mercer) \$4,690,
150 Delbarton Homecoming (Mingo) \$2,079, Doddridge
151 County Fair \$4,158, Dorcas Ice Cream Social (Grant)
152 \$3,564, Durbin Days (Pocahontas) \$2,970, Elbert/Filbert
153 Reunion Festival (McDowell) \$891, Elkins Randolph
154 County 4th of July Car Show (Randolph) \$1,188, Fairview
155 4th of July Celebration (Marion) \$684, Farm Safety Day
156 (Preston) \$1,188, Farmer's Day Festival (Monroe)
157 \$2,330, Farmers' Day Parade (Wyoming) \$720, Fenwick
158 Mountain Old Time Community Festival (Nicholas)
159 \$2,880, FestivALL Charleston (Kanawha) \$11,881,
160 Flatwoods Days (Braxton) \$700, Flemington Day Fair and
161 Festival (Taylor) \$2,079, Follansbee Community Days
162 (Brooke) \$4,900, Fort Gay Mountain Heritage Days
163 (Wayne) \$2,970, Fort Henry Days (Ohio) \$3,148, Fort
164 Henry Living History (Ohio) \$1,563, Fort New Salem
165 Spirit of Christmas Festival (Harrison) \$2,432, Frankford
166 Autumnfest (Greenbrier) \$2,970, Franklin Fishing Derby
167 (Pendleton) \$4,456, Freshwater Folk Festival (Greenbrier)
168 \$2,970, Friends Auxiliary of W.R. Sharpe Hospital (Lewis)
169 \$2,970, Frontier Days (Harrison) \$1,782, Frontier
170 Fest/Canaan Valley (Taylor) \$2,970, Fund for the Arts-
171 Wine & All that Jazz Festival (Kanawha) \$1,485,
172 Gassaway Days Celebration (Braxton) \$2,970, Gilbert
173 Elementary Fall Blast (Mingo) \$2,188, Gilbert Kiwanis
174 Harvest Festival (Mingo) \$2,376, Gilbert Spring Fling
175 (Mingo) \$3,595, Gilmer County Farm Show \$2,376,
176 Grant County Arts Council \$1,188, Grape Stomping Wine
177 Festival (Nicholas) \$1,188, Great Greenbrier River Race
178 (Pocahontas) \$5,940, Greater Quinwood Days
179 (Greenbrier) \$781, Guyandotte Civil War Days (Cabell)
180 \$5,941, Hamlin 4th of July Celebration (Lincoln) \$2,970,

181 Hampshire Civil War Celebration Days (Hampshire) \$684,
182 Hampshire County 4th of July Celebration \$11,881,
183 Hampshire County Fair \$5,002, Hampshire Heritage Days
184 (Hampshire) \$2,376, Hancock County Oldtime Fair
185 \$2,970, Hardy County Commission - 4th of July \$5,940,
186 Hatfield McCoy Matewan Reunion Festival (Mingo)
187 \$12,330, Hatfield McCoy Trail National ATV and Dirt Bike
188 Weekend (Wyoming) \$2,970, Heat'n the Hills Chilifest
189 (Lincoln) \$2,970, Heritage Craft Festival (Monroe)
190 \$1,044, Heritage Days Festival (Roane) \$891, Hilltop
191 Festival (Cabell) \$684, Hilltop Festival of Lights
192 (McDowell) \$1,188, Hinton Railroad Days (Summers)
193 \$4,347, Holly River Festival (Webster) \$891, Hometown
194 Mountain Heritage Festival (Fayette) \$2,432, Hundred 4th
195 of July (Wetzel) \$4,307, Hundred American Legion Earl
196 Kiger Post Bluegrass Festival (Wetzel) \$1,188, Hurricane
197 4th of July Celebration (Putnam) \$2,970, Jaeger Town Fair
198 (McDowell) \$891, Irish Heritage Festival of West Virginia
199 (Raleigh) \$2,970, Irish Spring Festival (Lewis) \$684,
200 Italian Heritage Festival-Clarksburg (Harrison) \$17,821,
201 Jackson County Fair \$2,970, Jamboree (Pocahontas)
202 \$2,970, Jane Lew Arts and Crafts Fair (Lewis) \$684,
203 Jefferson County Fair Association \$14,851, Jersey
204 Mountain Ruritan Pioneer Days (Hampshire) \$684, John
205 Henry Days Festival (Monroe) \$4,698, Johnnie Johnson
206 Blues and Jazz Festival (Marion) \$2,970, Johnstown
207 Community Fair (Harrison) \$1,485, Junior Heifer Preview
208 Show (Lewis) \$1,188, Kanawha Coal Riverfest-St. Albans
209 4th of July Festival (Kanawha) \$2,970, Keeper of the
210 Mountains-Kayford (Kanawha) \$1,485, Kenova Autumn
211 Festival (Wayne) \$4,377, Kermit Fall Festival (Mingo)
212 \$1,782, Keystone Reunion Gala (McDowell) \$1,563, King
213 Coal Festival (Mingo) \$2,970, Kingwood Downtown
214 Street Fair and Heritage Days (Preston) \$1,188, L.Z.
215 Rainelle West Virginia Veterans Reunion (Greenbrier)
216 \$2,970, Lady of Agriculture (Preston) \$684, Larry Joe
217 Harless Center Octoberfest Hatfield McCoy Trail (Mingo)
218 \$5,940, Larry Joe Harless Community Center Spring
219 Middle School Event (Mingo) \$2,970, Last Blast of

220 Summer (McDowell) \$2,970, Lewis County Fair
 221 Association \$2,079, Lewisburg Shanghai (Greenbrier)
 222 \$1,188, Lincoln County Fall Festival \$4,752, Lincoln
 223 County Winterfest \$2,970, Lindside Veterans' Day Parade
 224 \$720, Little Levels Heritage Festival (Pocahontas) \$1,188,
 225 Lost Creek Community Festival (Harrison) \$4,158, Main
 226 Street Arts Festival (Upshur) \$3,127, Main Street
 227 Martinsburg Chocolate Fest and Book Fair (Berkeley)
 228 \$2,813, Mannington District Fair (Marion) \$3,564, Maple
 229 Syrup Festival (Randolph) \$684, Marion County FFA
 230 Farm Fest \$1,485, Marmet Labor Day Celebration
 231 (Kanawha) \$3,078, Marshall County Antique Power Show
 232 \$1,485, Marshall County Fair \$4,456, Mason County Fair
 233 \$2,970, Mason Dixon Festival (Monongalia) \$4,158,
 234 Matewan Massacre Reenactment (Mingo) \$5,004,
 235 Matewan-Magnolia Fair (Mingo) \$15,932, McARTS-
 236 McDowell County \$11,881, McDowell County Fair
 237 \$1,485, McGrew House History Day (Preston) \$1,188,
 238 McNeill's Rangers (Mineral) \$4,752, Meadow Bridge
 239 Hometown Festival (Fayette) \$743, Meadow River Days
 240 Festival (Greenbrier) \$1,782, Mercer Bluestone Valley
 241 Fair (Mercer) \$1,188, Mercer County Fair \$1,188, Mercer
 242 County Heritage Festival \$3,474, Mid Ohio Valley Antique
 243 Engine Festival (Wood) \$1,782, Milton Christmas in the
 244 Park (Cabell) \$1,485, Milton 4th of July Celebration
 245 (Cabell) \$1,485, Mineral County Fair \$1,040, Mineral
 246 County Veterans Day Parade \$891, Molasses Festival
 247 (Calhoun) \$1,188, Monongahfest (Marion) \$3,752, Moon
 248 Over Mountwood Fishing Festival (Wood) \$1,782,
 249 Morgan County Fair-History Wagon \$891, Moundsville
 250 Bass Festival (Marshall) \$2,376, Moundsville July 4th
 251 Celebration (Marshall) \$2,970, Mount Liberty Fall Festival
 252 (Barbour) \$1,485, Mountain Fest (Monongalia) \$11,881,
 253 Mountain Festival (Mercer) \$2,747, Mountain Heritage
 254 Arts and Crafts Festival (Jefferson) \$2,970, Mountain
 255 Music Festival (McDowell) \$1,485, Mountain State Apple
 256 Harvest Festival (Berkeley) \$4,456, Mountain State Arts
 257 & Crafts Fair Cedar Lakes (Jackson) \$26,732,
 258 Mountaineer Hot Air Balloon Festival (Monongalia)

259 \$2,376, Mullens Dogwood Festival (Wyoming) \$4,158,
260 Multi-Cultural Festival of West Virginia (Kanawha)
261 \$11,881, Music and Barbecue - Banks District VFD
262 (Upshur) \$1,278, New Cumberland Christmas Parade
263 (Hancock) \$1,782, New Cumberland 4th of July
264 (Hancock) \$2,970, New River Bridge Day Festival
265 (Fayette) \$23,762, Newburg Volunteer Fireman's Field
266 Day (Preston) \$684, Nicholas County Fair \$2,970,
267 Nicholas County Potato Festival \$2,079, Oak Leaf Festival
268 (Fayette) \$6,253, Oceana Heritage Festival (Wyoming)
269 \$3,564, Oglebay City Park - Festival of Lights (Ohio)
270 \$47,524, Oglebay Festival (Ohio) \$5,940, Ohio County
271 Country Fair \$5,346, Ohio River Fest (Jackson) \$4,320,
272 Ohio Valley Beef Association (Wood) \$1,485, Ohio
273 Valley Black Heritage Festival (Ohio) \$3,267, Old Central
274 City Fair (Cabell) \$2,970, Old Century City Fair (Barbour)
275 \$1,250, Old Tyme Christmas (Jefferson) \$1,425, Paden
276 City Labor Day Festival (Wetzel) \$3,861, Parkersburg
277 Homecoming (Wood) \$8,754, Patty Fest (Monongalia)
278 \$1,188, Paw Paw District Fair (Marion) \$2,079, Pax
279 Reunion Committee (Fayette) \$2,970, Pendleton County
280 4-H Weekend \$1,188, Pendleton County Committee for
281 Arts \$8,910, Pendleton County Fair \$6,253, Pennsboro
282 Country Road Festival (Ritchie) \$1,188, Petersburg 4th of
283 July Celebration (Grant) \$11,881, Petersburg HS
284 Celebration (Grant) \$5,940, Piedmont-Annual Back Street
285 Festival (Mineral) \$2,376, Pinch Reunion (Kanawha)
286 \$891, Pine Bluff Fall Festival (Harrison) \$2,376, Pine
287 Grove 4th of July Festival (Wetzel) \$4,158, Pineville
288 Festival (Wyoming) \$3,564, Pleasants County Agriculture
289 Youth Fair \$2,970, Poca Heritage Days (Putnam) \$1,782,
290 Pocahontas County Pioneer Days \$4,159, Point Pleasant
291 Stern Wheel Regatta (Mason) \$2,970, Pratt Fall Festival
292 (Kanawha) \$1,485, Princeton Autumnfest (Mercer)
293 \$1,563, Princeton Street Fair (Mercer) \$2,970, Putnam
294 County Fair \$2,970, Quartets on Parade (Hardy) \$2,376,
295 Rainelle Fall Festival (Greenbrier) \$3,127, Rand
296 Community Center Festival (Kanawha) \$1,485, Randolph
297 County Community Arts Council \$1,782, Randolph

298 County Fair \$4,158, Randolph County Ramp and Rails
 299 \$1,188, Ranson Christmas Festival (Jefferson) \$2,970,
 300 Ranson Festival (Jefferson) \$2,970, Renick Liberty
 301 Festival (Greenbrier) \$684, Ripley 4th of July (Jackson)
 302 \$8,910, Ritchie County Fair and Exposition \$2,970,
 303 Ritchie County Pioneer Days \$684, River City Festival
 304 (Preston) \$684, Roane County Agriculture Field Day
 305 \$1,782, Rock the Park (Kanawha) \$3,240, Rocket Boys
 306 Festival (Raleigh) \$1,710, Romney Heritage Days
 307 (Hampshire) \$1,876, Ronceverte River Festival
 308 (Greenbrier) \$2,970, Rowlesburg Labor Day Festival
 309 (Preston) \$684, Rupert Country Fling (Greenbrier)
 310 \$1,876, Saint Spyridon Greek Festival (Harrison) \$1,485,
 311 Salem Apple Butter Festival (Harrison) \$2,376, Sistersville
 312 4th of July (Tyler) \$3,267, Skirmish on the River (Mingo)
 313 \$1,250, Smoke on the Water (Wetzel) \$1,782, South
 314 Charleston Summerfest (Kanawha) \$5,940, Southern
 315 Wayne County Fall Festival \$684, Spirit of Grafton
 316 Celebration (Taylor) \$5,940, Springfield Peach Festival
 317 (Hampshire) \$738, St. Albans City of Lights - December
 318 (Kanawha) \$2,970, Sternwheel Festival (Wood) \$1,782,
 319 Stoco Reunion (Raleigh) \$1,485, Stonewall Jackson
 320 Heritage Arts & Crafts Jubilee (Lewis) \$6,534, Stonewall
 321 Jackson's Roundhouse Raid (Berkeley) \$7,200,
 322 Storytelling Festival (Lewis) \$400, Strawberry Festival
 323 (Upshur) \$17,821, Sylvester Big Coal River Festival
 324 \$1,944, Tacy Fair (Barbour) \$684, Taste of Parkersburg
 325 (Wood) \$2,970, Taylor County Fair \$3,267, Terra Alta
 326 VFD 4th of July Celebration (Preston) \$684, The
 327 Gathering at Sweet Creek (Wood) \$1,782, Three Rivers
 328 Coal Festival (Marion) \$4,604, Thunder on the Tygart -
 329 Mothers' Day Celebration (Taylor) \$8,910, Town of
 330 Delbarton 4th of July Celebration (Mingo) \$1,782, Town
 331 of Fayetteville Heritage Festival (Fayette) \$4,456, Town
 332 of Matoaka Hog Roast (Mercer) \$684, Town of Rivesville
 333 4th of July Festival (Marion) \$3,127, Town of Winfield -
 334 Putnam County Homecoming \$3,240, St. Albans Train Fest
 335 (Kanawha) \$6,120, Treasure Mountain Festival
 336 (Pendleton) \$14,851, Tri-County Fair (Grant) \$22,548,

337 Tucker County Arts Festival and Celebration \$10,692,
338 Tucker County Fair \$2,821, Tucker County Health Fair
339 \$1,188, Tunnelton Depot Days (Preston) \$684, Tunnelton
340 Volunteer Fire Department Festival (Preston) \$684,
341 Turkey Festival (Hardy) \$1,782, Tyler County Fair
342 \$3,088, Tyler County 4th of July \$400, Tyler County
343 OctoberFest \$720, Union Community Irish Festival
344 (Barbour) \$648, Uniquely West Virginia Festival
345 (Morgan) \$1,188, Upper Kanawha Valley Oktoberfest
346 (Kanawha) \$1,485, Upper Ohio Valley Italian Festival
347 (Ohio) \$7,128, Upshur County Youth Livestock Show
348 \$1,440, Valley District Fair (Preston) \$2,079, Veterans
349 Welcome Home Celebration (Cabell) \$938, Vietnam
350 Veterans of America # 949 Christmas Party (Cabell) \$684,
351 Volcano Days at Mountwood Park (Wood) \$2,970, War
352 Homecoming Fall Festival (McDowell) \$891,
353 Wardensville Fall Festival (Hardy) \$2,970, Wayne County
354 Fair \$2,970, Wayne County Fall Festival \$2,970, Webster
355 County Fair \$3,600, Webster County Wood Chopping
356 Festival \$8,910, Webster Wild Water Weekend \$1,188,
357 Weirton July 4th Celebration (Hancock) \$11,881,
358 Welcome Home Family Day (Wayne) \$1,900, Wellsburg
359 4th of July Celebration (Brooke) \$4,456, Wellsburg Apple
360 Festival of Brooke County \$2,970, West Virginia
361 Blackberry Festival (Harrison) \$2,970, West Virginia
362 Chestnut Festival (Preston) \$684, West Virginia Coal
363 Festival (Boone) \$5,940, West Virginia Coal Show
364 (Mercer) \$1,563, West Virginia Dairy Cattle Show (Lewis)
365 \$5,940, West Virginia Dandelion Festival (Greenbrier)
366 \$2,970, West Virginia Day at the Railroad Museum
367 (Mercer) \$1,800, West Virginia Fair and Exposition
368 (Wood) \$4,812, West Virginia Fireman's Rodeo (Fayette)
369 \$1,485, West Virginia Oil and Gas Festival (Tyler) \$6,534,
370 West Virginia Peach Festival (Hampshire) \$3,240, West
371 Virginia Polled Hereford Association (Braxton) \$891,
372 West Virginia Poultry Festival (Hardy) \$2,970, West
373 Virginia Pumpkin Festival (Cabell) \$5,940, West Virginia
374 State Folk Festival (Gilmer) \$2,970, West Virginia Water
375 Festival - City of Hinton (Summers) \$9,144, Weston VFD

376 4th of July Firemen Festival (Lewis) \$1,188, Wetzel
 377 County Autumnfest \$3,267, Wetzel County Town and
 378 Country Days \$10,098, Wheeling Celtic Festival (Ohio)
 379 \$1,166, Wheeling City of Lights (Ohio) \$4,752, Wheeling
 380 Sternwheel Regatta (Ohio) \$5,940, Wheeling Vintage
 381 Raceboat Regatta (Ohio) \$11,881, Whipple Community
 382 Action (Fayette) \$1,485, Wileyville Homecoming
 383 (Wetzel) \$2,376, Wine Festival and Mountain Music Event
 384 (Harrison) \$2,970, Winter Festival of the Waters
 385 (Berkeley) \$2,970, Wirt County Fair \$1,485, Wirt County
 386 Pioneer Days \$1,188, Wyoming County Civil War Days
 387 \$1,296, Youth Stockman Beef Expo (Lewis) \$1,188.

388 Any unexpended balances remaining in the
 389 appropriations for Preservation West Virginia (fund 3534,
 390 appropriation 09200), Fairs and Festivals (fund 3534,
 391 appropriation 12200), Archeological Curation/Capital
 392 Improvements (fund 3534, appropriation 24600), Historic
 393 Preservation Grants (fund 3534, appropriation 31100),
 394 Grants for Competitive Arts Program (fund 3534,
 395 appropriation 62400), and Project ACCESS (fund 3534,
 396 appropriation 86500) at the close of the fiscal year 2018 are
 397 hereby reappropriated for expenditure during the fiscal year
 398 2019.

399 Any Fairs & Festivals awards shall be funded in
 400 addition to, and not in lieu of, individual grant allocations
 401 derived from the Arts Council and the Cultural Grant
 402 Program allocations.

295-Library Commission –

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2019 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>884,109</u> |
| 6 | Total..... | | \$11,454,456 |

7 Any unexpended balance remaining in the
 8 appropriation for Libraries – Special Projects (fund 3559,
 9 appropriation 62500) at the close of fiscal year 2018 is
 10 hereby reappropriated for expenditure during the fiscal
 11 year 2019.

296-Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2019 Org 0508

| | | | |
|----|--|-------|------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 198,745 |
| 3 | Current Expenses | 13000 | 332,284 |
| 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 Human Services | | |
| 9 | for Health Care and Title XIX | | |
| 10 | Waiver for Senior Citizens | 53900 | 4,615,503 |
| 11 | Roger Tompkins Alzheimer's | | |
| 12 | Respite Care..... | 64300 | 2,298,312 |
| 13 | WV Alzheimer's Hotline | 72400 | 45,000 |
| 14 | Regional Aged and | | |
| 15 | Disabled Resource Center | 76700 | 425,000 |
| 16 | Senior Services | | |
| 17 | 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 | 7,718 |

| | | | |
|----|--------------------------------|-------|------------------|
| 22 | In-Home Services and Nutrition | | |
| 23 | for Senior Citizens..... | 91700 | <u>4,320,941</u> |
| 24 | Total..... | | \$39,169,030 |

25 Any unexpended balance remaining in the
 26 appropriation for Senior Citizen Centers and Programs
 27 (fund 5405, appropriation 46200) at the close of the fiscal
 28 year 2018 is hereby reappropriated for expenditure during
 29 the fiscal year 2019.

30 Included in the above appropriation for Current
 31 Expenses (fund 5405, appropriation 13000), is funding to
 32 support an in-home direct care workforce registry.

33 The above appropriation for Transfer to Division of
 34 Human Services for Health Care and Title XIX Waiver for
 35 Senior Citizens (appropriation 53900) along with the
 36 federal moneys generated thereby shall be used for
 37 reimbursement for services provided under the program.

297-Higher Education Policy Commission –

Lottery Education –

Higher Education Policy Commission –

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2019 Org 0441

| | | | |
|---|--------------------------------------|-------|--------------|
| 1 | RHI Program and | | |
| 2 | Site Support (R)..... | 03600 | \$ 1,912,491 |
| 3 | RHI Program and | | |
| 4 | Site Support – | | |
| 5 | RHEP Program Administration | 03700 | 146,653 |
| 6 | RHI Program and Site Support – | | |
| 7 | Grad Med | | |
| 8 | Ed and Fiscal Oversight (R) | 03800 | 87,777 |
| 9 | Minority Doctoral Fellowship (R) ... | 16600 | 129,604 |

| | | | |
|----|---------------------------------------|-------|----------------|
| 10 | Health Sciences Scholarship (R).... | 17600 | 222,417 |
| 11 | Vice Chancellor for Health Sciences – | | |
| 12 | Rural Health | | |
| 13 | Residency Program (R) | 60100 | 62,725 |
| 14 | WV Engineering, Science, and | | |
| 15 | Technology Scholarship Program.... | 86800 | <u>452,831</u> |
| 16 | Total..... | | \$ 3,014,498 |

17 Any unexpended balances remaining in the
 18 appropriations for RHI Program and Site Support (fund
 19 4925, appropriation 03600), RHI Program and Site Support
 20 – Grad Med Ed and Fiscal Oversight (fund 4925,
 21 appropriation 03800), Minority Doctoral Fellowship (fund
 22 4925, appropriation 16600), Health Sciences Scholarship
 23 (fund 4925, appropriation 17600), and Vice Chancellor for
 24 Health Sciences – Rural Health Residency Program (fund
 25 4925, appropriation 60100) at the close of fiscal year 2018
 26 are hereby reappropriated for expenditure during the fiscal
 27 year 2019.

28 The above appropriation for WV Engineering, Science,
 29 and Technology Scholarship Program (appropriation 86800)
 30 shall be transferred to the West Virginia Engineering,
 31 Science and Technology Scholarship Fund (fund 4928, org
 32 0441) established by W.Va. Code §18C-6-1.

298-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2019 Org 0442

| | | | |
|---|----------------------------|-------|--------------|
| 1 | Debt Service – Total | 31000 | \$ 5,000,000 |
|---|----------------------------|-------|--------------|

2 Any unexpended balance remaining in the
 3 appropriation for Capital Outlay and Improvements – Total
 4 (fund 4908, appropriation 84700) at the close of fiscal year
 5 2018 is hereby reappropriated for expenditure during the
 6 fiscal year 2019.

*299-Higher Education Policy Commission –**Lottery Education –**West Virginia University – School of Medicine*

(WV Code Chapter 18B)

Fund 4185 FY 2019 Org 0463

| | | | |
|----|------------------------------------|-------|----------------|
| 1 | WVU Health Sciences – | | |
| 2 | RHI Program and | | |
| 3 | Site Support (R)..... | 03500 | \$ 1,132,812 |
| 4 | MA Public Health Program and | | |
| 5 | Health Science Technology (R)..... | 62300 | 52,445 |
| 6 | Health Sciences Career | | |
| 7 | Opportunities Program (R)..... | 86900 | 325,138 |
| 8 | HSTA Program (R)..... | 87000 | 1,680,240 |
| 9 | Center for Excellence | | |
| 10 | in Disabilities (R)..... | 96700 | <u>303,739</u> |
| 11 | Total..... | | \$ 3,494,374 |

12 Any unexpended balances remaining in the appropriations
13 for WVU Health Sciences – RHI Program and Site Support
14 (fund 4185, appropriation 03500), MA Public Health Program
15 and Health Science Technology (fund 4185, appropriation
16 62300), Health Sciences Career Opportunities Program (fund
17 4185, appropriation 86900), HSTA Program (fund 4185,
18 appropriation 87000), and Center for Excellence in Disabilities
19 (fund 4185, appropriation 96700) at the close of fiscal year
20 2018 are hereby reappropriated for expenditure during the
21 fiscal year 2019.

*300-Higher Education Policy Commission –**Lottery Education –**Marshall University – School of Medicine*

(WV Code Chapter 18B)

Fund 4896 FY 2019 Org 0471

| | | | |
|---|---------------------------------------|-------|-------------------|
| 1 | Marshall Medical School – | | |
| 2 | RHI Program and | | |
| 3 | Site Support (R)..... | 03300 | \$ 408,216 |
| 4 | Vice Chancellor for Health Sciences – | | |
| 5 | Rural Health | | |
| 6 | Residency Program (R) | 60100 | <u>166,770</u> |
| 7 | Total..... | | <u>\$ 574,986</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 2018 are hereby reappropriated for expenditure
14 during the fiscal year 2019.

15 Total TITLE II, Section 4 –
16 Lottery Revenue \$123,308,000

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-
4 25-22b, 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
8 W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e,
9 §29-22C-27a and §29-25-22b, the Director of the Lottery
10 shall provide funding from the State Excess Lottery
11 Revenue Fund for the remaining appropriations in this
12 section to the extent that funds are available. In the event
13 that revenues to the State Excess Lottery Revenue Fund
14 are sufficient to meet all the appropriations required made
15 pursuant to this section, then the Director of the Lottery
16 shall then provide the funds available for fund 5365,
17 appropriation 18900.

*301-Lottery Commission –**Refundable Credit*Fund 7207 FY 2019 Org 0705

| | Appropriation | Excess Lottery 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. | | |

*302-Lottery Commission –**General Purpose Account*Fund 7206 FY 2019 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. | | |

*303-Higher Education Policy Commission –**Education Improvement Fund*Fund 4295 FY 2019 Org 0441

| | | |
|---|-------|--------------|
| 1 PROMISE Scholarship – Transfer... | 80000 | \$29,000,000 |
| 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.

304-Economic Development Authority –

Economic Development Project Fund

Fund 9065 FY 2019 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).

305-Department of Education –

School Building Authority

Fund 3514 FY 2019 Org 0402

1 Debt Service – Total 31000 \$19,000,000

306-West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2019 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.

307-Higher Education Policy Commission –

Higher Education Improvement Fund

Fund 4297 FY 2019 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.

308-Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2019 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 2018 are hereby reappropriated for expenditure
 16 during the fiscal year 2019.

309-Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2019 Org 0944

| | | | |
|---|-------------------|-------|--------------|
| 1 | Debt Service..... | 04000 | \$ 2,032,000 |
|---|-------------------|-------|--------------|

310-Racing Commission –

Fund 7308 FY 2019 Org 0707

| | | | |
|---|--------------------------------------|-------|--------------|
| 1 | Special Breeders Compensation | | |
| 2 | (WVC §29-22-18a, subsection (l)).... | 21800 | \$ 2,000,000 |

311-Lottery Commission –

Distributions to Statutory Funds and Purposes

Fund 7213 FY 2019 Org 0705

| | | | |
|----|-------------------------------------|-------|------------|
| 1 | Parking Garage Fund – Transfer.... | 70001 | \$ 500,000 |
| 2 | 2004 Capitol Complex Parking | | |
| 3 | Garage Fund – Transfer..... | 70002 | 216,478 |
| 4 | Capitol Dome and Improvements | | |
| 5 | Fund – Transfer | 70003 | 1,796,256 |
| 6 | Capitol Renovation and Improvement | | |
| 7 | Fund – Transfer | 70004 | 2,381,252 |
| 8 | Development Office Promotion | | |
| 9 | Fund – Transfer | 70005 | 1,298,864 |
| 10 | Research Challenge Fund – | | |
| 11 | Transfer..... | 70006 | 1,731,820 |
| 12 | Tourism Promotion Fund – | | |
| 13 | Transfer..... | 70007 | 4,808,142 |
| 14 | Cultural Facilities and Capitol | | |
| 15 | Resources Matching | | |
| 16 | Grant Program | | |
| 17 | Fund – Transfer | 70008 | 1,250,535 |
| 18 | State Debt Reduction Fund – | | |
| 19 | Transfer..... | 70010 | 20,000,000 |
| 20 | General Revenue Fund – Transfer ... | 70011 | 1,167,799 |
| 21 | West Virginia Racing | | |
| 22 | Commission Racetrack | | |
| 23 | Video Lottery Account | 70012 | 3,463,637 |
| 24 | Historic Resort Hotel Fund..... | 70013 | 24,010 |
| 25 | Licensed Racetrack Regular | | |

| | | | |
|----|------------------|-------|---------------------|
| 26 | Purse Fund | 70014 | <u>11,383,247</u> |
| 27 | Total..... | | <u>\$50,022,040</u> |

312-Governor’s Office

(WV Code Chapter 5)

Fund 1046 FY 2019 Org 0100

1 Any unexpended balance remaining in the
 2 appropriation for Publication of Papers and Transition
 3 Expenses – Lottery Surplus (fund 1046, appropriation
 4 06600) at the close of the fiscal year 2018 is hereby
 5 reappropriated for expenditure during the fiscal year 2019.

313-West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2019 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 2018 are hereby reappropriated for expenditure during
 8 the fiscal year 2019.

314-Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2019 Org 0441

1 Any unexpended balance remaining in the appropriation
 2 for Advanced Technology Centers (fund 4932, appropriation

3 02800) at the close of the fiscal year 2018 is hereby
4 reappropriated for expenditure during the fiscal year 2019.

315-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2019 Org 0511

1 Medical Services..... 18900 \$28,202,960

316-Division of Corrections –

Correctional Units

(WV Code Chapters 25, 28, 49 and 62)

Fund 6283 FY 2019 Org 0608

1 Any unexpended balance remaining in the
2 appropriation for Capital Outlay and Maintenance (fund
3 6283, appropriation 75500) at the close of the fiscal year
4 2018 is hereby reappropriated for expenditure during the
5 fiscal year 2019.

6 Total TITLE II, Section 5 –

7 Excess Lottery Funds..... \$ 290,257,000

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 2019.

LEGISLATIVE

317-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2019 Org 2300

| | Appropriation | Federal Funds |
|-------------------------|----------------------|----------------------|
| 1 Economic Loss Claim | | |
| 2 Payment Fund..... | 33400 | \$ 2,360,125 |

JUDICIAL

318-Supreme Court

Fund 8867 FY 2019 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

319-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2019 Org 1400

| | | |
|--------------------------------|-------|---------------|
| 1 Personal Services and | | |
| 2 Employee Benefits..... | 00100 | \$ 2,563,760 |
| 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 Buildings..... | 25800 | 1,000,000 |
| 8 Other Assets..... | 69000 | <u>50,000</u> |
| 9 Total..... | | \$ 9,053,455 |

320-Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 8737 FY 2019 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 |

321-Department of Agriculture –

State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2019 Org 1400

| | | | |
|---|------------------------|-------|-------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 97,250 |
| 3 | Current Expenses | 13000 | <u>15,599,974</u> |
| 4 | Total..... | | \$15,697,224 |

322-Department of Agriculture –

Land Protection Authority

Fund 8896 FY 2019 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 |

323-Secretary of State –

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2019 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

324-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2019 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 |

325-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2019 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 |

326-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2019 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 |

*327-West Virginia Development Office –**Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8901 FY 2019 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 |

328-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2019 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 |

329-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2019 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 | 6,951,000 |
| 9 | Land | 73000 | <u>6,001,000</u> |
| 10 | Total..... | | \$29,584,087 |

*330-Division of Miners' Health,**Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2019 Org 0314

| | | | |
|---|------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 613,177 |
| 3 | Current Expenses | 13000 | <u>150,000</u> |
| 4 | Total..... | | \$ 763,177 |

331-WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2019 Org 0323

| | | | |
|---|-------------------------------|-------|------------------|
| 1 | Unclassified | 09900 | \$ 5,127 |
| 2 | Current Expenses | 13000 | 507,530 |
| 3 | Reed Act 2002 – | | |
| 4 | Unemployment 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.

332-Office of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2019 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

333-State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2019 Org 0402

| | | | |
|---|------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 5,628,855 |
| 3 | Unclassified | 09900 | 2,000,000 |
| 4 | Current Expenses | 13000 | 212,367,820 |
| 5 | Repairs and Alterations..... | 06400 | 10,000 |
| 6 | Equipment..... | 07000 | 10,000 |
| 7 | Other Assets..... | 69000 | <u>10,000</u> |
| 8 | Total..... | | \$ 220,026,675 |

*334-State Board of Education –**School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2019 Org 0402

| | | | |
|---|------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,812,648 |
| 3 | Unclassified | 09900 | 1,150,500 |
| 4 | Current Expenses | 13000 | 148,281,265 |
| 5 | Repairs and Alterations..... | 06400 | 20,000 |
| 6 | Equipment..... | 07000 | 100,000 |
| 7 | Other Assets..... | 69000 | <u>25,000</u> |
| 8 | Total..... | | \$ 151,389,413 |

*335-State Board of Education –**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2019 Org 0402

| | | | |
|---|------------------------------|-------|---------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 1,819,972 |
| 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..... | | \$16,325,053 |

*336-State Board of Education –**Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2019 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

337-Department of Education and the Arts –

Office of the Secretary

(WV Code Chapter 5F)

Fund 8841 FY 2019 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 |

338-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2019 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 |

339-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2019 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 |

340-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2019 Org 0439

| | | | |
|---|----------------|-------|------------|
| 1 | Equipment..... | 07000 | \$ 200,000 |
|---|----------------|-------|------------|

*341-State Board of Rehabilitation –**Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2019 Org 0932

| | | | |
|---|------------------------------|-------|------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$11,248,930 |
| 3 | Current Expenses | 13000 | 39,440,940 |
| 4 | Repairs and Alterations..... | 06400 | 350,400 |
| 5 | Equipment..... | 07000 | <u>1,275,870</u> |
| 6 | Total..... | | \$52,316,140 |

*342-State Board of Rehabilitation –**Division of Rehabilitation Services –**Disability Determination Services*

(WV Code Chapter 18)

Fund 8890 FY 2019 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*343-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2019 Org 0313

| | | | |
|---|------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$30,084,598 |
| 3 | Current Expenses | 13000 | 169,448,731 |
| 4 | Repairs and Alterations..... | 06400 | 738,283 |
| 5 | Equipment..... | 07000 | 1,712,238 |
| 6 | Unclassified | 09900 | 2,062,978 |
| 7 | Other Assets..... | 69000 | 2,151,011 |
| 8 | Land..... | 73000 | <u>100,000</u> |
| 9 | Total..... | | \$ 206,297,839 |

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES***344-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2019 Org 0506

| | | | |
|---|------------------------|-------|-------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 750,876 |
| 3 | Unclassified | 09900 | 73,307 |
| 4 | Current Expenses | 13000 | <u>17,330,086</u> |
| 5 | Total..... | | \$18,154,269 |

*345-Division of Health –**Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2019 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 |

*346-Division of Health –**West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2019 Org 0506

| | | | |
|---|--|-------|--------------|
| 1 | West Virginia Drinking Water Treatment | | |
| 2 | Revolving Fund – Transfer..... | 68900 | \$16,000,000 |

347-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2019 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 |

348-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2019 Org 0511

| | | | |
|----|---------------------------------|-------|------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$69,213,619 |
| 3 | Unclassified | 09900 | 22,855,833 |
| 4 | Current Expenses | 13000 | 112,085,005 |
| 5 | Medical Services..... | 18900 | 3,404,265,405 |
| 6 | Medical Services | | |
| 7 | Administrative Costs | 78900 | 132,045,119 |
| 8 | CHIP Administrative Costs | 85601 | 4,500,000 |
| 9 | CHIP Services..... | 85602 | 47,422,974 |
| 10 | Federal Economic Stimulus..... | 89100 | <u>5,000,000</u> |
| 11 | Total..... | | \$3,797,387,955 |

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

349-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2019 Org 0601

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Unclassified | 09900 | \$ 47,800 |
| 2 | Current Expenses | 13000 | 4,727,200 |
| 3 | Repairs and Alterations..... | 06400 | <u>5,000</u> |
| 4 | Total..... | | \$ 4,780,000 |

350-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 8726 FY 2019 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.

351-Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2019 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 |

352-Division of Homeland Security and

Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2019 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 |

353-Division of Corrections

(WV Code Chapters 25, 28, 49 and 62)

Fund 8836 FY 2019 Org 0608

| | | | | |
|---|------------------------|-------|----|----------------|
| 1 | Unclassified | 09900 | \$ | 1,100 |
| 2 | Current Expenses | 13000 | | <u>108,900</u> |
| 3 | Total..... | | \$ | 110,000 |

354-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2019 Org 0612

| | | | | |
|---|------------------------------|-------|----|------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 2,461,129 |
| 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..... | | \$ | 8,026,885 |

355-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2019 Org 0619

| | | | | |
|---|------------------------|-------|----|--------|
| 1 | Current Expenses | 13000 | \$ | 80,000 |
|---|------------------------|-------|----|--------|

356-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 8803 FY 2019 Org 0620

| | | | | |
|---|------------------------------|-------|----|--------------|
| 1 | Personal Services and | | | |
| 2 | Employee Benefits..... | 00100 | \$ | 1,058,570 |
| 3 | Unclassified | 09900 | | 25,185 |
| 4 | Current Expenses | 13000 | | 18,771,973 |
| 5 | Repairs and Alterations..... | 06400 | | <u>1,750</u> |
| 6 | Total..... | | \$ | 19,857,478 |

DEPARTMENT OF REVENUE*357-Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2019 Org 0704

| | | | |
|---|------------------------|-------|--------------|
| 1 | Current Expenses | 13000 | \$ 3,000,000 |
|---|------------------------|-------|--------------|

DEPARTMENT OF TRANSPORTATION*358-Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2019 Org 0802

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 501,394 |
| 3 | Current Expenses | 13000 | 10,498,106 |
| 4 | Repairs and Alterations..... | 06400 | <u>500</u> |
| 5 | Total..... | | \$11,000,000 |

359-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2019 Org 0805

| | | | |
|---|------------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 702,637 |
| 3 | Current Expenses | 13000 | 9,163,149 |
| 4 | Repairs and Alterations..... | 06400 | 2,500 |
| 5 | Equipment..... | 07000 | 2,801,714 |
| 6 | Buildings..... | 25800 | 650,000 |
| 7 | Other Assets..... | 69000 | <u>200,000</u> |
| 8 | Total..... | | \$13,520,000 |

DEPARTMENT OF VETERANS' ASSISTANCE*360-Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 8858 FY 2019 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 |

361-Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2019 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

362-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2019 Org 0508

| | | | |
|---|------------------------|-------|------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 721,393 |
| 3 | Current Expenses | 13000 | 13,811,853 |

| | | | |
|---|------------------------------|-------|--------------|
| 4 | Repairs and Alterations..... | 06400 | 3,000 |
| 5 | Total..... | | \$14,536,246 |

MISCELLANEOUS BOARDS AND COMMISSIONS

363-Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2019 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 | Total..... | | \$ 1,695,866 |

364-Public Service Commission –

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2019 Org 0926

| | | | |
|---|------------------------|-------|------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 596,600 |
| 3 | Current Expenses | 13000 | 124,628 |
| 4 | Equipment..... | 07000 | 3,000 |
| 5 | Unclassified | 09900 | 4,072 |
| 6 | Total..... | | \$ 728,300 |

365-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2019 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 | <u>2,000</u> |
| 7 | Total..... | | \$ 800,600 |
| 8 | Total TITLE II, Section 6 – | | |
| 9 | Federal Funds | | <u>\$5,029,664,340</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 2019.

366-West Virginia Development Office –

Community Development

Fund 8746 FY 2019 Org 0307

| | | | |
|---|------------------------|-------|--------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 10,648,117 |
| 3 | Unclassified | 09900 | 2,375,000 |
| 4 | Current Expenses | 13000 | <u>224,476,883</u> |
| 5 | Total..... | | \$237,500,000 |

367-Department of Commerce

West Virginia Development Office –

Office of Economic Opportunity –

Community Services

Fund 8902 FY 2019 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 |

*368-WorkForce West Virginia –
Workforce Investment Act*

Fund 8749 FY 2019 Org 0323

| | | | |
|---|------------------------------|-------|--------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,912,606 |
| 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..... | | \$42,202,340 |

369-Division of Health –

Maternal and Child Health

Fund 8750 FY 2019 Org 0506

| | | | |
|---|------------------------|-------|------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 2,124,294 |
| 3 | Unclassified | 09900 | 110,017 |
| 4 | Current Expenses | 13000 | <u>8,767,420</u> |
| 5 | Total..... | | \$11,001,731 |

370-Division of Health –

Preventive Health

Fund 8753 FY 2019 Org 0506

| | | | |
|---|------------------------|-------|----------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 265,868 |
| 3 | Unclassified | 09900 | 22,457 |
| 4 | Current Expenses | 13000 | 1,895,366 |
| 5 | Equipment..... | 07000 | <u>165,642</u> |
| 6 | Total..... | | \$ 2,349,333 |

*371-Division of Health –**Substance Abuse Prevention and Treatment*Fund 8793 FY 2019 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 |

*372-Division of Health –**Community Mental Health Services*Fund 8794 FY 2019 Org 0506

| | | | |
|---|------------------------|-------|------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 936,557 |
| 3 | Unclassified | 09900 | 33,533 |
| 4 | Current Expenses | 13000 | <u>3,083,307</u> |
| 5 | Total..... | | \$ 4,053,397 |

*373-Division of Human Services –**Energy Assistance*Fund 8755 FY 2019 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 |

*374-Division of Human Services –**Social Services*Fund 8757 FY 2019 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 |

375-Division of Human Services –

Temporary Assistance for Needy Families

Fund 8816 FY 2019 Org 0511

| | | | |
|---|------------------------|-------|--------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$18,371,875 |
| 3 | Unclassified | 09900 | 1,250,000 |
| 4 | Current Expenses | 13000 | <u>105,847,136</u> |
| 5 | Total..... | | \$ 125,469,011 |

376-Division of Human Services –

Child Care and Development

Fund 8817 FY 2019 Org 0511

| | | | |
|---|-----------------------------|-------|-----------------------|
| 1 | Personal Services and | | |
| 2 | Employee Benefits..... | 00100 | \$ 4,682,166 |
| 3 | Unclassified | 09900 | 350,000 |
| 4 | Current Expenses | 13000 | <u>31,999,456</u> |
| 5 | Total..... | | <u>\$ 37,031,622</u> |
| 6 | Total TITLE II, Section 7 – | | |
| 7 | Federal Block Grants | | <u>\$ 536,019,650</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 \$1,753,740 special revenue funds in
 5 the amount of \$226,619 and state road funds in the amount
 6 of \$408,830 for payment of claims against the state.

1 **Sec. 9. Appropriations from general revenue surplus**
 2 **accrued.** — The following item is hereby appropriated

3 from the state fund, general revenue, and is to be available
4 for expenditure during the fiscal year 2019 out of surplus
5 funds only, accrued from the fiscal year ending June 30,
6 2018, 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 appropriation be payable only from surplus as of
10 July 31, 2018 from the fiscal year ending June 30, 2018,
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 2018, are not sufficient to meet the appropriation made
15 pursuant to this section, then the appropriation shall be
16 made to the extent that surplus funds are available as of the
17 date mandated to meet the appropriation 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.

377-Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2019 Org 0506

1 Office of Drug Control
2 Policy - Surplus ##### \$ 5,000,000

378-Division of Homeland Security and

Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2019 Org 0606

1 West Virginia Water Gaging
2 Council - Surplus ##### \$ 765,000

379-West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2019 Org 0304

1 Tourism – Marketing – Surplus ##### \$ 2,500,000

380-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2019 Org 0307

1 Sales and Marketing Enhancement –
2 Surplus ##### \$ 2,500,000

381-Auditor’s Office

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2019 Org 1200

1 VFD Workers’ Compensation Subsidy –
2 Surplus ##### \$ 2,000,000

382-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2019 Org 0806

1 Port Authority – Surplus 44399 \$ 1,000,000

2 The above appropriation to Port Authority - Surplus
3 (fund 0581, appropriation 44399) shall serve as
4 reimbursement for expenses incurred by the State Road
5 Fund related construction and operation of the Heartland
6 Intermodal Gateway in Wayne County.

7 Total TITLE II, Section 9 – General Revenue
8 Surplus Accrued..... \$13,765,000

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 2019 out of
 5 surplus funds only, as determined by the director of lottery,
 6 accrued from the fiscal year ending June 30, 2018, 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, 2018.

11 In the event that surplus revenues available from the
 12 fiscal year ending June 30, 2018, 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.

383-Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2019 Org 0508

| | | | |
|---|-------------------------------------|-------|---------------------|
| 1 | Senior Services Medicaid Transfer – | | |
| 2 | Lottery Surplus | 68199 | \$ 6,000,000 |
| 3 | Total TITLE II, Section 10 – | | |
| 4 | Surplus Accrued | | <u>\$ 6,000,000</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 2019
 5 out of surplus funds only, as determined by the director of
 6 lottery, accrued from the fiscal year ending June 30, 2018,
 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, 2018.

11 In the event that surplus revenues available from the
 12 fiscal year ending June 30, 2018, 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.

384-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2019 Org 0511

| | | | |
|---|------------------------------|-------|---------------------|
| 1 | Medical Services – | | |
| 2 | Lottery Surplus | 68100 | \$ 8,000,000 |
| 3 | Total TITLE II, Section 11 – | | |
| 4 | Surplus Accrued | | <u>\$ 8,000,000</u> |

1 **Sec. 12. Special revenue appropriations.** — There are
 2 hereby appropriated for expenditure during the fiscal year
 3 2019 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
 9 3, and W.Va. Code §11B-2, unless the spending unit has
 10 filed with the director of the budget and the legislative
 11 auditor 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.

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 2019,
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 2019 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

4 bond insurance fund of the West Virginia housing
5 development fund which is under the supervision and
6 control of the municipal bond commission as provided by
7 W.Va. Code §31-18-20b, or in the funds of the municipal
8 bond commission because of the failure of any state agency
9 for 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

TITLE III - ADMINISTRATION

§1. Appropriations conditional

§2. Constitutionality

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 13

**(S. B. 379 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 16, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT making a supplementary appropriation from the balance of moneys remaining as an unappropriated balance in the State Fund, State Excess Lottery Revenue Fund, to the Department of Health and Human Resources, Division of Human Services, fund 5365, fiscal year 2018, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2018, which included a statement of the State Excess Lottery Revenue Fund setting forth therein the unappropriated cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less regular appropriations for fiscal year 2018; and

Whereas, It appears from the Governor's statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 5365, fiscal year 2018, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

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

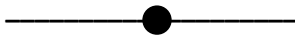
4 *310 – Division of Human Services*

5 (WV Code Chapters 9, 48, and 49)

6 Fund 5365 FY 2018 Org 0511

| | | | |
|---|--|-----------------|----------------|
| 7 | | | Excess |
| 8 | | Appro- | Lottery |
| 9 | | priation | Funds |

| | | | | | |
|----|---|-----------------------|-------|----|-----------|
| 10 | 1 | Medical Services..... | 18900 | \$ | 9,900,000 |
|----|---|-----------------------|-------|----|-----------|



CHAPTER 14

**(S. B. 382 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed February 16, 2018; in effect from passage.]

[Approved by the Governor on February 27, 2018.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2018, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2018, which included a statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2017, and further

included the estimate of revenues for the fiscal year 2018, less regular appropriations for fiscal year 2018; and

Whereas, It appears from the Governor’s statement of the Lottery Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 5405, fiscal year 2018, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 4. Appropriations from lottery net profits.**

3 292 – *Bureau of Senior Services –*

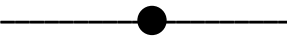
4 *Lottery Senior Citizens Fund*

5 (WV Code Chapter 29)

6 Fund 5405 FY 2018 Org 0508

| | | | |
|---|--|-----------------|----------------|
| 7 | | Appro- | Lottery |
| 8 | | priation | Funds |

| | | | | |
|----|----|--------------------------------|-------|--------------|
| 9 | 8 | Transfer to Division of | | |
| 10 | 9 | Human Services for Health Care | | |
| 11 | 10 | and Title XIX Waiver | | |
| 12 | 11 | for Senior Citizens..... | 53900 | \$ 4,300,000 |



CHAPTER 15

**(S. B. 384 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed February 16, 2018; in effect from passage.]

[Approved by the Governor on February 27, 2018.]

AN ACT supplementing and amending by decreasing and increasing existing appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2018, organization 0511, to the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2018, organization 0506, to the Bureau of Senior Services, fund 0420, fiscal year 2018, organization 0508, and to the Department of Health and Human Resources – Division of Health – Central Office, fund 0407, fiscal year 2018, organization 0506, by supplementing, amending, increasing, and decreasing the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

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

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, and this legislation, there will remain an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0403, fiscal year 2018, organization 0511, be supplemented and amended by decreasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 60 – Division of Human Services

5 (*WV Code Chapters 9, 48, and 49*)

6 Fund 0403 FY 2018 Org 0511

| | | Appro- | General |
|----|--------------------------------|-----------------|----------------|
| | | priation | Revenue |
| | | | Fund |
| 10 | 5 Child Care Development | 14400 | \$ 5,000,000 |
| 11 | 8 Medical Services..... | 18900 | 30,327,000 |

12 And, That the total appropriation for the fiscal year
 13 ending June 30, 2018, to fund 0420, fiscal year 2018,
 14 organization 0508, be supplemented and amended by
 15 decreasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 BUREAU OF SENIOR SERVICES

4 83 – Bureau of Senior Services

5 (WV Code Chapter 29)

6 Fund 0420 FY 2018 Org 0508

| | | | |
|---|--|-----------------|----------------|
| 7 | | | |
| 8 | | Appro- | General |
| 9 | | priation | Revenue |
| | | | Fund |

| | | | | |
|----|---|--|-------|--------------|
| 10 | 1 | Transfer to Division of Human Services | | |
| 11 | 2 | for Health Care | | |
| 12 | 3 | And Title XIX Waiver | | |
| 13 | 4 | for Senior Citizens..... | 53900 | \$ 4,300,000 |

14 And, That the total appropriation for the fiscal year
15 ending June 30, 2018, to fund 0407, fiscal year 2018,
16 organization 0506, be supplemented and amended by
17 increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 56 - Division of Health –

5 Central Office

6 (WV Code Chapter 16)

7 Fund 0407 FY 2018 Org 0506

| | | | |
|----|--|-----------------|----------------|
| 8 | | | |
| 9 | | Appro- | General |
| 10 | | priation | Revenue |
| | | | Fund |

| | | | | |
|----|----|---------------------------------|-------|------------|
| 11 | 25 | Health Right Free Clinics | 72700 | \$ 500,000 |
|----|----|---------------------------------|-------|------------|

12 And, That the total appropriation for the fiscal year
13 ending June 30, 2018, to fund 0525, fiscal year 2018,
14 organization 0506, be supplemented and amended by
15 increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 *57 – Consolidated Medical Services Fund*

5 (WV Code Chapter 16)

6 Fund 0525 FY 2018 Org 0506

| | | | |
|---|--|-----------------|----------------|
| 7 | | | General |
| 8 | | Appro- | Revenue |
| 9 | | priation | Fund |

| | | | | |
|----|---|--------------------------|-------|--------------|
| 10 | 6 | Institutional Facilities | | |
| 11 | | Operations (R) | 33500 | \$34,127,000 |

12 And, That the total appropriation for the fiscal year
13 ending June 30, 2018, to fund 0403, fiscal year 2018,
14 organization 0511, be supplemented and amended by
15 increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 *60 – Division of Human Services*

5 (WV Code Chapters 9, 48, and 49)

6 Fund 0403 FY 2018 Org 0511

| | | | | |
|---|--|-----------------|--|----------------|
| 7 | | | | General |
| 8 | | Appro- | | Revenue |
| 9 | | priation | | Fund |

| | | | | |
|----|---|----------------------|-------|--------------|
| 10 | 9 | Social Services..... | 19500 | \$ 5,000,000 |
|----|---|----------------------|-------|--------------|



CHAPTER 16

**(S. B. 385 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 8, 2018; in effect from passage.]
[Approved by the Governor on March 15, 2018.]

AN ACT supplementing and amending by decreasing existing appropriations and adding new appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2018, organization 0511, to the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2018, organization 0608, and to the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2018, organization 0621, by supplementing, amending, adding, and decreasing the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

Whereas, There are available cash balances in the Medical Services Program Fund that can be utilized in order to decrease the appropriations from the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget document, statement of the State Fund, General Revenue, and this legislation, there will remain an unappropriated balance in the State Treasury

which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0403, fiscal year 2018, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 60 – Division of Human Services

5 (WV Code Chapters 9, 48, and 49)

6 Fund 0403 FY 2018 Org 0511

| | | | |
|---|--|-----------------|----------------|
| 7 | | | General |
| 8 | | Appro- | Revenue |
| 9 | | priation | Fund |

| | | | | |
|----|---|-----------------------|-------|--------------|
| 10 | 8 | Medical Services..... | 18900 | \$23,000,000 |
|----|---|-----------------------|-------|--------------|

11 And, That the total appropriation for the fiscal year
12 ending June 30, 2018, to fund 0450, fiscal year 2018,
13 organization 0608, be supplemented and amended by
14 adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 67 – Division of Corrections –

6 Correctional Units

7 (WV Code Chapters 25, 28, 49, and 62)

8 Fund 0450 FY 2018 Org 0608

| | | | |
|----|--|-----------------|----------------|
| 9 | | | General |
| 10 | | Appro- | Revenue |
| 11 | | priation | Fund |

| | | | |
|----|---------------------------------|-------|--------------|
| 12 | 21a Roof Repairs and Mechanical | | |
| 13 | System Upgrades (R)..... | 75502 | \$20,000,000 |

14 Any unexpended balance remaining in the appropriation
 15 for Roof Repairs and Mechanical System Upgrades (fund
 16 0450, appropriation 75502) at the close of the fiscal year
 17 2018 is hereby reappropriated for expenditures during the
 18 fiscal year 2019.

19 And, That the total appropriation for the fiscal year
 20 ending June 30, 2018, to fund 0570, fiscal year 2018,
 21 organization 0621, be supplemented and amended by
 22 adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF MILITARY AFFAIRS
 4 AND PUBLIC SAFETY

5 *71 – Division of Juvenile Services*

6 (WV Code Chapter 49)

7 Fund 0570 FY 2018 Org 0621

| | | | |
|----|--|-----------------|----------------|
| 8 | | | General |
| 9 | | Appro- | Revenue |
| 10 | | priation | Fund |

| | | | |
|----|--------------------------------|-------|--------------|
| 11 | 6a Roof Repairs and Mechanical | | |
| 12 | System Upgrades (R)..... | 75502 | \$ 3,000,000 |

13 Any unexpended balance remaining in the appropriation
14 for Roof Repairs and Mechanical System Upgrades (fund
15 0570, appropriation 75502) at the close of the fiscal year
16 2018 is hereby reappropriated for expenditures during the
17 fiscal year 2019.



CHAPTER 17

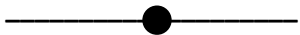
**(Com. Sub. for S. B. 386 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed February 16, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT supplementing and amending by decreasing and increasing existing appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Higher Education Policy Commission, Marshall University – School of Medicine, fund 0347, fiscal year 2018, organization 0471, and to the Higher Education Policy Commission, Marshall University – General Administration Fund, fund 0348, fiscal year 2018, organization 0471, by supplementing, amending, increasing, and decreasing the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 10, 2018, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

| | | | |
|----|---|-----------------|----------------|
| 4 | <i>99 – Marshall University –</i> | | |
| 5 | <i>General Administration Fund</i> | | |
| 6 | (WV Code Chapter 18B) | | |
| 7 | Fund <u>0348</u> FY <u>2018</u> Org <u>0471</u> | | |
| 8 | | | General |
| 9 | | Appro- | Revenue |
| 10 | | priation | Fund |
| 11 | 1 Marshall University | 44800 | \$ 597,993 |



CHAPTER 18

**(S. B. 388 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 16, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT supplementing and amending by decreasing and increasing existing appropriations and adding a new appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2018, organization 0511, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2018, organization 0209, and to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2018, organization 0221, by supplementing, amending, decreasing, and increasing existing appropriations and adding a new appropriation for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

Whereas, There are available cash balances in the Medical Services Program Fund that can be utilized in order to decrease the appropriations from the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, and this legislation, there will remain an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0403, fiscal year 2018, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 *60 – Division of Human Services*

5 (WV Code Chapters 9, 48, and 49)

6 Fund 0403 FY 2018 Org 0511

| 7 | 8 | 9 | 10 | 11 |
|----|---|-----------------------|-------|----------------|
| | | Appro- | | General |
| | | priation | | Revenue |
| | | | | Fund |
| 10 | 8 | Medical Services..... | 18900 | \$16,433,000 |

11 And, That the total appropriation for the fiscal year
12 ending June 30, 2018, to fund 0203, fiscal year 2018,
13 organization 0209, be supplemented and amended by
14 adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF ADMINISTRATION

4 *20 – Division of Finance*

5 (WV Code Chapter 5A)

6 Fund 0203 FY 2018 Org 0209

| | | |
|---|-----------------|----------------|
| 7 | | General |
| 8 | Appro- | Revenue |
| 9 | priation | Fund |

| | | | |
|----|------------------------|-------|--------------|
| 10 | 2a Enterprise Resource | | |
| 11 | Planning System | 08701 | \$ 1,133,000 |

12 The above appropriation for Enterprise Resource
13 Planning System (fund 0203, appropriation 08701) shall be
14 transferred to the Enterprise Resource Planning System
15 Fund (fund 9080).

16 And, That the total appropriation for the fiscal year
17 ending June 30, 2018, to fund 0226, fiscal year 2018,
18 organization 0221, be supplemented and amended by
19 increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

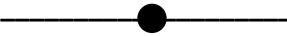
2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF Administration

4 *27 – Public Defender Services*

5 (WV Code Chapter 29)

| | | | |
|----|---|--------------------------------|--------------------|
| 6 | Fund <u>0226</u> FY <u>2018</u> Org <u>0221</u> | | |
| 7 | | | General |
| 8 | | Appro- | Revenue |
| 9 | | priation | Fund |
| 10 | 6 | Appointed Counsel Fees (R).... | 78800 \$15,300,000 |



CHAPTER 19

**(S. B. 633 - By Senators Blair, Arvon, Boley, Boso,
Drennan, Facemire, Ferns, Gaunch, Mann, Maroney,
Palumbo, Plymale, Prezioso, Stollings, Sypolt,
Takubo and Unger)**

[Passed March 10, 2018; in effect from passage.]

[Approved by the Governor on March 15, 2018.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2018, in the amount of \$1,620,000 from the Department of Revenue, Insurance Commissioner - Insurance Commission Fund, fund 7152, fiscal year 2018, organization 0704, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health – Consolidated Medical Services Fund, fund 0525, fiscal year 2018, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net

appropriation balances forwarded and regular appropriations for the fiscal year 2018, and further included recommended expirations to the surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2018, in the Department of Revenue Insurance Commissioner - Insurance Commission Fund, fund 7152, fiscal year 2018, organization 0704, be decreased by expiring the amount of \$1,620,000, to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2018.

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0525, fiscal year 2018, organization 0506, be supplemented and amended by increasing an existing item of appropriation and by adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

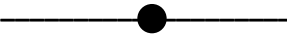
4 57 – Consolidated Medical Services Fund

5 (WV Code Chapter 16)

6 Fund 0525 FY 2018 Org 0506

| 7 8 9 | | Appropriation | General Revenue Fund |
|-------------|-------------------------------|----------------------|-----------------------------|
| 10 | 4 Behavioral Health Program – | | |
| 11 | Surplus (R) | 63100 | \$ 1,120,000 |

| | | | | |
|----|----|--|-------|---------|
| 12 | 9a | Office of Drug Control Policy – | | |
| 13 | | Surplus | 35402 | 500,000 |
| 14 | | Any unexpended balance remaining in the appropriation | | |
| 15 | | for Behavioral Health Program – Surplus (fund 0525, | | |
| 16 | | appropriation 63100) at the close of the fiscal year 2018 is | | |
| 17 | | hereby reappropriated for expenditure during fiscal year | | |
| 18 | | 2019. | | |



CHAPTER 20

**(S. B. 634 - By Senators Blair, Arvon, Boley, Boso,
Drennan, Facemire, Ferns, Gaunch, Mann, Maroney,
Palumbo, Plymale, Prezioso, Stollings, Sypolt,
Takubo and Unger)**

[Passed March 10, 2018; in effect from passage.]

[Approved by the Governor on March 10, 2018.]

AN ACT supplementing and amending by adding, increasing, and decreasing the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2018, organization 0511, and to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2018, organization 0506, by supplementing, amending, adding, increasing, and decreasing the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net

appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

Whereas, There are available cash balances in the Medical Services Program Fund that can be utilized in order to decrease the appropriations from the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, and this legislation, there will remain an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0403, fiscal year 2018, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 60 – Division of Human Services

5 (WV Code Chapters 9, 48, and 49)

6 Fund 0403 FY 2018 Org 0511

| | | | |
|---|--|-----------------|----------------|
| 7 | | | General |
| 8 | | Appro- | Revenue |
| 9 | | priation | Fund |

| | | | | |
|----|---|-----------------------|-------|--------------|
| 10 | 8 | Medical Services..... | 18900 | \$10,000,000 |
|----|---|-----------------------|-------|--------------|

11 And, That the total appropriation for the fiscal year
12 ending June 30, 2018, to fund 0407, fiscal year 2018,
13 organization 0506, be supplemented and amended by
14 adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 *56 – Division of Health –*

5 *Central Office*

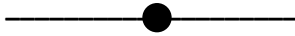
6 (WV Code Chapter 16)

7 Fund 0407 FY 2018 Org 0506

| | | | |
|----|--|-----------------|----------------|
| 8 | | | General |
| 9 | | Appro- | Revenue |
| 10 | | priation | Fund |

| | | | | |
|----|-----|--------------------------|-------|--------------|
| 11 | 11a | Office of Drug | | |
| 12 | | Control Policy (R) | 35401 | \$10,000,000 |

13 Any unexpended balance remaining in the appropriation
 14 for Office of Drug Control Policy (fund 0407, appropriation
 15 35401) at the close of the fiscal year 2018 is hereby
 16 reappropriated for expenditure during fiscal year 2019.



CHAPTER 21

**(H. B. 4376 - By Mr. Speaker (Mr. Armstead) and
 Delegate Miley)
 [By Request of the Executive]**

 [Passed March 8, 2018; in effect from passage.]
 [Approved by the Governor on March 15, 2018.]

AN ACT expiring funds to the balance of the Department of Health and Human Resources, Division of Health – Medical Cannabis Program Fund, fund 5420, fiscal year 2018,

organization 0506, in the amount of *\$0 from the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2018, organization 0506, to the Department of Health and Human Resources, Division of Health – Medical Cannabis Program Fund, fund 5420, fiscal year 2018, organization 0506, and to the Department of Health and Human Resources, Division of Human Services – Health Care Provider Tax, Medicaid State Share Fund, fund 5090, fiscal year 2018, organization 0511, by supplementing and amending chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill.

Whereas, The Governor finds that the account balance in the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, exceeds that which is necessary for the purpose for which the account was established; and

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, in the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2018, organization 0506, and in the Department of Health and Human Resources, Division of Human Services - Health Care Provider Tax, Medicaid State Share Fund, fund 5090, fiscal year 2017, organization 0511, that is available for expenditure during the fiscal year ending June 30, 2018 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

*NOTE: The Governor reduced line 4 in the title of the bill by \$2,953,990 to \$0.

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, be decreased by expiring the amount of *\$0 to the Department of Health and Human Resources, Division of Health – Medical Cannabis Program Fund, fund 5420, fiscal year 2018, organization 0506, to be available for expenditure during the fiscal year ending June 30, 2018.

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 5144, fiscal year 2018, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

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

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 *198 – Division of Health –*

5 *The Vital Statistics Account*

6 (WV Code Chapter 16)

7 Fund 5144 FY 2018 Org 0506

| | | | | |
|---|--|-----------------|--|--------------|
| 8 | | Appro- | | Other |
| 9 | | priation | | Funds |

| | | | | | |
|----|---|-------------------------|-------|----|--------|
| 10 | 1 | Personal Services and | | | |
| 11 | 2 | Employee Benefits | 00100 | \$ | 50,000 |

12 And, That the total appropriation for the fiscal year
 13 ending June 30, 2018, to fund 5163, fiscal year 2018,
 14 organization 0506, be supplemented and amended by
 15 increasing an existing item of appropriation as follows:

*NOTE: The Governor reduced line 5 of the above paragraph following the enacting clause, by \$2,953,330 to \$0.

1 TITLE II – APPROPRIATIONS.

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

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 *200 – Division of Health –*

5 *Laboratory Services Fund*

6 (WV Code Chapter 16)

7 Fund 5163 FY 2018 Org 0506

| 8 | 9 | Appropriation | Other Funds |
|----|-------------------------|----------------------|--------------------|
| 10 | 4 Current Expenses..... | 13000 | \$ 100,000 |

11 And, chapter one, Acts of the Legislature, 1st
12 extraordinary session, 2017, known as the budget bill, be
13 supplemented and amended by adding to Title II, section
14 three thereof, the following:

1 TITLE II – APPROPRIATIONS.

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

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 *205a – Division of Health –*

5 *Medical Cannabis Program Fund*

6 (WV Code Chapter 16A)

7 Fund 5420 FY 2018 Org 0506

| 8 | 9 | Appropriation | Other Funds |
|----|---------------------------|----------------------|--------------------|
| 10 | 1 Personal Services and | | |
| 11 | 2 Employee Benefits | 00100 | \$ 303,395 |

| | | | | |
|----|---|-----------------------|-------|----------------|
| 12 | 3 | Current Expenses..... | 13000 | 819,222 |
| 13 | 4 | Other Assets..... | 69000 | <u>895,000</u> |
| 14 | | Total | | \$ 2,017,617 |

15 And, That the total appropriation for the fiscal year
 16 ending June 30, 2018, to fund 5090, fiscal year 2018,
 17 organization 0511, be supplemented and amended by
 18 increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

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

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 *209 – Division of Human Services –*

5 *Health Care Provider Tax –*

6 *Medicaid State Share Fund*

7 (WV Code Chapter 11)

8 Fund 5090 FY 2018 Org 0511

| | | | | |
|----|---|-----------------------|-----------------|---------------|
| 9 | | | Appro- | Other |
| 10 | | | priation | Funds |
| 11 | 1 | Medical Services..... | 18900 | \$ 36,900,000 |

CHAPTER 22

**(H. B. 4379 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed March 8, 2018; in effect from passage.]
[Approved by the Governor on March 15, 2018.]

AN ACT supplementing, amending, decreasing, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2018, organization 0803, for the fiscal year ending June 30, 2018.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less regular appropriations for the fiscal year 2018; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 9017, fiscal year 2018, organization 0803, be supplemented and amended by decreasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 2. Appropriations from state road fund.**

3 DEPARTMENT OF TRANSPORTATION

4 *109 – Division of Highways –*

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2018 Org 0803

| 7 | | Appro- | State |
|------|---------------------------|-----------------|--------------|
| 8 | | priation | Road |
| 9 | | | Fund |
| 10 2 | Maintenance..... | 23700 | \$40,000,000 |
| 11 9 | Appalachian Programs..... | 28000 | 20,000,000 |

12 And, That the total appropriation for the fiscal year
 13 ending June 30, 2018, to fund 9017, fiscal year 2018,
 14 organization 0803, be supplemented and amended by
 15 increasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 2. Appropriations from state road fund.**

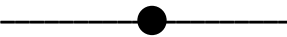
3 DEPARTMENT OF TRANSPORTATION

4 *109 – Division of Highways –*

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2018 Org 0803

| 7 | | Appro- | State |
|------|--------------------------------|-----------------|--------------|
| 8 | | priation | Road |
| 9 | | | Fund |
| 10 1 | Debt Service | 04000 | \$ 5,000,000 |
| 11 7 | Interstate Construction..... | 27800 | 20,000,000 |
| 12 8 | Other Federal Aid Programs.... | 27900 | 53,000,000 |



CHAPTER 23

**(H. B. 4380 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed February 20, 2018; in effect from passage.]

[Approved by the Governor on March 2, 2018.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Agriculture, Fund 8736, fiscal year 2018, Organization 1400, and to the Department of Agriculture – State Conservation Committee, Fund 8783, fiscal year 2018, Organization 1400, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to Fund 8736, fiscal year 2018, Organization 1400, be supplemented and amended by increasing an existing item and adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

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

3 EXECUTIVE

4 *315 – Department of Agriculture*

5 (WV Code Chapter 19)

6 Fund 8736 FY 2018 Org 1400

| | | | |
|---|--|-----------------|----------------|
| 7 | | Appro- | |
| 8 | | priation | Federal |
| | | | Funds |

| | | | | |
|----|----|-------------------------|-------|--------------|
| 9 | 1 | Personal Services and | | |
| 10 | 2 | Employee Benefits | 00100 | \$ 1,000,000 |
| 11 | 6a | Buildings..... | 25800 | 1,000,000 |

12 And, That the total appropriation for the fiscal year
 13 ending June 30, 2018, to Fund 8783, fiscal year 2018,
 14 Organization 1400, be supplemented and amended by
 15 increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

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

3 EXECUTIVE

4 *317 – Department of Agriculture –*

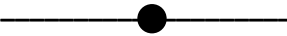
5 *State Conservation Committee*

6 (WV Code Chapter 19)

7 Fund 8783 FY 2018 Org 1400

| | | | | |
|---|--|--|-----------------|----------------|
| 8 | | | Appro- | |
| 9 | | | priation | Federal |
| | | | | Funds |

| | | | | |
|----|---|-----------------------|-------|--------------|
| 10 | 3 | Current Expenses..... | 13000 | \$ 1,500,000 |
|----|---|-----------------------|-------|--------------|



CHAPTER 24

**(H. B. 4381 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed February 20, 2018; in effect from passage.]
[Approved by the Governor on March 2, 2018.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Education, State Board of Education – School Lunch Program, fund 8713, fiscal year 2018, organization 0402, and to the Department of Education, State Board of Education – Vocational Division, fund 8714, fiscal year 2018, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 8713, fiscal year 2018, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

- 1 TITLE II – APPROPRIATIONS.
- 2 **Sec. 6. Appropriations of federal funds.**

3 DEPARTMENT OF EDUCATION

4 330 – State Board of Education –

5 School Lunch Program

6 (WV Code Chapters 18 and 18A)

7 Fund 8713 FY 2018 Org 0402

| | | | |
|---|--|-----------------|----------------|
| 8 | | Appro- | |
| 9 | | priation | Federal |
| | | | Funds |

| | | | | |
|----|---|-----------------------|-------|--------------|
| 10 | 4 | Current Expenses..... | 13000 | \$ 5,000,000 |
|----|---|-----------------------|-------|--------------|

11 And, That the total appropriation for the fiscal year
12 ending June 30, 2018, to fund 8714, fiscal year 2018,
13 organization 0402, be supplemented and amended by
14 increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

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

3 DEPARTMENT OF EDUCATION

4 331 – State Board of Education –

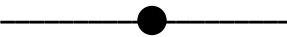
5 Vocational Division

6 (WV Code Chapters 18 and 18A)

7 Fund 8714 FY 2018 Org 0402

| | | | |
|---|--|-----------------|----------------|
| 8 | | Appro- | |
| 9 | | priation | Federal |
| | | | Funds |

| | | | | |
|----|---|-------------------------|-------|------------|
| 10 | 1 | Personal Services and | | |
| 11 | 2 | Employee Benefits | 00100 | \$ 300,000 |



CHAPTER 25

**(H. B. 4384 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed February 20, 2018; in effect from passage.]

[Approved by the Governor on March 2, 2018.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Transportation, Division of Public Transit, fund 8745, fiscal year 2018, organization 0805, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 8745, fiscal year 2018, organization 0805, be supplemented and amended by increasing an existing item of appropriation as follows:

- 1 TITLE II – APPROPRIATIONS.
- 2 **Sec. 6. Appropriations of federal funds.**
- 3 DEPARTMENT OF TRANSPORTATION
- 4 356 – *Division of Public Transit*
- 5 (WV Code Chapter 17)

| | | | |
|----|---|-------------------------|------------------|
| 6 | Fund <u>8745</u> FY <u>2018</u> Org <u>0805</u> | | |
| 7 | | Appro- | Federal |
| 8 | | priation | Funds |
| 9 | 1 | Personal Services and | |
| 10 | 2 | Employee Benefits | 00100 \$ 132,700 |



CHAPTER 26

**(H. B. 4385 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed March 2, 2018; in effect from passage.]
[Approved by the Governor on March 9, 2018.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2018, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 8722, fiscal year 2018, organization 0511, be

supplemented and amended by increasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

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

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 *345 – Division of Human Services*

5 (WV Code Chapters 9, 48 and 49)

6 Fund 8722 FY 2018 Org 0511

| 7 | 8 | Appro- | Federal |
|---|-----------------------|----------------|----------------|
| 9 | 10 | riation | Funds |
| 4 | Current Expenses..... | 13000 | \$40,000,000 |
| 5 | Medical Services..... | 18900 | 70,000,000 |



CHAPTER 27

**(H. B. 4386 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed February 20, 2018; in effect from passage.]
[Approved by the Governor on March 2, 2018.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Health and Human Resources, Division of Health – Community Mental Health Services, fund 8794, fiscal year 2018, organization 0506, by

supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 8794, fiscal year 2018, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

| | | | |
|---|--|-----------------------|------------------|
| 1 | TITLE II – APPROPRIATIONS. | | |
| 2 | Sec. 7. Appropriations from federal block grants. | | |
| 3 | DEPARTMENT OF HEALTH AND HUMAN RESOURCES | | |
| 4 | 370 – <i>Division of Health –</i> | | |
| 5 | <i>Community Mental Health Services</i> | | |
| 6 | Fund <u>8794</u> FY <u>2018</u> Org <u>0506</u> | | |
| 7 | | Appro- | Federal |
| 8 | | priation | Funds |
| 9 | 4 | Current Expenses..... | 13000 \$ 700,000 |

●

CHAPTER 28

**(H. B. 4389 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed March 10, 2018; in effect from passage.]

[Approved by the Governor on March 15, 2018.]

AN ACT expiring funds to the balance of the West Virginia Enterprise Resource Planning Board - Enterprise Resource Planning System Fund, fund 9080, fiscal year 2018, organization 0947, in the amount of \$2,266,000 and to the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund ****, fiscal year 2018, organization 0804 in the amount of \$1,500,000; from the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, and from the Treasurer's Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300, by supplementing and amending chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill.

WHEREAS, The Governor finds that the account balances in the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, and in the Treasurer's Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300 exceed that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, be decreased by expiring the amount of

\$1,133,000, and to the Treasurer’s Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300 be decreased by expiring the amount of \$1,133,000 to the West Virginia Enterprise Resource Planning Board - Enterprise Resource Planning System Fund, fund 9080, fiscal year 2018, organization 0947, and the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, be decreased by expiring the amount of \$1,500,000 to the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund ****, fiscal year 2018, organization 0804 to be available for expenditure during the fiscal year ending June 30, 2018.

And, chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

1 TITLE II – APPROPRIATIONS.

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

3 DEPARTMENT OF TRANSPORTATION.

4 *259a – State Rail Authority*

5 *West Virginia Commuter Rail Access Fund*

6 (WV Code Chapter 29)

7 Fund **** FY 2018 Org 0804

| 8 | Appro- | Other |
|----------------------------------|-----------------|--------------|
| 9 | priation | Funds |
| 10 1 Current Expenses..... 13000 | | \$ 1,500,000 |

CHAPTER 29

**(Com. Sub. for H. B. 4217 - By Delegates Ellington,
Sobonya, Atkinson, Queen, Summers, White,
Westfall, Dean, Criss, Rohrbach and Frich)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §61-12-10 of the Code West Virginia, 1931, as amended, relating to permitting a designated representative of a hospital or an attending physician to obtain a patient's autopsy report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. POSTMORTEM EXAMINATIONS.

***§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.**

1 (a) If in the opinion of the chief medical examiner, or of
2 the county medical examiner of the county in which the
3 death in question occurred, it is advisable and in the public
4 interest that an autopsy be made, or if an autopsy is
5 requested by either the prosecuting attorney or the judge of
6 the circuit court or other court of record having criminal
7 jurisdiction in that county, an autopsy shall be conducted by
8 the chief medical examiner or his or her designee, by a
9 member of his or her staff, or by a competent pathologist
10 designated and employed by the chief medical examiner
11 under the provisions of this article. For this purpose, the
12 chief medical examiner may employ any county medical
13 examiner who is a pathologist who holds board certification
14 or board eligibility in forensic pathology or has completed

***NOTE:** This section was also amended by H. B. 4020 (Chapter 37), which passed prior to this act.

15 an American Board of Pathology fellowship in forensic
16 pathology to make the autopsies, and the fees to be paid for
17 autopsies under this section shall be in addition to the fee
18 provided for investigations pursuant to §61-12-8. A full
19 record and report of the findings developed by the autopsy
20 shall be filed with the office of the chief medical examiner
21 by the person making the autopsy.

22 (b) Within the discretion of the chief medical examiner,
23 or of the person making the autopsy, or if requested by the
24 prosecuting attorney of the county, or of the county where
25 any injury contributing to or causing the death was
26 sustained, a copy of the report of the autopsy shall be
27 furnished to the prosecuting attorney.

28 (c) The office of the chief medical examiner shall keep
29 full, complete and properly indexed records of all deaths
30 investigated, containing all relevant information concerning
31 the death and the autopsy report if an autopsy report is made.
32 Any prosecuting attorney or law-enforcement officer may
33 secure copies of these records or information necessary for
34 the performance of his or her official duties.

35 (d) Copies of these records or information shall be
36 furnished, upon request, to any court of law, or to the parties
37 therein to whom the cause of death is a material issue,
38 except where the court determines that interests in a civil
39 matter conflict with the interests in a criminal proceeding,
40 in which case the interests in the criminal proceeding shall
41 take precedence. The office of chief medical examiner shall
42 be reimbursed a reasonable rate by the requesting party for
43 costs incurred in the production of records under this
44 subsection, and subsection (c), (f) and (g) of this section.

45 (e) The chief medical examiner is authorized to release
46 investigation records and autopsy reports to the
47 multidisciplinary team authorized by §49-4-402 and as
48 authorized in subsection (j) of this section. At the direction
49 of the Secretary of the Department of Health and Human
50 Resources the chief medical examiner may release records

51 and information to other state agencies when considered to
52 be in the public interest.

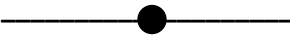
53 (f) The chief medical examiner is authorized to release
54 a copy of the autopsy and toxicology reports upon the
55 request from a designated representative of a hospital as
56 defined in §16-2D-2 of this code, to said facility who has
57 reported a death under the provisions of §61-12-8 for
58 purposes of quality review and medical record completion.

59 (g) The chief medical examiner is authorized to release
60 a copy of the autopsy and toxicology reports upon the
61 request of an attending physician as defined in §16-30C-3
62 of this code, to said physician whose patient has died for
63 purposes of quality review and medical record completion.

64 (h) Any person performing an autopsy under this section
65 may keep and retain, for and on behalf of the chief medical
66 examiner, any tissue from the body upon which the autopsy
67 was performed which may be necessary for further study or
68 consideration.

69 (i) In cases of the death of any infant in the State of West
70 Virginia where sudden infant death syndrome is the suspected
71 cause of death and the chief medical examiner or the medical
72 examiner of the county in which the death in question occurred
73 considers it advisable to perform an autopsy, it is the duty of
74 the chief medical examiner or the medical examiner of the
75 county in which the death occurred to notify the sudden infant
76 death syndrome program within the division of maternal and
77 child health and to inform the program of all information to be
78 given to the infant's parents.

79 (j) If the chief medical officer determines that a drug
80 overdose is the cause of death of a person, the chief medical
81 examiner shall provide notice of the death to the West
82 Virginia Controlled Substances Monitoring Program
83 Database Review Committee established pursuant to §60A-
84 9-5(b) and shall include in the notice any information
85 relating to the cause of the fatal overdose.



CHAPTER 30

**(Com. Sub. for H. B. 4343 - By Delegates Frich,
Westfall, White, Upson, Lovejoy, Robinson and A.
Evans)**

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §31A-4-20 of the Code of West Virginia, 1931, as amended, relating to the delivery of financial statements to bank shareholders at or prior to the annual meeting of shareholders.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

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

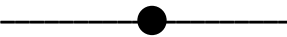
1 (a) The stockholders of each state banking institution
2 shall meet annually. The banking institution shall prepare
3 and submit to the stockholders a copy of the institution's
4 most recent fiscal year audited financial statements. The
5 audited financial statement may be consolidated or
6 combined statements of the banking institution, its holding
7 company and any subsidiaries, that include a balance sheet
8 as of the end of the fiscal year, an income statement for
9 that year and a statement of changes in shareholders'
10 equity for the year. The submission is sufficient if, within
11 120 days of the close of the fiscal year, the banking
12 institution delivers a physical or digital copy of the
13 requisite statement through traditional mail or courier

14 service, electronic mail or any other means of delivery or
15 provides shareholders with notice of access to a digital
16 copy of the statements published to a website or any other
17 digital media platform or portal.

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

23 (c) At such time or times as it may be directed to do so
24 by the written request of the board of directors, or the
25 Commissioner of Financial Institutions, such outside
26 independent auditing firm shall immediately proceed to
27 examine the condition of the bank, and upon completion of
28 such examination, shall file its report in writing with the
29 board of directors. Such report shall set forth in detail all
30 items included in the assets of the bank which the firm has
31 reason to believe are not of the value at which they appear
32 on the books and records of the bank, and shall give the
33 value of each of such items according to its judgment. The
34 board of directors shall cause such report to be retained as a
35 part of the records of the bank.

36 (d) The workpapers of any audit, including any
37 materials associated with an audit of the bank's electronic
38 data procedures, shall be made available to the
39 commissioner or to the examiners of the Division of
40 Financial Institutions upon request, and will be accorded
41 confidentiality in conformity with §31A-2-4 of this code.



CHAPTER 31

**(H. B. 4629 - By Delegates Hanshaw, Harshbarger,
Byrd, Robinson, R. Miller, Pushkin, Sobonya, Hollen,
Canestraro, Lane and Zatezalo)**

[Passed March 10, 2018; in effect from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to repeal §31G-1-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31G-2-1 of said code, all relating to broadband enhancement and expansion policies generally; repealing language relating to pilot project for cooperative associations by political subdivisions; and providing that a political subdivision of this state may be a qualified person for the purposes of forming a cooperative association.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-10. Pilot Project for cooperatives by political subdivisions.

1 [Repealed].

ARTICLE 2. COOPERATIVE ASSOCIATIONS.

§31G-2-1. Definitions.

1 As used in this article:

2 (1) “Cooperative association” or “association” means
3 any corporation organized under this article. Each

4 association shall also comply with the requisite business
5 corporation provisions of chapter thirty-one-d or thirty-one-
6 f of this code, or the nonprofit corporation provisions of
7 chapter thirty-one-e of this code.

8 (2) “Internet services” means providing access to, and
9 presence on, the internet and other services. Data may be
10 transmitted using several technologies, including dial-up,
11 DSL, cable modem, wireless, or dedicated high-speed
12 interconnects.

13 (3) “Member” means a member of an association
14 without capital stock and a holder of common stock in an
15 association organized with capital stock.

16 (4) “Qualified person” means a person who is engaged in
17 the use of internet services, either in an individual capacity, as
18 a political subdivision of this state, or as a business.

19 (5) “Qualified activity” means using internet services.

CHAPTER 32

**(H. B. 4422 - By Delegates Frich, Walters, Westfall,
Upson, Householder, Statler, Ambler, A. Evans, C.
Miller and Anderson)**

[Passed March 3, 2018; in effect ninety days from passage.]

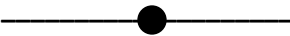
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §35-5-4 of the Code of West Virginia, 1931, relating to permitting permanent endowment funds of cemeteries to invest their principal in government bonds, and corporate bonds that have been rated A or above.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CEMETERIES.**§35-5-4. Same — How invested; report of trustee; disposition of income.**

1 The principal of such permanent endowment fund shall
2 be invested in some safe securities, including government
3 bonds, and corporate bonds that have been rated A or above
4 to be approved by the board of directors of such cemetery
5 association, or its successors, in the name of a trustee
6 appointed as hereinafter provided. Such trustee shall make
7 an annual report to the board of directors of such cemetery
8 association showing the amount of the permanent
9 endowment fund at the beginning of each year, the names
10 of the donors, if any, and the amounts contributed by each
11 during the year in which the report is made, the income
12 derived from such fund during the year, and the amount on
13 hand at the end of the year; and a copy of such report shall
14 be filed with the clerk of the county court of the county in
15 which such cemetery association is located. The trustee
16 during the year, or at the end thereof, shall turn over to such
17 cemetery association, or its successor, all income derived
18 from such permanent endowment fund during the year,
19 which shall be expended in accordance with this article.

**CHAPTER 33****(S. B. 47 - By Senators Romano and Ojeda)**

[Passed March 6, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §49-2-802 of the Code of West Virginia, 1931, as amended, relating to requiring Department of Defense family advocacy groups to be notified about any abuse or neglect of a child of a military person.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-802. Establishment of child protective services; general duties and powers; administrative procedure; immunity from civil liability; cooperation of other state agencies.

1 (a) The department shall establish or designate in every
2 county a local child protective services office to perform the
3 duties and functions set forth in this article.

4 (b) The local child protective services office shall
5 investigate all reports of child abuse or neglect. Under no
6 circumstances may investigating personnel be relatives of
7 the accused, the child or the families involved. In
8 accordance with the local plan for child protective services,
9 it shall provide protective services to prevent further abuse
10 or neglect of children and provide for or arrange for and
11 coordinate and monitor the provision of those services
12 necessary to ensure the safety of children. The local child
13 protective services office shall be organized to maximize
14 the continuity of responsibility, care, and service of
15 individual workers for individual children and families.
16 Under no circumstances may the secretary or his or her
17 designee promulgate rules or establish any policy which
18 restricts the scope or types of alleged abuse or neglect of
19 minor children which are to be investigated or the provision
20 of appropriate and available services.

21 (c) Each local child protective services office shall:

22 (1) Receive or arrange for the receipt of all reports of
23 children known or suspected to be abused or neglected on a
24 24-hour, seven-day-a-week basis and cross-file all reports
25 under the names of the children, the family, and any person
26 substantiated as being an abuser or neglecter by
27 investigation of the Department of Health and Human
28 Resources, with use of cross-filing of the person's name
29 limited to the internal use of the department: *Provided*, That
30 local child protective services offices shall disclose the

31 names of alleged abusers pursuant to §49-2-802(c)(4) of this
32 code;

33 (2) Provide or arrange for emergency children's services
34 to be available at all times;

35 (3) Upon notification of suspected child abuse or
36 neglect, commence or cause to be commenced a thorough
37 investigation of the report and the child's environment. As
38 a part of this response, within 14 days there shall be a face-
39 to-face interview with the child or children and the
40 development of a protection plan, if necessary, for the safety
41 or health of the child, which may involve law-enforcement
42 officers or the court;

43 (4) Make efforts as soon as practicable to determine the
44 military status of parents whose children are subject to
45 abuse or neglect allegations. If the office determines that a
46 parent or guardian is in the military, the department shall
47 notify a Department of Defense family advocacy program
48 that there is an allegation of abuse and neglect that is
49 screened in and open for investigation that relates to that
50 military parent or guardian;

51 (5) Respond immediately to all allegations of imminent
52 danger to the physical well-being of the child or of serious
53 physical abuse. As a part of this response, within 72 hours
54 there shall be a face-to-face interview with the child or
55 children and the development of a protection plan, which
56 may involve law-enforcement officers or the court; and

57 (6) In addition to any other requirements imposed by this
58 section, when any matter regarding child custody is pending,
59 the circuit court or family court may refer allegations of child
60 abuse and neglect to the local child protective services office
61 for investigation of the allegations as defined by this chapter
62 and require the local child protective services office to submit
63 a written report of the investigation to the referring circuit court
64 or family court within the time frames set forth by the circuit
65 court or family court.

66 (d) In those cases in which the local child protective
67 services office determines that the best interests of the child
68 require court action, the local child protective services
69 office shall initiate the appropriate legal proceeding.

70 (e) The local child protective services office shall be
71 responsible for providing, directing, or coordinating the
72 appropriate and timely delivery of services to any child
73 suspected or known to be abused or neglected, including
74 services to the child's family and those responsible for the
75 child's care.

76 (f) To carry out the purposes of this article, all
77 departments, boards, bureaus, and other agencies of the state
78 or any of its political subdivisions and all agencies
79 providing services under the local child protective services
80 plan shall, upon request, provide to the local child protective
81 services office any assistance and information as will enable
82 it to fulfill its responsibilities.

83 (g)(1) In order to obtain information regarding the
84 location of a child who is the subject of an allegation of
85 abuse or neglect, the Secretary of the Department of Health
86 and Human Resources may serve, by certified mail or
87 personal service, an administrative subpoena on any
88 corporation, partnership, business, or organization for the
89 production of information leading to determining the
90 location of the child.

91 (2) In case of disobedience to the subpoena, in
92 compelling the production of documents, the secretary may
93 invoke the aid of:

94 (A) The circuit court with jurisdiction over the served
95 party if the person served is a resident; or

96 (B) The circuit court of the county in which the local
97 child protective services office conducting the investigation
98 is located if the person served is a nonresident.

99 (3) A circuit court shall not enforce an administrative
100 subpoena unless it finds that:

101 (A) The investigation is one the Division of Child
102 Protective Services is authorized to make and is being
103 conducted pursuant to a legitimate purpose;

104 (B) The inquiry is relevant to that purpose;

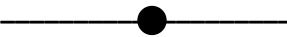
105 (C) The inquiry is not too broad or indefinite;

106 (D) The information sought is not already in the
107 possession of the Division of Child Protective Services; and

108 (E) Any administrative steps required by law have been
109 followed.

110 (4) If circumstances arise where the secretary, or his or
111 her designee, determines it necessary to compel an
112 individual to provide information regarding the location of
113 a child who is the subject of an allegation of abuse or
114 neglect, the secretary, or his or her designee, may seek a
115 subpoena from the circuit court with jurisdiction over the
116 individual from whom the information is sought.

117 (h) No child protective services caseworker may be held
118 personally liable for any professional decision or action
119 taken pursuant to that decision in the performance of his or
120 her official duties as set forth in this section or agency rules
121 promulgated thereupon. However, nothing in this
122 subsection protects any child protective services worker
123 from any liability arising from the operation of a motor
124 vehicle or for any loss caused by gross negligence, willful
125 and wanton misconduct, or intentional misconduct.



CHAPTER 34

(S. B. 407 - By Senators Takubo, Maroney, Stollings and Plymale)

[Passed March 9, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §49-1-203 and §49-1-206 of the Code of West Virginia, 1931, as amended, all relating to modifying definitions related to licensing and approval of child care programs; modifying definitions related to child advocacy, care, residential, and treatment programs eliminating ability for family child care homes, informal family child care homes, or relative family child care homes to self-certify compliance with legislative rules; eliminating statutory caps on the number of children under 24 months of age in family child care facilities and family child care homes; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART II – DEFINITIONS.

§49-1-203. Definitions related, but not limited to, licensing and approval of programs.

1 When used in this chapter, terms defined in this section
 2 have the meanings ascribed to them that relate to, but are
 3 not limited to, licensing and approval of programs, except
 4 in those instances where a different meaning is provided or
 5 the context in which the word used clearly indicates that a
 6 different meaning is intended.

7 “Approval” means a finding by the Secretary of the
8 Department of Health and Human Resources that a facility
9 operated by the state has met the requirements of legislative
10 rules promulgated for operation of that facility and that a
11 certificate of approval or a certificate of operation has been
12 issued.

13 “Certification of approval” or “certificate of operation”
14 means a statement issued by the Secretary of the
15 Department of Health and Human Resources that a facility
16 meets all of the necessary requirements for operation.

17 “Certificate of license” means a statement issued by the
18 Secretary of the Department of Health and Human
19 Resources authorizing an individual, corporation,
20 partnership, voluntary association, municipality, or county,
21 or any agency thereof, to provide specified services for a
22 limited period of time in accordance with the terms of the
23 certificate.

24 “Certificate of registration” means a statement issued by
25 the Secretary of the Department of Health and Human
26 Resources to a family child care home, informal family
27 child care home, or relative family child care home to
28 provide specified services for a limited period in accordance
29 with the terms of the certificate.

30 “License” means the grant of official permission to a
31 facility to engage in an activity which would otherwise be
32 prohibited.

33 “Registration” means the grant of official permission to
34 a family child care home, informal family child care home,
35 or a relative family child care home determined to be in
36 compliance with the legislative rules promulgated pursuant
37 to this chapter.

38 “Rule” means legislative rules promulgated by the
39 Secretary of the Department of Health and Human
40 Resources or a statement issued by the Secretary of the

41 Department of Health and Human Resources of the
42 standards to be applied in the various areas of child care.

43 “Variance” means a declaration that a rule may be
44 accomplished in a manner different from the manner set
45 forth in the rule.

46 “Waiver” means a declaration that a certain legislative
47 rule is inapplicable in a particular circumstance.

**§49-1-206. Definitions related, but not limited to, child
advocacy, care, residential, and treatment programs.**

1 When used in this chapter, terms defined in this section
2 have the meanings ascribed to them that relate to, but are
3 not limited to, child advocacy, care, residential, and
4 treatment programs, except in those instances where a
5 different meaning is provided or the context in which the
6 word used clearly indicates that a different meaning is
7 intended.

8 “Child Advocacy Center (CAC)” means a community-
9 based organization that is a member in good standing with
10 the West Virginia Child Abuse Network, Inc., as set forth in
11 §49-3-101 of this code.

12 “Child care” means responsibilities assumed and
13 services performed in relation to a child’s physical,
14 emotional, psychological, social, and personal needs and the
15 consideration of the child’s rights and entitlements, but does
16 not include secure detention or incarceration under the
17 jurisdiction of the Division of Juvenile Services pursuant to
18 §49-2-901 *et seq.* of this code. It includes the provision of
19 child care services or residential services.

20 “Child care center” means a facility maintained by the
21 state or any county or municipality thereof, or any agency
22 or facility maintained by an individual, firm, corporation,
23 association, or organization, public or private for the care of
24 13 or more children for child care services in any setting, if
25 the facility is open for more than 30 days per year per child.

26 “Child care services” means direct care and protection
27 of children during a portion of a 24- hour day outside of the
28 child’s own home which provides experiences to children
29 that foster their healthy development and education.

30 “Child placing agency” means a child welfare agency
31 organized for the purpose of placing children in private
32 family homes for foster care or for adoption. The function
33 of a child placing agency may include the investigation and
34 certification of foster family homes and foster family group
35 homes as provided in this chapter. The function of a child
36 placing agency may also include the supervision of children
37 who are 16 or 17 years old and living in unlicensed
38 residences.

39 “Child welfare agency” means any agency or facility
40 maintained by the state or any county or municipality
41 thereof, or any agency or facility maintained by an
42 individual, firm, corporation, association, or organization,
43 public or private, to receive children for care and
44 maintenance or for placement in residential care facilities,
45 including, without limitation, private homes or any facility
46 that provides care for unmarried mothers and their children.
47 A child welfare agency does not include juvenile detention
48 facilities or juvenile correctional facilities operated by or
49 under contract with the Division of Juvenile Services,
50 pursuant to §49-2-901 *et seq.* of this code, nor any other
51 facility operated by that division for the secure housing or
52 holding of juveniles committed to its custody.

53 “Community based” means a facility, program, or
54 service located near the child’s home or family and
55 involving community participation in planning, operation,
56 and evaluation and which may include, but is not limited to,
57 medical, educational, vocational, social, and psychological
58 guidance, training, special education, counseling, substance
59 abuse, and any other treatment or rehabilitation services.

60 “Community-based juvenile probation sanctions”
61 means any of a continuum of nonresidential accountability

62 measures, programs, and sanctions in response to a
63 technical violation of probation, as part of a system of
64 community-based juvenile probation sanctions and
65 incentives, that may include, but are not limited to:

66 (A) Electronic monitoring;

67 (B) Drug and alcohol screening, testing, or monitoring;

68 (C) Youth reporting centers;

69 (D) Reporting and supervision requirements;

70 (E) Community service; and

71 (F) Rehabilitative interventions such as family
72 counseling, substance abuse treatment, restorative justice
73 programs, and behavioral or mental health treatment.

74 “Community services” means nonresidential prevention
75 or intervention services or programs that are intended to
76 reduce delinquency and future court involvement.

77 “Evidence-based practices” means policies, procedures,
78 programs, and practices demonstrated by research to
79 reliably produce reductions in the likelihood of reoffending.

80 “Facility” means a place or residence, including
81 personnel, structures, grounds, and equipment used for the
82 care of a child or children on a residential or other basis for
83 any number of hours a day in any shelter or structure
84 maintained for that purpose. Facility does not include any
85 juvenile detention facility or juvenile correctional facility
86 operated by or under contract with the Division of Juvenile
87 Services for the secure housing or holding of juveniles
88 committed to its custody.

89 “Family child care facility” means any facility which is
90 used to provide nonresidential child care services for
91 compensation for seven to 12 children, including children
92 who are living in the household, who are under six years of

93 age. A facility may be in a provider's residence or a separate
94 building.

95 "Family child care home" means a facility which is used
96 to provide nonresidential child care services for
97 compensation in a provider's residence. The provider may
98 care for four to six children at one time, including children
99 who are living in the household, who are under six years of
100 age.

101 "Family resource network" means:

102 (A) A local community organization charged with
103 service coordination, needs and resource assessment,
104 planning, community mobilization, and evaluation, and
105 which has met the following criteria:

106 (i) Agreeing to a single governing entity;

107 (ii) Agreeing to engage in activities to improve service
108 systems for children and families within the community;

109 (iii) Addressing a geographic area of a county or two or
110 more contiguous counties;

111 (iv) Having nonproviders, which include family
112 representatives and other members who are not employees
113 of publicly funded agencies, as the majority of the members
114 of the governing body, and having family representatives as
115 the majority of the nonproviders;

116 (v) Having representatives of local service agencies,
117 including, but not limited to, the public health department,
118 the behavioral health center, the local health and human
119 resources agency, and the county school district, on the
120 governing body; and

121 (vi) Accepting principles consistent with the cabinet's
122 mission as part of its philosophy.

123 (B) A family resource network may not provide direct
124 services, which means to provide programs or services
125 directly to children and families.

126 “Family support”, for the purposes of §49-2-601 *et seq.*
127 of this code, means goods and services needed by families
128 to care for their family members with developmental
129 disabilities and to enjoy a quality of life comparable to other
130 community members.

131 “Family support program” means a coordinated system
132 of family support services administered by the Department
133 of Health and Human Resources through contracts with
134 behavioral health agencies throughout the state.

135 “Foster family home” means a private residence which
136 is used for the care on a residential basis of no more than
137 five children who are unrelated by blood, marriage, or
138 adoption to any adult member of the household.

139 “Health care and treatment” means:

140 (A) Developmental screening;

141 (B) Mental health screening;

142 (C) Mental health treatment;

143 (D) Ordinary and necessary medical and dental
144 examination and treatment;

145 (E) Preventive care including ordinary immunizations,
146 tuberculin testing, and well-child care; and

147 (F) Nonemergency diagnosis and treatment. However,
148 nonemergency diagnosis and treatment does not include an
149 abortion.

150 “Home-based family preservation services” means
151 services dispensed by the Department of Health and Human
152 Resources or by another person, association, or group who
153 has contracted with that division to dispense services when

154 those services are intended to stabilize and maintain the
155 natural or surrogate family in order to prevent the placement
156 of children in substitute care. There are two types of home-
157 based family preservation services and they are as follows:

158 (A) Intensive, short-term intervention of four to six
159 weeks; and

160 (B) Home-based, longer-term after care following
161 intensive intervention.

162 “Informal family child care” means a home that is used
163 to provide nonresidential child care services for
164 compensation for three or fewer children, including children
165 who are living in the household who are under six years of
166 age. Care is given in the provider’s own home to at least one
167 child who is not related to the caregiver.

168 “Nonsecure facility” means any public or private
169 residential facility not characterized by construction fixtures
170 designed to physically restrict the movements and activities
171 of individuals held in lawful custody in that facility and
172 which provides its residents access to the surrounding
173 community with supervision.

174 “Nonviolent misdemeanor offense” means a
175 misdemeanor offense that does not include any of the
176 following:

177 (A) An act resulting in bodily injury or death;

178 (B) The use of a weapon in the commission of the
179 offense;

180 (C) A domestic abuse offense involving a significant or
181 likely risk of harm to a family member or household
182 member;

183 (D) A criminal sexual conduct offense; or

184 (E) Any offense for driving under the influence of
185 alcohol or drugs.

186 “Out-of-home placement” means a post-adjudication
187 placement in a foster family home, group home, nonsecure
188 facility, emergency shelter, hospital, psychiatric residential
189 treatment facility, staff secure facility, hardware secure
190 facility, detention facility, or other residential placement
191 other than placement in the home of a parent, custodian, or
192 guardian.

193 “Out-of-school time” means a child care service which
194 offers activities to children before and after school, on
195 school holidays, when school is closed due to emergencies,
196 and on school calendar days set aside for teacher activities.

197 “Placement” means any temporary or permanent
198 placement of a child who is in the custody of the state in any
199 foster home, group home, or other facility or residence.

200 “Pre-adjudicatory community supervision” means
201 supervision provided to a youth prior to adjudication, for a
202 period of supervision up to one year for an alleged status or
203 delinquency offense.

204 “Regional family support council” means the council
205 established by the regional family support agency to carry
206 out the responsibilities specified in §49-2-601 *et seq.* of this
207 code.

208 “Relative family child care” means a home that provides
209 nonresidential child care services only to children related to
210 the caregiver. The caregiver is a grandparent, great
211 grandparent, aunt, uncle, great-aunt, great-uncle, or adult
212 sibling of the child or children receiving care. Care is given
213 in the provider’s home.

214 “Residential services” means child care which includes
215 the provision of nighttime shelter and the personal
216 discipline and supervision of a child by guardians,
217 custodians, or other persons or entities on a continuing or

218 temporary basis. It may include care or treatment, or both,
219 for transitioning adults. Residential services does not
220 include or apply to any juvenile detention facility or juvenile
221 correctional facility operated by the Division of Juvenile
222 Services, created pursuant to this chapter, for the secure
223 housing or holding of juveniles committed to its custody.

224 “Risk and needs assessment” means a validated,
225 standardized actuarial tool which identifies specific risk
226 factors that increase the likelihood of reoffending and the
227 factors that, when properly addressed, can reduce the
228 likelihood of reoffending.

229 “Secure facility” means any public or private residential
230 facility which includes construction fixtures designed to
231 physically restrict the movements and activities of juveniles
232 or other individuals held in lawful custody in such facility.

233 “Staff secure facility” means any public or private
234 residential facility characterized by staff restrictions of the
235 movements and activities of individuals held in lawful
236 custody in such facility, and which limits its residents’
237 access to the surrounding community, but is not
238 characterized by construction fixtures designed to
239 physically restrict the movements and activities of residents.

240 “Standardized screener” means a brief, validated
241 nondiagnostic inventory or questionnaire designed to
242 identify juveniles in need of further assessment for medical,
243 substance abuse, emotional, psychological, behavioral, or
244 educational issues, or other conditions.

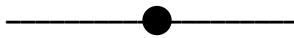
245 “State family support council” means the council
246 established by the Department of Health and Human
247 Resources pursuant to §49-2-601 *et seq.* of this code to carry
248 out the responsibilities specified in §49-2-1 *et seq.* of this
249 code.

250 “Time-limited reunification services” means individual,
251 group, and family counseling, inpatient, residential, or

252 outpatient substance abuse treatment services, mental health
253 services, assistance to address domestic violence, services
254 designed to provide temporary child care, and therapeutic
255 services for families, including crisis nurseries and
256 transportation to or from those services, provided during 15
257 of the most recent 22 months a child or juvenile has been in
258 foster care, as determined by the earlier date of the first
259 judicial finding that the child is subjected to abuse or
260 neglect, or the date which is 60 days after the child or
261 juvenile is removed from home.

262 “Technical violation” means an act that violates the
263 terms or conditions of probation or a court order that does
264 not constitute a new delinquent offense.

265 “Truancy diversion specialist” means a school-based
266 probation officer or truancy social worker within a school
267 or schools who, among other responsibilities, identifies
268 truants and the causes of the truant behavior, and assists in
269 developing a plan to reduce the truant behavior prior to court
270 involvement.



CHAPTER 35

**(Com. Sub. for S. B. 443 - By Senators Arvon,
Azinger, Cline, Gaunch, Maynard, Rucker and
Smith)**

[Passed March 10, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §49-4-605 of the Code of West Virginia, 1931, as amended, relating to requiring the department to file a petition to terminate parental rights when parents voluntarily fail to have contact or attempt to have

contact with the child for a period of 18 consecutive months;
and creating exceptions thereto.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

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

1 (a) Except as provided in §49-4-605(b) of this code, the
2 department shall file or join in a petition or otherwise seek a
3 ruling in any pending proceeding to terminate parental rights:

4 (1) If a child has been in foster care for 15 of the most
5 recent 22 months as determined by the earlier of the date of
6 the first judicial finding that the child is subjected to abuse
7 or neglect or the date which is 60 days after the child is
8 removed from the home;

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

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

26 (4) If a parent whose child has been removed from the
27 parent's care, custody, and control by an order of removal

28 voluntarily fails to have contact or attempt to have contact
29 with the child for a period of 18 consecutive months:
30 *Provided*, That failure to have, or attempt to have, contact
31 due to being incarcerated, being in a medical or drug
32 treatment or recovery facility, or being on active military
33 duty shall not be considered voluntary behavior.

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

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

38 (2) The department has documented in the case plan
39 made available for court review a compelling reason,
40 including, but not limited to, the child's age and preference
41 regarding termination or the child's placement in custody of
42 the department based on any proceedings initiated under
43 part seven of this article, that filing the petition would not
44 be in the best interests of the child; or

45 (3) The department has not provided, when reasonable
46 efforts to return a child to the family are required, the
47 services to the child's family as the department deems
48 necessary for the safe return of the child to the home.



CHAPTER 36

**(Com. Sub. for S. B. 465 - By Senators Trump, Boso,
Ferns, Baldwin and Cline)**

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §49-2-803 of the Code of West
Virginia, 1931, as amended, relating generally to mandated

reporting of child abuse and neglect; clarifying that sexual abuse and sexual assault constitute abuse of a child for reporting purposes; reducing the time period in which a mandated reporter is required to report suspected abuse or neglect; requiring mandated reporters to directly report known or suspected abuse or neglect; eliminating certain broad reporting requirements applicable to any person over the age of 18; clarifying that minors are not mandated reporters; eliminating certain exceptions to the reporting time limit; eliminating particularized reporting requirements for education employees; and eliminating provisions pertaining to conduct involving students or students and school personnel.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.

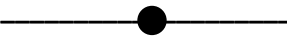
1 (a) Any medical, dental, or mental health professional,
2 Christian Science practitioner, religious healer, school
3 teacher or other school personnel, social service worker,
4 child care or foster care worker, emergency medical
5 services personnel, peace officer or law-enforcement
6 official, humane officer, member of the clergy, circuit court
7 judge, family court judge, employee of the Division of
8 Juvenile Services, magistrate, youth camp administrator or
9 counselor, employee, coach or volunteer of an entity that
10 provides organized activities for children, or commercial
11 film or photographic print processor who has reasonable
12 cause to suspect that a child is neglected or abused,
13 including sexual abuse or sexual assault, or observes the
14 child being subjected to conditions that are likely to result
15 in abuse or neglect shall immediately, and not more than 24
16 hours after suspecting this abuse or neglect, report the
17 circumstances to the Department of Health and Human
18 Resources. In any case where the reporter believes that the
19 child suffered serious physical abuse or sexual abuse or
20 sexual assault, the reporter shall also immediately report to

21 the State Police and any law-enforcement agency having
22 jurisdiction to investigate the complaint. Any person
23 required to report under this article who is a member of the
24 staff or volunteer of a public or private institution, school,
25 entity that provides organized activities for children,
26 facility, or agency shall also immediately notify the person
27 in charge of the institution, school, entity that provides
28 organized activities for children, facility, or agency, or a
29 designated agent thereof, who may supplement the report or
30 cause an additional report to be made: *Provided*, That
31 notifying a person in charge, supervisor, or superior does
32 not exempt a person from his or her mandate to report
33 suspected abuse or neglect.

34 (b) County boards of education and private school
35 administrators shall provide all employees with a written
36 statement setting forth the requirements contained in this
37 section and shall obtain and preserve a signed
38 acknowledgment from school employees that they have
39 received and understand the reporting requirement.

40 (c) Nothing in this article is intended to prevent
41 individuals from reporting suspected abuse or neglect on
42 their own behalf. In addition to those persons and officials
43 specifically required to report situations involving
44 suspected abuse or neglect of children, any other person
45 may make a report if that person has reasonable cause to
46 suspect that a child has been abused or neglected in a home
47 or institution or observes the child being subjected to
48 conditions or circumstances that would reasonably result in
49 abuse or neglect.

50 (d) The provisions of this section are not applicable to
51 persons under the age of 18.



CHAPTER 37

**(Com. Sub. for H. B. 4020 - By Delegates Hanshaw
and Foster)**

[By Request of the West Virginia Supreme Court of Appeals]

[Passed February 8, 2018; in effect ninety days from passage.]

[Approved by the Governor on February 20, 2018.]

AN ACT to amend and reenact §7-4-4 and §7-4-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-7-2 of said code; to amend and reenact §7-10-2 of said code; to amend and reenact §15-11-2 of said code; to amend and reenact §15-2-15 of said code; to amend and reenact §15-2C-1 of said code; to amend and reenact §15-9-3 of said code; to amend and reenact §15-11-2 of said code; to amend and reenact §16-2F-2 of said code; to amend and reenact §16-3C-1 of said code; to amend and reenact §16-9A-3 of said code; to amend and reenact §16-30-3 of said code; to amend and reenact §16-47-5 of said code; to amend and reenact §17C-5-6a of said code; to amend and reenact §18-5-15c of said code; to amend and reenact §18-8-6a of said code; to amend and reenact §18A-5-1d of said code; to amend and reenact §28-1-2 of said code; to amend and reenact §29-21-16 of said code; to amend and reenact §31-20-2 of said code; to amend and reenact §33-4-20 of said code; to amend and reenact §48-9-205 and §48-9-301a of said code; to amend and reenact §48-22-301 of said code; to amend and reenact §48-26-701 and §48-26-1002 of said code; to amend and reenact §48-27-403 of said code; to amend and reenact §49-1-201 of said code; to amend and reenact §51-2A-2 of said code; to amend and reenact §51-7-8 of said code; to amend and reenact §61-2-14h of said code; to amend and reenact §61-5-12b of said code; to amend and reenact §61-6-25 of said code; to amend and reenact §61-7-8 of said code; to amend and reenact §61-8-12 of said code; to amend and reenact §61-8B-11a of said code;

to amend and reenact §61-8C-3b of said code; to amend and reenact §61-8D-9 of said code; to amend and reenact §61-11-23 of said code; to amend and reenact §61-12-10 of said code; and to amend and reenact §62-6B-5, all relating to clarifying and making technical corrections in the code when referencing chapter 49 of this code due to 2015 revisions to chapter 49 of said code; and defining terms.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.

1 The prosecutor's advisory council composed of elected
2 prosecuting attorneys of each county of the state or a
3 designated member of their staff is continued. The
4 prosecutor's advisory council shall meet not less than one
5 time each year. Annually, the council shall elect from
6 among its membership a chairman of the council who shall
7 set the agenda for the council's meetings and shall appoint
8 necessary committees and direct the work of the council in
9 carrying out its duties under the provisions of this section.

10 The council shall provide advice, assistance, training,
11 and leadership to the offices of the various county
12 prosecuting attorneys of this state in criminal and civil cases
13 which involve child abuse or neglect or sexual assault or
14 sexual abuse of children. The council shall also provide
15 advice and assistance to the secretary of the Department of
16 Health and Human Resources in the implementation of a
17 multidisciplinary planning process as set forth in §49-4-401
18 through §49-4-413 of this code.

19 The council may seek funds and programs to provide
20 each prosecuting attorney's office with a staff person to
21 assist children who are crime victims to obtain services and

22 assistance from other agencies and programs in the
23 community. Prosecuting attorneys shall be reimbursed by
24 their respective county commissions for necessary expenses
25 actually incurred when attending meetings of the council.

26 The council may apply for and receive funds from any
27 grant program of any agency or institution in the United
28 States, public or private, to be used for carrying out the
29 purposes of this section.

§7-4-5. Multidisciplinary investigative teams.

1 The prosecuting attorney of each county in the state
2 shall maintain a multidisciplinary investigative team, in
3 accordance with the provisions of §49-4-402 of this code.

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of 200,000.

1 (a) There are hereby established county in-service
2 training programs as hereinafter set forth.

3 (b) The Attorney General may establish any in-service
4 training programs that will do most to assist the prosecuting
5 attorneys in the performance of their duties. The Attorney
6 General is authorized to accept any federal aid which may
7 be made available or any financial assistance which may be
8 available from any private nonprofit organization for the
9 purposes of this section. The prosecuting attorney in any
10 county having a population in excess of 200,000 shall also
11 discharge the additional duties imposed upon him or her by
12 the provisions of §49-4-503 of this code.

13 (c) The State Auditor may establish any in-service
14 training programs for county commissioners, county clerks,
15 sheriffs, and their assistants and employees that will do most
16 to modernize and improve the services of their respective

17 offices. The State Auditor in conjunction with the West
18 Virginia Supreme Court of Appeals shall establish in-
19 service training programs for circuit clerks and their
20 assistants and employees. The State Tax Commissioner is
21 authorized and directed to establish such in-service training
22 programs for assessors and their assistants and employees.
23 The State Tax Commissioner, State Auditor, and the West
24 Virginia Supreme Court of Appeals are authorized to accept
25 any federal aid which may be made available or any
26 financial assistance which may be available from any
27 private nonprofit organization for the purpose of this article.

28 (d) Each of the county officials mentioned in this
29 section, and, at his or her option, one or more of his or her
30 assistants, deputies, and employees, shall participate in the
31 programs established under this section.

32 (e) The county commission shall reimburse officials and
33 employees for the actual amount expended by them for
34 food, lodging, and registration while in attendance at
35 authorized training for the purpose of this section.

ARTICLE 10. HUMANE OFFICERS.

§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.

1 (a) Humane officers shall prevent the perpetration or
2 continuance of any act of cruelty upon any animal and
3 investigate and, upon probable cause, cause the arrest and
4 assist in the prosecution of any person engaging in such
5 cruel and forbidden practices. Upon reasonable cause, and,
6 as provided by law, such officers have the right to access
7 and inspect records and property reasonably necessary to
8 any investigation.

9 (b) Whenever a humane officer, pursuant to an
10 investigation of animal cruelty, forms a reasonable
11 suspicion that a minor child, or incapacitated or elderly

12 person, is the victim of abuse or neglect or has a suspicion
13 of domestic violence, he or she shall report the suspicion
14 and the grounds for the suspicion. In the event of suspected
15 child abuse or neglect, the humane officer shall report to the
16 local child protective services agency of the Department of
17 Health and Human Resources in accordance with the
18 provisions of §49-2-809 of this code. In the event of
19 suspected abuse or neglect of an incapacitated or elderly
20 person, he or she shall report to the department's local adult
21 protective services agency in accordance with the
22 provisions of §9-6-11 of this code. In the event of suspected
23 domestic violence, he or she shall report to the State Police
24 in accordance with the provisions of §48-27-101 *et seq.* of
25 this code.

26 (c) Any person who interferes with, obstructs or resists
27 any humane officer in the discharge of his or her duty is
28 guilty of a misdemeanor and, upon conviction thereof, shall
29 be fined not less than \$100 nor more than \$500 or confined
30 in jail not more than 30 days, or both fined and confined.
31 Any penalties imposed for a violation of this subsection
32 shall be imposed in addition to any penalties the person
33 incurs for cruel or inhumane treatment of any animal.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 11. THE CHILD PROTECTION ACT OF 2006.

§15-11-2. Legislative findings.

1 (a) The purpose of "The Child Protection Act of 2006"
2 is to put in place a series of programs, criminal law
3 revisions, and other reforms to provide and promote the
4 ability of the children of this state to live their lives without
5 being exposed and subjected to neglect and physical and
6 sexual abuse. The targeted increases in terms of
7 incarceration, enhanced treatment, post-release supervision,
8 and new approaches toward the state's child protection
9 system will, in the aggregate, strengthen government's
10 ability to address this most serious problem. The Legislature

11 finds that the broad reaching measures encompassed in this
12 Act will provide for greater intervention among and
13 punishment and monitoring of individuals who create a risk
14 to our children’s safety and well-being.

15 (b) The Legislature further finds that the following
16 reforms implemented as part of this Act will provide
17 protections to the children of this state and are all important
18 to eliminate risks to children and are essential elements of
19 “The Child Protection Act of 2006”:

20 (1) Creating a special unit in the State Police
21 specializing in the investigation of child abuse and neglect
22 — §15-2-15 of this code;

23 (2) Modifying the Sex Offender Registration Act to
24 ensure more effective registration, identification, and
25 monitoring of persons convicted of sexual offenses — §15-
26 12-1 *et seq.* of this code;

27 (3) Establishing the Child Abuse and Neglect Registry,
28 requiring the registry to disclose information to certain state
29 and local officials — §15-13-1 *et seq.* of this code;

30 (4) Providing for coded driver’s licenses and nondriver
31 identification cards to more easily identify sexually violent
32 predators — §17B-2-3 of this code;

33 (5) Prohibiting contractors and service providers
34 convicted of certain offenses from accessing school grounds
35 and providing for the release of criminal history information
36 by the central abuse registry to county school boards — §18-
37 5-15c of this code;

38 (6) Establishing a task force to study the feasibility of
39 constructing separate correctional facilities for the
40 incarceration and treatment of sex offenders — §25-1-22 of
41 this code;

42 (7) Requiring the State Police and the Department of
43 Health and Human Resources to maintain statewide child

44 abuse and neglect statistical indices of all convictions and
45 allegations, respectively — §15-2-15 and §49-2-813 of this
46 code;

47 (8) Providing for increased terms of incarceration for
48 first degree sexual assault and first degree sexual abuse
49 committed against children under the age of 12 — §61-8B-
50 3 and §61-8B-7 of this code;

51 (9) Eliminating eligibility of certain sex offenders for
52 probation, home incarceration, and alternative sentences
53 and providing for enhanced terms of incarceration for
54 certain subsequent sex offenses committed by recidivist sex
55 offenders — §61-8B-9a and §61-8B-9b of this code;

56 (10) Providing for polygraph examinations for certain
57 sex offenders on probation, parole, or supervised release —
58 §62-11D-1 *et seq.* of this code;

59 (11) Providing for electronic monitoring of certain sex
60 offenders on probation, parole, and supervised release —
61 §62-11D-1 *et seq.* of this code;

62 (12) Establishing a task force to develop measures
63 aimed at managing sexually violent predators released from
64 confinement — §62-11E-1 *et seq.* of this code;

65 (13) Making psychiatric evaluations a condition of
66 probation eligibility for certain sex offenders (- §62-12-2 of
67 this code;

68 (14) Authorizing the Department of Health and Human
69 Resources to establish qualifications for sex offender
70 treatment programs and counselors — §62-12-2 and §62-
71 12-26 of this code;

72 (15) Providing for extended supervision of certain
73 offenders and supervised release requirements for sexually
74 violent offenders — §62-12-26 of this code; and

75 (16) Providing for prerelease risk assessments of certain
76 sex offenders — §62-12-27 of this code.

77 (c) In addition, the Legislature finds that those enhanced
78 terms of incarceration and post-conviction measures
79 provided for in this Act which impact certain offenders
80 convicted of sexual offenses against adults are necessary
81 and appropriate to protect children from neglect and
82 physical and sexual abuse given that: (1) Clinical research
83 indicates that a substantial percentage of sexual offenders
84 “cross over” among age groups in selecting their victims;
85 (2) many of the risk factors prevalent among sex offenders
86 that “cross over” (e.g., substance abuse, lack of empathy
87 toward victim, inability to control inappropriate impulses,
88 childhood abuse) also are prevalent among perpetrators of
89 child abuse and neglect; and (3) enhanced terms of
90 incarceration, post-conviction supervision, monitoring,
91 and treatment measures will enable the criminal justice
92 system to identify and address those “cross over” offenders
93 before they can victimize additional children.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-15. State Police Child Abuse and Neglect Investigations Unit.

1 (a) The superintendent shall maintain a special unit of
2 the State Police called the Child Abuse and Neglect
3 Investigations Unit. The purpose of the unit is to focus on
4 identifying, investigating, and prosecuting criminal child
5 abuse and neglect cases, in coordination with Child
6 Protective Services, established pursuant to §49-2-802 of
7 this code. The unit shall assist other State Police members
8 with child abuse or neglect investigations as well as the
9 Division of Child Protective Services. The unit may provide
10 training, technical expertise, and coordination of services
11 for other law-enforcement agencies, Child Protective
12 Services caseworkers, prosecuting attorneys, and
13 multidisciplinary teams established pursuant to the
14 provisions of §49-4-402 of this code, to identify,

15 investigate, report, and prosecute criminal child abuse and
16 criminal child neglect cases. However, nothing in this
17 section may be construed to mean that the unit will assume
18 the duties or investigations of other State Police members or
19 other law-enforcement officers.

20 (b) The unit shall consist, at a minimum, six members
21 of the State Police. The superintendent shall assign a unit
22 director and five regional members, to be dedicated and
23 trained to assist county Child Protective Services Offices
24 and caseworkers in investigating and coordinating with
25 other law-enforcement personnel, cases of suspected child
26 abuse or neglect. Cases to be investigated include
27 allegations received pursuant to §49-2-803 of this code, and
28 any other credible child abuse or neglect allegations.

29 (c) The unit director's duties include:

30 (1) Overseeing State Police members assigned to the
31 unit;

32 (2) Coordinating activities of the unit with Child
33 Protection Services;

34 (3) Assisting Child Protective Services in developing
35 and refining protocols for improving identification and
36 prosecution of suspected criminal acts of child abuse or
37 neglect; and

38 (4) Assuring that all other directives and responsibilities
39 of the unit are fulfilled.

40 (d) The unit shall maintain a statewide statistical index
41 on child abuse and neglect convictions resulting from
42 convictions for violations of §61-8D-2, §61-8D-2a, §61-
43 8D-3, §61-8D-3a, §61-8D-4 and §61-8D-4a of this code, to
44 monitor the timely and proper investigation and disposition
45 of child abuse or neglect cases. The statistical data index
46 maintained by the unit shall not contain information of a
47 specific nature that would identify individual cases or
48 persons.

49 (e) On or before December 31, of each year, the unit
50 director shall submit an annual report to the Joint
51 Committee on Government and Finance. The annual report
52 is to include the statistical index required under the
53 provisions of subsection (d) of this section, and may include
54 recommendations for statutory or program reforms that will
55 assist the unit and further promote the goals of the unit. The
56 report may not contain information of a specific nature that
57 would identify individual cases or persons.

58 (f) Every state law-enforcement agency of this state
59 shall periodically provide statistical information regarding
60 child abuse and neglect cases investigated and prosecuted
61 by that law-enforcement agency to the unit.

62 (g) The superintendent may propose rules for legislative
63 approval or procedural rules as necessary to effectuate the
64 provisions of this section in accordance with the provisions
65 of §29A-3-1 *et seq.* of this code. The superintendent shall
66 provide forms to law-enforcement agencies, circuit clerks,
67 and parole officers to facilitate submission of appropriate
68 information necessary to prepare the statistical reports
69 required by this section.

70 (h) There is continued a special account in the state
71 Treasury, into which shall be deposited any gifts, grants or
72 donations made to the unit, and any other funds directed to
73 be deposited into the account by appropriation of the
74 Legislature, and to be expended for the purposes of this
75 section pursuant to appropriation of the Legislature.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

1 The following terms when used in this article have
2 meanings ascribed to them in this section, except in those
3 instances where the context clearly indicates a different
4 meaning:

5 (a) “Central abuse registry” or “registry” means the
6 registry created by this article which contains the names of
7 individuals who have been convicted of a felony or a
8 misdemeanor offense constituting abuse, neglect, or
9 misappropriation of the property of a child or an
10 incapacitated adult or an adult receiving behavioral health
11 services.

12 (b) “Child abuse and neglect” or “child abuse or
13 neglect” means those terms as defined in §49-1-201 of this
14 code, and shall include any act with respect to a child which
15 is a crime against the person pursuant to §61-2-1 *et seq.* of
16 this code, any act which is unlawful pursuant to §61-8D-1
17 *et seq.*, of this code and any offense with respect to a child
18 which is enumerated in §15-2C-3 of this code.

19 (c) “Abuse or neglect of an incapacitated adult” means
20 “abuse,” “neglect,” and “incapacitated adult” as those terms
21 are defined in §9-6-1 of this code, and shall include any act
22 with respect to an incapacitated adult which is a crime
23 against the person pursuant to §61-2-1 *et seq.* of this code,
24 and any offense with respect to an incapacitated adult which
25 is enumerated in §15-2C-3 of this code.

26 (d) “Adult receiving behavioral health services” means
27 a person over the age of 18 years who is receiving any
28 behavioral health service from a licensed behavioral health
29 provider or any behavioral health provider whose services
30 are paid for, in whole or in part, by Medicaid or Medicare.

31 (e) “Conviction” of a felony or a misdemeanor means
32 an adjudication of guilt by a court or jury following a
33 hearing on the merits, or entry of a plea of guilty or *nolo*
34 *contendere*.

35 (f) “Residential care facility” means any facility where
36 a child or an incapacitated adult or an adult receiving
37 behavioral health services resides which is subject to
38 registration, licensure, or certification by the Department of
39 Health and Human Resources, and includes nursing homes,

40 personal care homes, residential board and care homes,
41 adult family care homes, group homes, legally unlicensed
42 service providers, residential child care facilities, family
43 based foster care homes, specialized family care homes, and
44 intermediate care facilities for the mentally retarded.

45 (g) “Misappropriation of property” means any act which
46 is a crime against property under §61-3-1 *et seq.* of this code
47 with respect to a child in a residential care facility or an
48 incapacitated adult or an adult receiving behavioral health
49 services in a residential care facility or a child or an
50 incapacitated adult or an adult receiving behavioral health
51 services who is a recipient of home care services.

52 (h) “Home care” or “home care services” means
53 services provided to children or incapacitated adults or
54 adults receiving behavioral health services in the home
55 through a hospice provider, a community care provider, a
56 home health agency, through the Medicaid waiver program,
57 or through any person when that service is reimbursable
58 under the state Medicaid program.

59 (i) “Requester” means the West Virginia Department of
60 Education, any residential care facility, any state licensed
61 day care center, any qualified entity as defined in this
62 section, or any provider of home care services or an adult
63 receiving behavioral health services, providing to the
64 Central Abuse Registry the name of an individual and other
65 information necessary to identify that individual, and either:
66 (1) Certifying that the individual is being considered for
67 employment or service as a volunteer by the requester or for
68 a contractual relationship with the requester where the
69 individual will provide services to a child or an
70 incapacitated adult or an adult receiving behavioral health
71 services for compensation; or contractors and vendors who
72 have or may have unsupervised access to the child, disabled,
73 or elderly person for whom the qualified entity provides
74 care; or (2) certifying that an allegation of abuse, neglect, or
75 misappropriation of property has been made against the
76 individual.

77 (j) "Qualified entity" means any business, agency, or
78 organization that provides care, treatment, education,
79 training, instruction, supervision, or recreation for children,
80 the elderly, or individuals with disabilities and is a public,
81 private, or not-for-profit entity within the State of West
82 Virginia and meets the definition of qualified entity under
83 the federal National Child Protection Act of 1993; P.L. 103-
84 209 as amended by the Volunteers for Children Act; P.L.
85 105-251.

ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.

1 The Governor's Committee on Crime, Delinquency and
2 Correction or its designee shall ascertain the compliance of
3 juvenile detention and juvenile correctional facilities
4 operated by or under contract with the Division of Juvenile
5 Services, created pursuant to §49-2-902 of this code, with
6 standards for the structure, physical plant, operation, and
7 maintenance of the facilities, promulgated by the juvenile
8 facility standards commission, pursuant to §31-20-9a of this
9 code: *Provided*, That the review shall not include
10 educational programs in the facilities.

ARTICLE 11. PAYMENT OF FUNERAL EXPENSES.

§15-11-2. Payment of funeral expenses of law-enforcement, safety, and emergency workers killed in the line of duty.

1 (a) The Secretary of Military Affairs and Public Safety
2 shall, upon written request, direct payment from the fund in
3 the form of a draft as provided in this article up to and
4 including an amount not exceeding \$8,000 for the
5 reasonable funeral expenses, including burial expenses, of a
6 law-enforcement, safety, or emergency worker killed on or
7 after January 1, 1999, while carrying out official duties:
8 *Provided*, That funds shall not be expended for any funeral
9 expense that is otherwise payable pursuant to the provisions

10 of §23-4-1 *et seq.* of this code, as amended, or other benefit
11 programs established by a provision of this code which does
12 not involve employee participation: *Provided, however,*
13 That where other funds for funeral expenses are provided
14 pursuant to the laws of this state, from whatever source,
15 which amount to less than \$8,000, funds provided by the
16 provisions of this section shall be expended so as to ensure
17 that at least \$8,000 is available for reasonable funeral
18 expenses. The secretary shall direct payment of the funeral
19 expenses upon written request of an employer or head of a
20 volunteer organization, as is appropriate pursuant to this
21 article, certifying that the individual for whom funeral
22 expenses are requested was killed while performing official
23 duties.

24 (b) The secretary shall supply the draft in the name of
25 the person contracting for the funeral services and, if
26 known, the service provider to the employer or agency head
27 making the request who shall tender the draft to the person
28 who contracted for the services.

29 (c) For the purposes of this section, “law-enforcement,
30 safety, or emergency worker” means:

31 (1) Any duly authorized member of a law-enforcement
32 agency who is authorized to maintain public peace and
33 order, prevent and detect crime, make arrests, and enforce
34 the laws of the state or any county or municipality of the
35 state, other than parking ordinances, and including those
36 persons employed as security officers at municipal, county,
37 regional, or state offices, authorities or institutions, although
38 their employers may not be public law-enforcement
39 agencies, employed by the Hatfield-McCoy Regional
40 Recreation Authority, and members of the West Virginia
41 National Guard while engaged in active duty service:
42 *Provided,* That this section does not apply to those persons
43 employed by private security firms or agencies;

44 (2) Any state, regional, county, or municipal
45 correctional employee;

46 (3) Any firefighter employed by the state or any political
47 subdivision of the state and any volunteer firefighter
48 performing as a member of a volunteer fire department;

49 (4) Any “emergency medical services personnel”, as
50 defined in §16-4C-3 of this code, employed by or
51 volunteering for any state agency or institution or political
52 subdivision of the state; or

53 (5) Any probation officer appointed under the
54 provisions of either §62-12-5 or §49-4-719 of this code.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§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
11 accepted contraceptive devices, instruments, medicines or
12 drugs for a female who is not known to be pregnant and for
13 whom the contraceptive devices, instruments, medicines or
14 drugs were prescribed by a physician solely for
15 contraceptive purposes and not for the purpose of inducing
16 or causing the termination of a known pregnancy.

17 (2) “Medical emergency” means the same as that term
18 is defined in §16-2M-2 of this code.

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 18 years of age who is not, or has not been, married, who is
23 under the care, custody, and control of the person's parent
24 or parents, guardian, or court of competent jurisdiction
25 pursuant to applicable federal law or as provided in §49-4-
26 115 of this code.

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.

1 When used in this article:

2 (a) "AIDS" means acquired immunodeficiency
3 syndrome.

4 (b) "Bureau" means the Bureau for Public Health.

5 (c) "Commissioner" means the commissioner of the
6 Bureau for Public Health.

7 (d) "Convicted" includes pleas of guilty and pleas of
8 nolo contendere accepted by the court having jurisdiction of
9 the criminal prosecution, a finding of guilty following a jury
10 trial, or a trial to a court and an adjudicated juvenile offender
11 as defined in §49-1-202 of this code.

12 (e) "Department" means the State Department of Health
13 and Human Resources.

14 (f) "Funeral director" has the same meaning ascribed to
15 that term in §30-6-3 of this code.

16 (g) "Funeral establishment" has the same meaning
17 ascribed to that term in §30-6-3 of this code.

18 (h) "HIV" means the human immunodeficiency virus
19 identified as the causative agent of AIDS.

20 (i) "HIV-related test" means a test for the HIV antibody
21 or antigen or any future valid test approved by the bureau,
22 the federal drug administration, or the Centers for Disease
23 Control and Prevention.

24 (j) "Health facility" means a hospital, nursing home,
25 physician's office, clinic, blood bank, blood center, sperm
26 bank, laboratory, or other health care institution.

27 (k) "Health care provider" means any physician, dentist,
28 nurse, paramedic, psychologist, or other person providing
29 medical, dental, nursing, psychological, or other health care
30 services of any kind.

31 (l) "Health Information Exchange" means the electronic
32 movement of health-related information in accord with law
33 and nationally recognized standards.

34 (m) "High risk behavior" means behavior by a person
35 including, but not limited to: (i) Unprotected sex with a
36 person who is living with HIV; (ii) unprotected sex in
37 exchange for money or drugs; (iii) unprotected sex with
38 multiple partners; (iv) anonymous unprotected sex; (v) or
39 needle sharing; (vi) diagnosis of a sexually transmitted
40 disease; or (vii) unprotected sex or sharing injecting
41 equipment in a high HIV prevalence setting or with a person
42 who is living with HIV.

43 (n) "Medical or emergency responders" means paid or
44 volunteer firefighters, law-enforcement officers, emergency
45 medical technicians, paramedics, or other emergency
46 service personnel, providers, or entities acting within the
47 usual course of their duties; good samaritans and other
48 nonmedical and nonemergency personnel providing
49 assistance in emergencies; funeral directors; health care
50 providers; the commissioner of the Bureau for Public
51 Health; and all of their employees and volunteers.

52 (o) "Patient" or "test subject" or "subject of the test"
53 means the person upon whom an HIV test is performed, or

54 the person who has legal authority to make health care
55 decisions for the test subject.

56 (p) “Permitted purpose” is a disclosure permitted by the
57 Health Insurance Portability and Accountability Act of 1996
58 as amended, or a disclosure consented to or authorized by a
59 patient or test subject.

60 (q) “Person” includes any natural person, partnership,
61 association, joint venture, trust, public or private
62 corporation, or health facility.

63 (r) “Release of test results” means a permitted or
64 authorized disclosure of HIV-related test results.

65 (s) “Significant exposure” means:

66 (1) Exposure to blood or body fluids through
67 needlestick, instruments, sharps, surgery, or traumatic
68 events;

69 (2) Exposure of mucous membranes to visible blood or
70 body fluids, to which universal precautions apply according
71 to the national Centers for Disease Control and Prevention,
72 and laboratory specimens that contain HIV (e.g.
73 suspensions of concentrated virus); or

74 (3) Exposure of skin to visible blood or body fluids,
75 when the exposed skin is chapped, abraded, or afflicted with
76 dermatitis or the contact is prolonged or involving an
77 extensive area.

78 (t) “Source patient” means any person whose body
79 fluids have been the source of a significant exposure to a
80 medical or emergency responder.

81 (u) “Targeted testing” means performing an HIV-
82 related test for sub-populations at higher risk, typically
83 defined on the basis of behavior, clinical, or demographic
84 characteristics.

85 (v) "Victim" means the person or persons to whom
86 transmission of bodily fluids from the perpetrator of the
87 crimes of sexual abuse, sexual assault, incest, or sexual
88 molestation occurred or was likely to have occurred in the
89 commission of such crimes.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-3. Use or possession of tobacco or tobacco products, alternative nicotine products or vapor products by persons under the age of 18 years; penalties.

1 A person under the age of 18 years shall not have on or
2 about his or her person or premises or use any cigarette, or
3 cigarette paper, or any other paper prepared, manufactured
4 or made for the purpose of smoking any tobacco products,
5 in any form; any pipe, snuff, chewing tobacco, tobacco
6 product, or tobacco-derived product: *Provided*, That minors
7 participating in the inspection of locations where tobacco
8 products or tobacco-derived products are sold or distributed
9 pursuant to §16-9A-7 of this code is not considered to
10 violate the provisions of this section. Any person violating
11 the provisions of this section shall for the first violation be
12 fined \$50 and be required to serve eight hours of community
13 service; for a second violation, the person shall be fined
14 \$100 and be required to serve 16 hours of community
15 service; and for a third and each subsequent violation, the
16 person shall be fined \$200 and be required to serve 24 hours
17 of community service. Notwithstanding the provisions of
18 §49-4-701 of this code, the magistrate court has concurrent
19 jurisdiction.

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-3. Definitions.

1 For the purposes of this article:

2 (a) "Actual knowledge" means the possession of
3 information of the person's wishes communicated to the

4 health care provider orally or in writing by the person, the
5 person's medical power of attorney representative, the
6 person's health care surrogate, or other individuals resulting
7 in the health care provider's personal cognizance of these
8 wishes. Constructive notice and other forms of imputed
9 knowledge are not actual knowledge.

10 (b) "Adult" means a person who is 18 years of age or
11 older, an emancipated minor who has been established as
12 such pursuant to the provisions of §49-4-115 of this code,
13 or a mature minor.

14 (c) "Advanced nurse practitioner" means a registered
15 nurse with substantial theoretical knowledge in a
16 specialized area of nursing practice and proficient clinical
17 utilization of the knowledge in implementing the nursing
18 process, and who has met the further requirements of the
19 West Virginia Board of Examiners for registered
20 professional nurses rule, advanced practice registered
21 nurse, 19CSR 7, who has a mutually agreed upon association
22 in writing with a physician, and has been selected by or
23 assigned to the person and has primary responsibility for
24 treatment and care of the person.

25 (d) "Attending physician" means the physician selected
26 by or assigned to the person who has primary responsibility
27 for treatment and care of the person and who is a licensed
28 physician. If more than one physician shares that
29 responsibility, any of those physicians may act as the
30 attending physician under this article.

31 (e) "Capable adult" means an adult who is physically
32 and mentally capable of making health care decisions and
33 who is not considered a protected person pursuant to the
34 provisions of chapter 44A of this code.

35 (f) "Close friend" means any adult who has exhibited
36 significant care and concern for an incapacitated person
37 who is willing and able to become involved in the
38 incapacitated person's health care and who has maintained

39 regular contact with the incapacitated person so as to be
40 familiar with his or her activities, health, and religious and
41 moral beliefs.

42 (g) “Death” means a finding made in accordance with
43 accepted medical standards of either: (1) The irreversible
44 cessation of circulatory and respiratory functions; or (2) the
45 irreversible cessation of all functions of the entire brain,
46 including the brain stem.

47 (h) “Guardian” means a person appointed by a court
48 pursuant to the provisions of chapter 44A of this code who
49 is responsible for the personal affairs of a protected person
50 and includes a limited guardian or a temporary guardian.

51 (i) “Health care decision” means a decision to give,
52 withhold, or withdraw informed consent to any type of
53 health care, including, but not limited to, medical and
54 surgical treatments, including life-prolonging interventions,
55 psychiatric treatment, nursing care, hospitalization,
56 treatment in a nursing home or other facility, home health
57 care, and organ or tissue donation.

58 (j) “Health care facility” means a facility commonly
59 known by a wide variety of titles, including, but not limited
60 to, hospital, psychiatric hospital, medical center,
61 ambulatory health care facility, physicians’ office and
62 clinic, extended care facility operated in connection with a
63 hospital, nursing home, a hospital extended care facility
64 operated in connection with a rehabilitation center, hospice,
65 home health care, and other facility established to
66 administer health care in its ordinary course of business or
67 practice.

68 (k) “Health care provider” means any licensed
69 physician, dentist, nurse, physician’s assistant, paramedic,
70 psychologist, or other person providing medical, dental,
71 nursing, psychological or other health care services of any
72 kind.

73 (l) “Incapacity” means the inability because of physical
74 or mental impairment to appreciate the nature and
75 implications of a health care decision, to make an informed
76 choice regarding the alternatives presented, and to
77 communicate that choice in an unambiguous manner.

78 (m) “Life-prolonging intervention” means any medical
79 procedure or intervention that, when applied to a person,
80 would serve to artificially prolong the dying process or to
81 maintain the person in a persistent vegetative state. Life-
82 prolonging intervention includes, among other things,
83 nutrition and hydration administered intravenously or
84 through a feeding tube. The term “life-prolonging
85 intervention” does not include the administration of
86 medication or the performance of any other medical
87 procedure considered necessary to provide comfort or to
88 alleviate pain.

89 (n) “Living will” means a written, witnessed advance
90 directive governing the withholding or withdrawing of life-
91 prolonging intervention, voluntarily executed by a person in
92 accordance with the requirements of §16-30-4 of this code.

93 (o) “Mature minor” means a person, less than 18 years
94 of age, who has been determined by a qualified physician, a
95 qualified psychologist, or an advanced nurse practitioner to
96 have the capacity to make health care decisions.

97 (p) “Medical information” or “medical records” means
98 and includes without restriction any information recorded in
99 any form of medium that is created or received by a health
100 care provider, health care facility, health plan, public health
101 authority, employer, life insurer, school, or university or
102 health care clearinghouse that relates to the past, present or
103 future physical or mental health of the person, the provision
104 of health care to the person, or the past, present, or future
105 payment for the provision of health care to the person.

106 (q) “Medical power of attorney representative” or
107 “representative” means a person, 18 years of age or older,

108 appointed by another person to make health care decisions
109 pursuant to the provisions of §16-30-6 of this code or similar
110 act of another state and recognized as valid under the laws
111 of this state.

112 (r) “Parent” means a person who is another person’s
113 natural or adoptive mother or father or who has been granted
114 parental rights by valid court order and whose parental
115 rights have not been terminated by a court of law.

116 (s) “Persistent vegetative state” means an irreversible
117 state as diagnosed by the attending physician or a qualified
118 physician in which the person has intact brain stem function
119 but no higher cortical function and has neither self-
120 awareness or awareness of the surroundings in a learned
121 manner.

122 (t) “Person” means an individual, a corporation, a
123 business trust, a trust, a partnership, an association, a
124 government, a governmental subdivision or agency, or any
125 other legal entity.

126 (u) “Physician orders for scope of treatment (POST)
127 form” means a standardized form containing orders by a
128 qualified physician that details a person’s life-sustaining
129 wishes as provided by §16-30-25 of this code.

130 (v) “Principal” means a person who has executed a
131 living will or medical power of attorney.

132 (w) “Protected person” means an adult who, pursuant to
133 the provisions of chapter 44A of this code, has been found
134 by a court, because of mental impairment, to be unable to
135 receive and evaluate information effectively or to respond
136 to people, events, and environments to an extent that the
137 individual lacks the capacity to: (1) Meet the essential
138 requirements for his or her health, care, safety, habilitation,
139 or therapeutic needs without the assistance or protection of
140 a guardian; or (2) manage property or financial affairs to
141 provide for his or her support or for the support of legal

142 depends without the assistance or protection of a
143 conservator.

144 (x) “Qualified physician” means a physician licensed to
145 practice medicine who has personally examined the person.

146 (y) “Qualified psychologist” means a psychologist
147 licensed to practice psychology who has personally
148 examined the person.

149 (z) “Surrogate decisionmaker” or “surrogate” means an
150 individual 18 years of age or older who is reasonably
151 available, is willing to make health care decisions on behalf
152 of an incapacitated person, possesses the capacity to make
153 health care decisions, and is identified or selected by the
154 attending physician or advanced nurse practitioner in
155 accordance with the provisions of this article as the person
156 who is to make those decisions in accordance with the
157 provisions of this article.

158 (aa) “Terminal condition” means an incurable or
159 irreversible condition as diagnosed by the attending
160 physician or a qualified physician for which the
161 administration of life-prolonging intervention will serve
162 only to prolong the dying process.

ARTICLE 47. ALCOHOL AND DRUG OVERDOSE PREVENTION AND CLEMENCY ACT.

§16-47-5. Immunity, alternative sentencing and clemency options for a person for whom emergency medical assistance was sought.

1 (a) The immunity provisions in §16-47-4(a) of this code
2 extend to the person for whom emergency medical
3 assistance was sought if, after receiving emergency medical
4 assistance, the person participates in, complies with, and
5 completes a substance abuse treatment or recovery program
6 approved by the court. Alternatively, a court may consider
7 the following alternative sentencing and clemency options:

8 (1) Deferred prosecution under §60-6-26 or §60A-4-407
9 of this code;

10 (2) Pretrial diversion under §61-11-22 of this code;

11 (3) Adjudication in drug court under §62-15-1 *et seq.* of
12 this code or §49-4-703 of this code; or

13 (4) Any other appropriate form of alternative sentencing
14 or rehabilitation permitted by this code, including, but not
15 limited to:

16 (A) Probation;

17 (B) Conditional discharge under §60-6-26 of this code;
18 or

19 (C) The weekend jail program, the work program or the
20 community service program under §62-11A-1a of this code.

21 (b) Notwithstanding any other provision of this section
22 to the contrary, a person who may seek immunity or
23 clemency pursuant to subsection (a) of this section and is
24 charged with an offense not exempted by §16-47-4(a) of this
25 code may enter a plea of guilty to an offense exempted by
26 §16-47-4(a) of this code if the person, after consultation
27 with his or her attorney, so desires.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

1 (a) A preliminary breath analysis may be administered
2 to a child whenever a law-enforcement official has
3 reasonable cause to believe the child to have been driving a
4 motor vehicle with any amount of alcohol in his or her blood
5 for the purpose of determining the child's blood alcohol
6 content. The breath analysis must be administered as soon

7 as possible after the law-enforcement officer arrives at a
8 reasonable belief that the child has been driving a motor
9 vehicle with any amount of alcohol in his or her blood. Any
10 preliminary breath analysis administered pursuant to this
11 subsection must be administered with a device and in a
12 manner approved by the division of health for that purpose.
13 If a preliminary breath analysis is administered, the results
14 shall be used solely for the purpose of guiding the officer in
15 deciding whether the child, at the time of driving the motor
16 vehicle, had an alcohol concentration in his or her blood of
17 .0002 of one percent or more, by weight, and should,
18 therefore, be taken into custody to administer a secondary
19 test in accordance with the provisions of this section.

20 (b) A child may be taken into custody by a law-
21 enforcement official without a warrant or court order if the
22 official has reasonable grounds to believe the child to have
23 been driving a motor vehicle with any amount of alcohol in
24 his or her blood. If a preliminary breath analysis is
25 administered and the results of the analysis indicate that the
26 child has an alcohol concentration in his or her blood of less
27 than .0002 of one percent, by weight, the child may not be
28 taken into custody unless other grounds exist under §49-4-
29 705(b) of this code. Upon taking a child into custody
30 pursuant to the provisions of this section, the official shall
31 take all reasonable steps to cause notification to be made to
32 the child's parent or custodian or, if the parent or custodian
33 cannot be located, to a close relative.

34 (c) Upon taking a child into custody pursuant to this
35 section, the official shall take the child to a facility where a
36 secondary test of the child's blood or urine may be
37 administered at the direction of the official or a test of the
38 child's breath may be administered by the official. The law-
39 enforcement agency by which such law-enforcement
40 official is employed shall designate whether the secondary
41 test is a test of either blood, breath, or urine: *Provided*, That
42 if the test is a blood test and the child refuses to submit to
43 the blood test, then the law-enforcement official taking the
44 child into custody shall designate in lieu thereof a breath test

45 to be administered. Notwithstanding the provisions of
46 §17C-5-7 of this code, a refusal to submit to a blood test
47 only shall not result in the revocation of the child's license
48 to operate a motor vehicle in this state. Any child taken into
49 custody pursuant to this section shall be given a written
50 statement advising him or her that a refusal to submit to a
51 secondary test of either blood, breath, or urine, as finally
52 designated by the law-enforcement agency or official in
53 accordance with this subsection, will result in the
54 suspension of his or her license to operate a motor vehicle
55 in this state for a period of at least 30 days or a revocation
56 of the license for a period up to life.

57 (d) If the law-enforcement official taking the child into
58 custody is employed by a law-enforcement agency which
59 does not have available the testing equipment or facilities
60 necessary to conduct any secondary breath test which may
61 be administered pursuant to the provisions of this section,
62 then the official who took the child into custody may request
63 another qualified person to administer a secondary breath
64 test: *Provided*, That the breath test shall be administered in
65 the presence of the official who took the child into custody.
66 The results of the breath test may be used in evidence to the
67 same extent and in the same manner as if the test had been
68 conducted by the law-enforcement official who took the
69 child into custody. The qualified person administering the
70 breath test must be a member of the West Virginia state
71 police, the sheriff of the county where the child was taken
72 into custody, or any deputy of the sheriff or a law-
73 enforcement official of another municipality within the
74 county wherein the child was taken into custody. Only the
75 person actually administering the secondary breath test is
76 competent to testify as to the results and the veracity of the
77 test. If the secondary test is a blood test, the test shall be
78 conducted in accordance with the provisions of §17C-5-6 of
79 this code.

80 (e) After taking the child into custody, if the law-
81 enforcement official has reasonable cause to believe that the

82 act of the child in driving the motor vehicle is such that it
83 would provide grounds for arrest for an offense defined
84 under the provisions of §17C-5-2 of this code if the child
85 were an adult, then the official shall proceed to treat the
86 child in the same manner as any other child taken into
87 custody without a warrant or court order, in accordance with
88 the provisions of §17C-5-8 of this code.

89 (f) If the results of any secondary test administered
90 pursuant to this section indicate that the child, at the time of
91 driving the motor vehicle, had an alcohol concentration in
92 his or her blood of .0008 of one percent or less, by weight,
93 and if the law-enforcement official does not have reasonable
94 cause to believe that the act of the child in driving the motor
95 vehicle is such that it would provide grounds for arrest for
96 an offense defined under the provisions of §17C-5-2 of this
97 code if the child were an adult, then the official shall release
98 the child: *Provided*, That if the results of any secondary test
99 administered pursuant to this section indicate that the child,
100 at the time of driving the motor vehicle, had an alcohol
101 concentration in his or her blood of .0002 of one percent or
102 more, by weight, the child shall only be released to a parent
103 or custodian, or to some other responsible adult.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

1 (a) In recognition of the findings of the Legislature as
2 set forth in §49-2-401 of this code, the Legislature further
3 finds that public schools are able to provide a special
4 environment for the training of children, parents, and school
5 personnel in the prevention of child abuse and neglect and
6 child assault and that child abuse and neglect prevention and
7 child assault prevention programs in the public schools are
8 an effective and cost-efficient method of reducing the

9 incidents of child abuse and neglect, promoting a healthy
10 family environment, and reducing the general vulnerability
11 of children.

12 (b) County boards of education shall, to the extent funds
13 are provided, establish programs for the prevention of child
14 abuse and neglect and child assault. The programs shall be
15 provided to students, parents and school personnel as
16 considered appropriate. The programs comply with rules
17 developed by the state Board of Education with the advice
18 and assistance of the state Department of Health and Human
19 Resources and the West Virginia State Police: *Provided,*
20 That any programs which substantially comply with the
21 rules adopted by the board and were in effect prior to the
22 adoption of the rules may be continued.

23 (c) Funds for implementing the child abuse and neglect
24 prevention and child assault prevention programs may be
25 allocated to the county boards of education from the
26 children's trust fund established pursuant to the provisions
27 of §49-2-401 of this code or appropriated for such purpose
28 by the Legislature.

29 (d) County boards of education shall request from the
30 state Criminal Identification Bureau the record of any and
31 all criminal convictions relating to child abuse, sex-related
32 offenses, or possession of controlled substances with intent
33 to deliver the controlled substances or all of its future
34 employees. This request shall be made immediately after the
35 effective date of this section, and thereafter as warranted.

36 (e) Contractors or service providers or their employees
37 may not make direct, unaccompanied contact with students
38 or access school grounds unaccompanied when students are
39 present if it cannot be verified that the contractors, service
40 providers, or employees have not previously been convicted
41 of a qualifying offense, as defined in §15-12-2 of this code.
42 For the purposes of this section, contractor and service
43 provider shall be limited to any vendor, individual, or entity
44 under contract with a county school board. County school

45 boards may require contractors and service providers to
46 verify the criminal records of their employees before
47 granting contact or access. Where prior written consent is
48 obtained, county school boards may obtain information
49 from the Central Abuse Registry regarding contractors,
50 service providers, and their employees for the purposes of
51 this subsection. Where a contractor or service provider gives
52 his or her prior written consent, the county school board also
53 may share information provided by the Central Abuse
54 Registry with other county school boards for the purposes
55 of satisfying the requirements of this subsection.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-6a. Incentive for county board participation in circuit court juvenile probation truancy programs.

1 A county board that enters into a truancy program
2 agreement with the circuit court of the county that (1)
3 provides for the referral of truant juveniles for supervision
4 by the court's probation office pursuant to §49-4-711 of this
5 code and (2) requires the county board to pay for the costs
6 of the probation officer or officers assigned to supervise
7 truant juveniles, shall be reimbursed for one half of the costs
8 of the probation officer or officers, subject to appropriation
9 of the Legislature for this purpose to the West Virginia
10 Department of Education. For any year in which the funds
11 appropriated are insufficient to cover the reimbursement
12 costs, the county's costs shall be reimbursed pro rata.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1d. Return to school through Juvenile Drug Court for certain students.

1 (a) When a student is expelled from school pursuant to
2 §18A-5-1a of this code, the county board, county
3 superintendent, or principal for the school from which the
4 student was expelled or the parent, guardian, or custodian

5 may refer the student to a Juvenile Drug Court, operated
6 pursuant to §49-4-703 of this code. Upon referral, the judge
7 assigned to Juvenile Drug Court shall determine whether the
8 student is an appropriate candidate for Juvenile Drug Court.

9 (b) If the judge determines the student is an appropriate
10 candidate for Juvenile Drug Court, then the court has
11 jurisdiction over the student in the same manner as it has
12 jurisdiction over all other persons in Juvenile Drug Court.
13 Jurisdiction over students includes the ability to issue any of
14 the various sanctions available to the Juvenile Drug Court,
15 including temporary detention.

16 (c)(1) Successful completion of Juvenile Drug Court or
17 certification by the Juvenile Drug Court judge that the
18 student is making satisfactory progress toward successful
19 completion of Juvenile Drug Court warrants consideration
20 for reduction of the expulsion period, pursuant to §18A-5-
21 1a of this code.

22 (2) The Juvenile Drug Court shall notify the county
23 superintendent of the completion or certification. The
24 county superintendent shall arrange a meeting with the
25 Juvenile Drug Court treatment team, the court, and the
26 student assistance team of the school from which the student
27 was expelled to discuss the student's history, progress, and
28 potential for improvement.

29 (3) The student assistance team shall evaluate and
30 recommend whether the student's expulsion period should
31 be reduced, and the student reinstated in school.

32 (4) The student assistance team's recommendation shall
33 be presented to the superintendent, who shall make the final
34 determination. The superintendent shall prepare a statement
35 detailing reasons for or against school reinstatement and
36 submit the statement to the county board. If the
37 superintendent determines to reduce the expulsion period,
38 he or she shall submit the statement required by §18A-5-

39 1a(i) of this code and place the student in an appropriate
40 school within the district.

41 (5) A student to be reinstated shall be permitted to return
42 to school no later than the 10th regular school day following
43 notice by the court to the superintendent regarding the
44 student's successful completion or satisfactory progress
45 toward successful completion of Juvenile Drug Court.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.

1 (a) Any male youth between the ages of 10 and 18 years
2 may be committed to the custody of the Commissioner of
3 Corrections by a circuit court of this state in the manner
4 prescribed in §49-4-701 through §49-4-725 of this code;
5 and further, any male youth who has been adjudged
6 delinquent pursuant to §49-1-202 of this code, who, as a
7 result thereof, was placed on probation and has been found,
8 in a proceeding pursuant to the procedural requirements of
9 §49-4-701 through §49-4-725 of this code, to have violated
10 a term of probation, prior to the attainment of his or her 20th
11 birthday, which constitutes a criminal offense, may be
12 committed to the custody of the Commissioner of
13 Corrections as a youthful offender.

14 (b) Every youth committed under this article shall,
15 following the dispositional proceeding, be transferred to the
16 place or places designated by the Commissioner of
17 Corrections for complete physical, educational, and
18 psychological examinations, including all appropriate tests,
19 to be completed as soon as possible, the completion of the
20 physical examinations to be within 20 days. The youth shall
21 be housed in a manner so as to prevent the spread of

22 infectious disease. Following disposition and prior to
23 transfer to the custody of the Commissioner of Corrections,
24 each youth shall be allowed to visit with his or her relatives,
25 without being committed to jail for a period of not less than
26 one hour. The cost of the examinations in this subsection
27 shall be borne by the committing county. The youth shall be
28 provided all treatment and rehabilitation indicated by the
29 examinations.

30 In lieu of the physical examinations and tests provided
31 for in this subsection, the court may, in the absence of
32 objection, have the county health officer or other local
33 health care facility perform physical and mental
34 examinations and tests, so long as the examinations and
35 tests are performed prior to the dispositional proceeding.
36 Except as otherwise provided by law, a child shall not be
37 committed to a jail following a dispositional proceeding
38 solely to await a physical, educational, or mental
39 examination or the results of the exam.

40 (c) All examinations shall be private. A youth who is
41 mentally ill or significantly intellectually disabled shall not
42 be committed to, or retained by, the Commissioner of
43 Corrections, but shall be returned to the committing court
44 for further disposition. A youth who has a serious infectious
45 disease shall not be retained in the custody of the
46 Commissioner of Corrections, but shall be transferred to an
47 appropriate treatment facility. Detailed medical records
48 shall be kept of every youth.

49 (d) The results of any physical, educational, and
50 psychological examinations, together with a copy of the
51 petition, the adjudicatory order, and the dispositional order
52 shall accompany every youth committed to the
53 Commissioner of Corrections, without which the youth
54 shall not be accepted. The commissioner, or his or her
55 designated representative, shall review the records of each
56 youth committed to assure that a youth is not illegally
57 detained in an inappropriate facility or custodial situation.

58 (e) The Commissioner of Corrections may transfer and
59 place such youth in any of the established centers or homes
60 or halfway programs and in less restrictive settings, whether
61 under his or her jurisdiction or private nonprofit residential
62 facilities, as he or she may determine appropriate to promote
63 the rehabilitation of the youth. To the extent possible, a
64 youth under the age of 15 shall not be in regular contact with
65 youths between the ages of 16 and 18.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

1 (a) The agency shall establish, and periodically review
2 and update financial guidelines for determining eligibility
3 for legal representation made available under the provisions
4 of this article. The agency shall adopt a financial affidavit
5 form for use by persons seeking legal representation made
6 available under the provisions of this article.

7 (b) All persons seeking legal representation made
8 available under the provisions of this article shall complete
9 the agency's financial affidavit form, which shall be
10 considered as an application for the provision of publicly
11 funded legal representation.

12 (c) Any juvenile shall have the right to be effectively
13 represented by counsel at all stages of proceedings brought
14 under the provisions of §49-4-701 through §49-4-725 of this
15 code. If the child advises the court of his or her inability to
16 pay for counsel, the court shall require the child's parent or
17 custodian to execute a financial affidavit. If the financial
18 affidavit demonstrates that neither of the child's parents, or,
19 if applicable, the child's custodian, has sufficient assets to
20 pay for counsel, the court shall appoint counsel for the child.

21 If the financial affidavit demonstrates that either of the
22 child's parents, or, if applicable, the child's custodian, does
23 have sufficient assets to pay for counsel, the court shall
24 order the parent, or, if applicable, the custodian, to provide,
25 by paying for, legal representation for the child in the
26 proceedings.

27 The court may disregard the assets of the child's parents
28 or custodian and appoint counsel for the child, as provided
29 in this section, if the court concludes, as a matter of law, that
30 the child and the parent or custodian have a conflict of
31 interest that would adversely affect the child's right to
32 effective representation of counsel, or concludes, as a matter
33 of law, that requiring the child's parent or custodian to
34 provide legal representation for the child would otherwise
35 jeopardize the best interests of the child.

36 (d) In circuits in which no public defender office is in
37 operation, circuit judges shall make all determinations of
38 eligibility. In circuits in which a public defender office is in
39 operation, all determinations of indigency shall be made by
40 a public defender office employee designated by the
41 executive director. The determinations shall be made after a
42 careful review of the financial affidavit submitted by the
43 person seeking representation. The review of the affidavit
44 shall be conducted in accord with the financial eligibility
45 guidelines established by the agency pursuant to subsection
46 (a) of this section. In addition to the financial eligibility
47 guidelines, the person determining eligibility shall consider
48 other relevant factors, including, but not limited to, those set
49 forth in subdivisions (1) through (9) of subsection (e) of this
50 section. If there is substantial reason to doubt the accuracy
51 of information in the financial affidavit, the person
52 determining eligibility may make any inquiries necessary to
53 determine whether the affiant has truthfully and completely
54 disclosed the required financial information.

55 After reviewing all pertinent matters, the person
56 determining eligibility may find the affiant eligible to have
57 the total cost of legal representation provided by the state,

58 or may find that the total cost of providing representation
59 shall be apportioned between the state and the eligible
60 person. A person whose annual income exceeds the
61 maximum annual income level allowed for eligibility may
62 receive all or part of the necessary legal representation, or a
63 person whose income falls below the maximum annual
64 income level for eligibility may be denied all or part of the
65 necessary legal representation if the person determining
66 eligibility finds the person's particular circumstances
67 require that eligibility be allowed or disallowed, as the case
68 may be, on the basis of one or more of the nine factors set
69 forth in subsection (e) of this section. If legal representation
70 is made available to a person whose income exceeds the
71 maximum annual income level for eligibility, or if legal
72 representation is denied to a person whose income falls
73 below the maximum annual income level for eligibility, the
74 person determining eligibility shall make a written
75 statement of the reasons for the action and shall specifically
76 relate those reasons to one or more of the factors set forth in
77 subsection (e) of this section.

78 (e) The following factors shall be considered in
79 determining eligibility for legal representation made
80 available under the provisions of this article:

81 (1) Current income prospects, taking into account,
82 seasonal variations in income;

83 (2) Liquid assets, assets which may provide collateral to
84 obtain funds to employ private counsel, and other assets
85 which may be liquidated to provide funds to employ private
86 counsel;

87 (3) Fixed debts and obligations, including federal, state
88 and local taxes, and medical expenses;

89 (4) Child care, transportation, and other expenses
90 necessary for employment;

91 (5) Age or physical infirmity of resident family
92 members;

93 (6) Whether the person seeking publicly funded legal
94 representation has made reasonable and diligent efforts to
95 obtain private legal representation, and the results of those
96 efforts;

97 (7) The cost of obtaining private legal representation
98 with respect to the particular matter in which assistance is
99 sought;

100 (8) Whether the person seeking publicly funded legal
101 representation has posted a cash bond for bail or has
102 obtained release on bond for bail through the services of a
103 professional bondsman for compensation and the amount
104 and source of the money provided for the bond;

105 (9) The consequences for the individual if legal
106 assistance is denied.

107 (f) Legal representation requested by the affiant may not
108 be denied in whole or part unless the affiant can obtain legal
109 representation without undue financial hardship. A person
110 determined to be ineligible by public defender personnel
111 may have the initial determination reviewed by a local
112 circuit judge who may amend, modify or rewrite the initial
113 determination. At any stage of the proceedings a circuit
114 court may determine a prior finding of eligibility was
115 incorrect or has become incorrect as the result of the
116 affiant's changed financial circumstances, and may revoke
117 any prior order providing legal representation. In that event,
118 any attorney previously appointed shall be entitled to
119 compensation under the provisions of law applicable to the
120 appointment for services already rendered.

121 (g) In the circumstances and manner set forth below,
122 circuit judges may order repayment to the state, through the
123 office of the clerk of the circuit court having jurisdiction

124 over the proceedings, of the costs of representation provided
125 under this article:

126 (1) In every case in which services are provided to an
127 indigent person and an adverse judgment has been rendered
128 against such person, the court may require that person, and
129 in juvenile cases, may require the juvenile's parents or
130 custodian, to pay as costs the compensation of appointed
131 counsel, the expenses of the defense, and any other fees and
132 costs authorized by statute.

133 (2) The court shall not order a person to pay costs unless
134 the person is able to pay without undue hardship. In
135 determining the amount and method of repayment of costs,
136 the court shall take account of the financial resources of the
137 person, the person's ability to pay, and the nature of the
138 burden that payment of costs will impose. The fact that the
139 court initially determines, at the time of a case's conclusion,
140 that it is not proper to order the repayment of costs does not
141 preclude the court from subsequently ordering repayment if
142 the person's financial circumstances change.

143 (3) When a person is ordered to repay costs, the court
144 may order payment to be made immediately or within a
145 specified period of time or in specified installments. If a
146 person is sentenced to a term of imprisonment, an order for
147 repayment of costs is not enforceable during the period of
148 imprisonment unless the court expressly finds, at the time
149 of sentencing, that the person has sufficient assets to pay the
150 amounts ordered to be paid or finds there is a reasonable
151 likelihood the person will acquire the necessary assets in the
152 foreseeable future.

153 (4) A person who has been ordered to repay costs, and
154 who is not in contumacious default in the payment thereof,
155 may at any time petition the sentencing court for
156 modification of the repayment order. If it appears to the
157 satisfaction of the court that continued payment of the
158 amount ordered will impose undue hardship on the person

159 or the person's dependents, the court may modify the
160 method or amount of payment.

161 (5) When a person ordered to pay costs is also placed on
162 probation or imposition or execution of sentence is
163 suspended, the court may make the repayment of costs a
164 condition of probation or suspension of sentence.

165 (h) Circuit clerks shall keep a record of repaid counsel
166 fees and defense expenses collected pursuant to this section
167 and shall, quarterly, pay the moneys to the State Auditor
168 who shall deposit the funds in the General Revenue Fund of
169 the state.

170 (i) The making of an affidavit subject to inquiry under
171 this section does not in any event give rise to criminal
172 remedies against the affiant nor occasion any civil action
173 against the affiant except for the recovery of costs as in any
174 other case where costs may be recovered and the recovery
175 of the value of services, if any, provided pursuant to this
176 article. A person who has made an affidavit knowing the
177 contents of the affidavit to be false may be prosecuted for
178 false swearing as provided by law.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-2. Definitions.

1 Unless the context indicates clearly otherwise, as used
2 in this article:

3 (a) "Adjacent regional juvenile detention facility"
4 means a facility constructed or maintained on property
5 owned or controlled by the Regional Jail Authority and
6 designed (1) for the short term preadjudicatory detention of
7 juveniles, for the confinement of juveniles who are awaiting
8 transportation to or placement at another juvenile detention
9 facility or juvenile correctional facility, or who are awaiting

10 trial as an adult pursuant to §49-4-710 of this code; or (2)
11 for the court-ordered, short term placement of juveniles in a
12 facility that is characterized by programmatic intervention
13 and by staff restrictions of the movements and activities of
14 juveniles placed there, that limits the juveniles' access to the
15 surrounding community and that is not characterized by
16 construction fixtures designed to physically restrict the
17 movements and activities of juveniles.

18 (b) "Authority" or "West Virginia Regional Jail
19 Authority" means the West Virginia Regional Jail and
20 Correctional Facility Authority created by this article.

21 (c) "Board" means the governing body of the authority.

22 (d) "Bonds" means bonds of the authority issued under
23 this article.

24 (e) "Cost of construction or renovation of a local jail
25 facility, regional jail facility or juvenile facility" means the
26 cost of all lands, water areas, property rights, and easements,
27 financing charges, interest prior to and during construction
28 and for a period not exceeding six months following the
29 completion of construction, equipment, engineering and
30 legal services, plans, specifications, and surveys, estimates
31 of costs and other expenses necessary or incidental to
32 determining the feasibility or practicability of any project,
33 together with any other expenses necessary or incidental to
34 the financing and the construction or renovation of the
35 facilities and the placing of the facilities in operation.

36 (f) "County" means any county of this state.

37 (g) "Federal agency" means the United States of
38 America and any department, corporation, agency, or
39 instrumentality created, designated, or established by the
40 United States of America.

41 (h) "Fund" or "funds" means a Regional Jail and
42 Correctional Facility Authority fund provided in §31-20-10
43 of this code, including those accounts that may be

44 established by the authority for accurate accounting of the
45 expenditure of public funds by that agency.

46 (i) "Government" means state and federal government,
47 and any political subdivision, agency or instrumentality of
48 the state or federal government, corporate or otherwise.

49 (j) "Inmate" means any adult person properly
50 committed to a local or regional jail facility or a correctional
51 facility.

52 (k) "Local jail facility" means any county facility for the
53 confinement, custody, supervision, or control of adult
54 persons convicted of misdemeanors, awaiting trial, or
55 awaiting transportation to a state correctional facility.

56 (l) "Municipality" means any city, town, or village in
57 this state.

58 (m) "Notes" means any notes as defined in §46-3-104
59 of this code issued under this article by the authority.

60 (n) "Correctional facility" means any correctional
61 facility, penitentiary, or other correctional institution
62 operated by the Division of Corrections for the incarceration
63 of adults.

64 (o) "Regional jail facility" or "regional jail" means any
65 facility operated by the authority and used jointly by two or
66 more counties for the confinement, custody, supervision, or
67 control of adult persons convicted of misdemeanors or
68 awaiting trial or awaiting transportation to a state
69 correctional facility.

70 (p) "Revenues" means all fees, charges, moneys, profits,
71 payments of principal of, or interest on, loans and other
72 investments, grants, contributions, and all other income
73 received by the authority.

74 (q) "Security interest" means an interest in the loan
75 portfolio of the authority which is secured by an underlying

76 loan or loans and is evidenced by a note issued by the
77 authority.

78 (r) “Work farm” has the same meaning as that term is
79 used in §7-8-12 of this code authorizing work farms for
80 individual counties.

81 (s) “Juvenile detention facility” or “juvenile detention
82 center” means a facility operated by the Division of Juvenile
83 Services (1) for the short term preadjudicatory detention of
84 juveniles, for the confinement of juveniles who are awaiting
85 transportation to or placement at another juvenile detention
86 facility or juvenile correctional facility, or who are awaiting
87 trial as an adult pursuant to §49-4-710 of this code; or (2)
88 for the court-ordered, short term placement of juveniles in a
89 facility that is characterized by programmatic intervention
90 and by staff restrictions of the movements and activities of
91 juveniles placed there, that limits the juveniles’ access to the
92 surrounding community and that is not characterized by
93 construction fixtures designed to physically restrict the
94 movements and activities of juveniles.

95 (t) “Juvenile correctional facility” means a facility
96 operated by the Division of Juvenile Services (1) for the
97 postdispositional confinement of juveniles adjudicated of
98 offenses that would be criminal offenses if committed by an
99 adult; or (2) for the court-ordered placement of juveniles in
100 a facility that is characterized by programmatic intervention
101 and by staff restrictions of the movements and activities of
102 juveniles placed there, that limits the juveniles’ access to the
103 surrounding community, and that is not characterized by
104 construction fixtures designed to physically restrict the
105 movements and activities of juveniles.

106 (u) “Juvenile facility” means an adjacent regional
107 juvenile detention facility, a juvenile detention facility, a
108 juvenile detention center, or a juvenile correctional
109 facility.

CHAPTER 33. INSURANCE.**ARTICLE 4. GENERAL PROVISIONS.****§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.**

1 (a) For purposes of this section, the following
2 definitions shall apply:

3 (1) "Abuse," as used in this section, means the
4 occurrence of one or more of the following acts between
5 family or household members:

6 (A) Attempting to cause or intentionally, knowingly, or
7 recklessly causing physical harm to another with or without
8 dangerous or deadly weapons;

9 (B) Placing another in reasonable apprehension of
10 physical harm;

11 (C) Creating fear of physical harm by harassment,
12 psychological abuse, or threatening acts;

13 (D) Committing either sexual assault or sexual abuse as
14 those terms are defined in §61-8B-1 *et seq.* and §61-8D-1 *et*
15 *seq.* of this code;

16 (E) Holding, confining, detaining, or abducting another
17 person against that person's will;

18 (F) Intentionally or recklessly damaging, destroying, or
19 taking the tangible property of another individual;

20 (G) Insulting, taunting, or challenging another
21 individual or engaging in a course of alarming or distressing
22 conduct in a manner which is likely to provoke a violent or
23 disorderly response or which is likely to cause humiliation,
24 degradation, or fear in another individual;

25 (H) Trespassing on or in the property of another
26 individual, or on or in property from which the trespasser
27 has been excluded by court order;

28 (I) Child abuse or neglect, as defined in §49-1-201 of
29 this code;

30 (J) Kidnapping, concealment, or removal of a minor
31 child from his or her custodian or from a person entitled to
32 visitation, as set forth in §61-2-14 through §61-2-14e of this
33 code.

34 (2) “Family or household member” means current or
35 former spouses, persons living as spouses, persons who
36 formerly resided as spouses, parents, children and
37 stepchildren, current or former sexual or intimate partners,
38 other persons related by blood or marriage, persons who are
39 presently or in the past have resided or cohabited together,
40 or a person with whom the victim has a child in common.

41 (3) “Victim of abuse,” as used in this section, means an
42 individual who has been or is subject to abuse, including,
43 but not limited to, an individual who seeks, has sought, or
44 should have sought medical or psychological treatment for
45 abuse, protection from abuse or shelter from abuse.

46 (b) For all policies issued or renewed after the effective
47 date of this section, a person or entity engaged in the
48 business of providing life or health insurance, or both, in
49 this state may not:

50 (1) Deny, refuse to issue, refuse to renew, refuse to
51 reissue, cancel, or otherwise terminate an insurance policy
52 or restrict coverage on any individual because that
53 individual is, has been, or may be the victim of abuse;

54 (2) Add any surcharge or rating factor to a premium of
55 an insurance policy because an individual has been or may
56 be the victim of abuse;

57 (3) Exclude or limit coverage for losses or deny a claim
58 incurred because an individual has been or may be the
59 victim of abuse; or

60 (4) Require as part of the application process any
61 information regarding whether that individual has been or
62 may be the victim of abuse.

63 (c) Nothing in this section may be construed to prohibit
64 a person from declining to issue an insurance policy
65 insuring the life of an individual who is or has been the
66 victim of abuse if the perpetrator of abuse is the applicant or
67 would be the owner of the insurance policy.

68 (d) Nothing in this section may be construed to prohibit
69 a person from underwriting or rating a risk on the basis of a
70 preexisting physical or mental condition, even if the
71 condition had been caused by abuse: *Provided, That:*

72 (1) The person routinely underwrites or rates the
73 condition in the same manner with respect to an insured or
74 an applicant who is not a victim of abuse;

75 (2) The fact that an individual is, has been, or may be
76 the victim of abuse may not be considered a physical or
77 mental condition; and

78 (3) The underwriting or rating is not used to evade the
79 intent of this law or any other provision of law. A person
80 may not be held civilly or criminally liable for any cause of
81 action which may be brought because of compliance with
82 this section.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

***§48-9-205. Permanent parenting plan.**

1 (a) A party seeking a judicial allocation of custodial
2 responsibility or decision-making responsibility under this
3 article shall file a proposed parenting plan with the court.
4 Parties may file a joint plan. A proposed plan shall be

*NOTE: This section was also amended by S. B. 51 (Chapter 65),
which passed subsequent to this act.

5 verified and shall state, to the extent known or reasonably
6 discoverable by the filing party or parties:

7 (1) The name, address, and length of residence of any
8 adults with whom the child has lived for one year or more,
9 or in the case of a child less than one year old, any adults
10 with whom the child has lived since the child's birth;

11 (2) The name and address of each of the child's parents
12 and any other individuals with standing to participate in the
13 action under §48-9-103 of this code;

14 (3) A description of the allocation of care taking and
15 other parenting responsibilities performed by each person
16 named in subdivisions (1) and (2) of this subsection during
17 the twenty-four months preceding the filing of an action
18 under this article;

19 (4) A description of the work and child-care schedules
20 of any person seeking an allocation of custodial
21 responsibility, and any expected changes to these schedules
22 in the near future;

23 (5) A description of the child's school and
24 extracurricular activities;

25 (6) A description of any of the limiting factors as
26 described in §48-9-209 of this code that are present,
27 including any restraining orders against either parent to
28 prevent domestic or family violence, by case number and
29 jurisdiction;

30 (7) Required financial information; and

31 (8) A description of the known areas of agreement and
32 disagreement with any other parenting plan submitted in the
33 case.

34 The court shall maintain the confidentiality of any
35 information required to be filed under this section when the
36 person giving that information has a reasonable fear of

37 domestic abuse and disclosure of the information would
38 increase that fear.

39 (b) The court shall develop a process to identify cases in
40 which there is credible information that child abuse or
41 neglect, as defined in §49-1-201 of this code, or domestic
42 violence as defined in §48-27-202 of this code has occurred.
43 The process shall include assistance for possible victims of
44 domestic abuse in complying with subdivision (6),
45 subsection (a) of this section, and referral to appropriate
46 resources for safe shelter, counseling, safety planning,
47 information regarding the potential impact of domestic
48 abuse on children, and information regarding civil and
49 criminal remedies for domestic abuse. The process shall
50 also include a system for ensuring that jointly submitted
51 parenting plans that are filed in cases in which there is
52 credible information that child abuse or domestic abuse has
53 occurred receive the court review that is mandated by §48-
54 9-201(b) of this code.

55 (c) Upon motion of a party and after consideration of the
56 evidence, the court shall order a parenting plan consistent
57 with the provisions of §48-9-206, §48-9-207, §48-9-208 and
58 §48-9-209 of this code, containing:

59 (1) A provision for the child's living arrangements and
60 each parent's custodial responsibility, which shall include
61 either:

62 (A) A custodial schedule that designates in which
63 parent's home each minor child will reside on given days of
64 the year; or

65 (B) A formula or method for determining such a
66 schedule in sufficient detail that, if necessary, the schedule
67 can be enforced in subsequent proceedings by the court;

68 (2) An allocation of decision-making responsibility as
69 to significant matters reasonably likely to arise with respect
70 to the child;

71 (3) A provision consistent with §48-9-202 of this code
72 for resolution of disputes that arise under the plan, and
73 remedies for violations of the plan; and

74 (4) A plan for the custody of the child should one or both
75 of the parents as a member of the National Guard, a reserve
76 component, or an active duty component be mobilized,
77 deployed, or called to active duty.

78 (d) A parenting plan may, at the court's discretion,
79 contain provisions that address matters that are expected to
80 arise in the event of a party's relocation, or provide for
81 future modifications in the parenting plan if specified
82 contingencies occur.

PART III - FACT FINDING.

§48-9-301a. Child abuse allegations.

1 (a) If allegations of child abuse are made during a child
2 custody proceeding and the court has concerns regarding the
3 child's safety, the court may take any reasonable, temporary
4 steps as the court, in its discretion, considers appropriate
5 under the circumstances to protect the child's safety until an
6 investigation can be completed. Nothing in this subsection
7 shall affect the applicability of §49-2-802 and §49-2-803 of
8 this code.

9 (b) If allegations of child abuse are made during a child
10 custody proceeding, the court may request that the local
11 child protective service conduct an investigation of the
12 allegations pursuant to §49-2-801 through §49-2-814 of this
13 code. Upon completion of the investigation, the agency
14 shall report its findings to the court.

ARTICLE 22. ADOPTION.

PART III. CONSENT OR RELINQUISHMENT; ABANDONMENT.

§48-22-301. Persons whose consent or relinquishment is required; exceptions.

1 (a) Subject to the limitations hereinafter set forth,
2 consent to or relinquishment for adoption of a minor child
3 is required of:

4 (1) The parents or surviving parent of a marital child,
5 whether adult or infant;

6 (2) The outsider father of a marital child who has been
7 adjudicated to be the father of the child or who has filed a
8 paternity action which is pending at the time of the filing of
9 the petition for adoption;

10 (3) The birth mother of a nonmarital child, whether
11 adult or infant; and

12 (4) The determined father.

13 (b) Consent or relinquishment shall not be required of a
14 parent or of any other person having custody of the adoptive
15 child:

16 (1) Whose parental rights have been terminated
17 pursuant to the provisions of §49-4-114 of this code;

18 (2) Whom the court finds has abandoned the child as set
19 forth in §48-22-306 of this code; or

20 (3) Who, in a stepparent adoption, is the birth parent or
21 adoptive parent of the child and is married to the petitioning
22 adoptive parent. In such stepparent adoption, the parent
23 must assent to the adoption by joining as a party to the
24 petition for adoption.

25 (c) If the mother, legal father, or determined father is
26 under disability, the court may order the adoption if it finds:

27 (1) The parental rights of the person are terminated,
28 abandoned, or permanently relinquished;

29 (2) The person is incurably insane; or

30 (3) The disability arises solely because of age and an
31 otherwise valid consent or relinquishment has been given.

32 (d) If all persons entitled to parental rights of the child
33 sought to be adopted are deceased or have been deprived of the
34 custody of the child by law, then consent or relinquishment is
35 required of the legal guardian or of any other person having
36 legal custody of the child at the time. If there is no legal
37 guardian nor any person who has legal custody of the child,
38 then consent or relinquishment is required from some discreet
39 and suitable person appointed by the court to act as the next
40 friend of the child in the adoption proceedings.

41 (e) If one of the persons entitled to parental rights of the
42 child sought to be adopted is deceased, only the consent or
43 relinquishment of the surviving person entitled to parental
44 rights is required.

45 (f) If the child to be adopted is 12 years of age or over,
46 the consent of the child is required to be given in the
47 presence of a judge of a court of competent jurisdiction,
48 unless for extraordinary cause, the requirement of such
49 consent is waived by the court.

50 (g) Any consent to adoption or relinquishment of
51 parental rights shall have the effect of authorizing the
52 prospective adoptive parents or the agency to consent to
53 medical treatment for the child, whether or not such
54 authorization is expressly stated in the consent or
55 relinquishment.

ARTICLE 26. DOMESTIC VIOLENCE ACT.

PART VII. CONFIDENTIALITY.

§48-26-701. Confidentiality.

1 (a) A program licensed pursuant to this article may not
2 disclose, reveal, or release or be compelled to disclose,

3 reveal, or release, any written records or personal or
4 personally identifying information about a program
5 participant created or maintained in providing services,
6 regardless of whether the information has been encoded,
7 encrypted, hashed, or otherwise protected, pursuant to this
8 article except:

9 (1) Upon written consent, or upon oral consent in
10 emergency situations defined by legislative rule, of the
11 person seeking or who has sought services from the
12 program;

13 (2) In any proceeding brought under §9-6-4 and §9-6-5
14 of this code or §49-4-601 through §49-4-610 of this code;

15 (3) As mandated by §49-2-801 through §49-2-814 and
16 §9-6-1 *et seq.* of this code;

17 (4) Pursuant to an order of any court based upon a
18 finding that the information is sufficiently relevant to a
19 proceeding before the court to outweigh the importance of
20 maintaining the confidentiality established by this section;

21 (5) To protect against a clear and substantial danger of
22 imminent injury by a person receiving services to himself or
23 herself or another; or

24 (6) As authorized by the releases signed by batterer
25 intervention and prevention program participants pursuant
26 to the provisions of subsection (b) of this section.

27 (b) Batterer intervention and prevention program
28 participants shall authorize the release of information by
29 signing the following releases:

30 (1) Allowing the provider to inform the victim or
31 alleged victim and the victim's advocates that the batterer is
32 participating in a batterer intervention and prevention
33 program with the provider and to provide information to the
34 victim or alleged victim and her or his advocates, if
35 necessary, for the victim's or alleged victim's safety;

36 (2) Allowing prior and current service providers to
37 provide information about the batterer to the provider;

38 (3) Allowing the provider, for good cause, to provide
39 information about the batterer to relevant legal entities,
40 including courts, parole officers, probation officers, child
41 protective services, adult protective services, law
42 enforcement, licensed domestic violence programs, or other
43 referral agencies;

44 (4) Allowing the provider to report to the court, if the
45 participation was court ordered, and to the victim or alleged
46 victim, if she or he requests and provides a method of
47 notification, and to her or his advocate, any assault, failure
48 to comply with program requirements, failure to attend the
49 program, threat of harm by the batterer, reason for
50 termination, and recommendations for changes in the court
51 order; and

52 (5) Allowing the provider to report to the victim or
53 alleged victim, or her or his advocate, without the
54 participant's authorization, all perceived threats of harm, the
55 participant's failure to attend, and reason for termination.

56 (c) Monitored parenting and exchange programs may
57 disclose to one parent or guardian, without the permission
58 of the other parent or guardian, any perceived threat of harm
59 or violation of the court order or violation of the monitored
60 parenting and exchange program rules by the other parent
61 or guardian.

62 (d) A monitored parenting and exchange program may
63 not release information about the child without consent of
64 the parent with custodial responsibility or guardian.

65 (e) In addition to the provisions set forth in this section,
66 the release of a victim's personally identifying information
67 is subject to the provisions of 42 U.S.C. § 13925(b)(2).

68 (f) A consent or authorization for the transmission or
69 disclosure of confidential information is not effective unless

70 it is signed by the program participant whose information is
71 being disclosed. Every person signing an authorization shall
72 be given a copy.

73 (g) A victim of domestic violence, dating violence,
74 sexual assault, or stalking shall not be required to provide
75 consent to release his or her personally identifying
76 information as a condition of eligibility for the services, nor
77 may any personally identifying information be shared in
78 order to comply with federal or state reporting, evaluation,
79 or data collection requirements: *Provided*, That nothing in
80 this section prohibits a program from reporting suspected
81 abuse or neglect, as defined by law, when the program is
82 mandated by law to report suspected abuse or neglect.

§48-26-1002. Exclusions.

1 The provisions of this part do not apply to therapeutic
2 or supervised visitation or exchanges or any activity
3 conducted by the state or others in abuse and neglect
4 proceedings pursuant to §49-2-801 through §49-2-814 and
5 §49-4-601 through §49-4-610 of this code in which
6 assessment, evaluation, formulation of a treatment plan,
7 case management, counseling, therapy, or similar activities
8 occur.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-403. Emergency protective orders of court; hearings; persons present.

1 (a) Upon the filing of a verified petition under this
2 article, the magistrate court may enter an emergency
3 protective order as it may determine necessary to protect the
4 petitioner or minor children from domestic violence and,
5 upon good cause shown, may do so ex parte without the
6 necessity of bond being given by the petitioner. Clear and
7 convincing evidence of immediate and present danger of
8 abuse to the petitioner or minor children constitutes good
9 cause for the issuance of an emergency protective order

10 pursuant to this section. If the respondent is not present at
11 the proceeding, the petitioner or the petitioner's legal
12 representative shall certify to the court, in writing, the
13 efforts which have been made to give notice to the
14 respondent or just cause why notice should not be required.
15 Copies of medical reports or records may be admitted into
16 evidence to the same extent as though the original reports or
17 records. The custodian of the records is not required to be
18 present to authenticate the records for any proceeding held
19 pursuant to this subsection. If the magistrate court
20 determines to enter an emergency protective order, the order
21 shall prohibit the respondent from possessing firearms.

22 (b) Following the proceeding, the magistrate court shall
23 order a copy of the petition to be served immediately upon
24 the respondent, together with a copy of any emergency
25 protective order entered pursuant to the proceedings, a
26 notice of the final hearing before the family court, and a
27 statement of the right of the respondent to appear and
28 participate in the final hearing, as provided in subsection (d)
29 of this section. Copies of any order entered under the
30 provisions of this section, a notice of the final hearing before
31 the family court, and a statement of the right of the petitioner
32 to appear and participate in the final hearing, as provided in
33 subsection (d) of this section, shall also be delivered to the
34 petitioner. Copies of any order entered shall also be
35 delivered to any law-enforcement agency having
36 jurisdiction to enforce the order, including municipal police,
37 the county sheriff's office and local office of the State
38 Police, within 24 hours of the entry of the order. An
39 emergency protective order is effective until modified by
40 order of the family court upon hearing as provided in
41 subsection (d) of this section. The order is in full force and
42 effect in every county in this state.

43 (c) Subsequent to the entry of the emergency protective
44 order, service on the respondent, and the delivery to the
45 petitioner and law-enforcement officers, the court file shall
46 be transferred to the office of the clerk of the circuit court
47 for use by the family court.

48 (d) The family court shall schedule a final hearing on
49 each petition in which an emergency protective order has
50 been entered by a magistrate. The hearing shall be scheduled
51 not later than 10 days following the entry of the order by the
52 magistrate. The notice of the final hearing shall be served on
53 the respondent and delivered to the petitioner, as provided in
54 subsection (b) of this section, and must set forth the hearing
55 date, time, and place and include a statement of the right of
56 the parties to appear and participate in the final hearing. The
57 notice must also provide that the petitioner's failure to appear
58 will result in a dismissal of the petition and that the
59 respondent's failure to appear may result in the entry of a
60 protective order against him or her for a period of 90 or 180
61 days, as determined by the court. The notice must also
62 include the name, mailing address, physical location, and
63 telephone number of the family court having jurisdiction over
64 the proceedings. To facilitate the preparation of the notice of
65 final hearing required by the provisions of this subsection, the
66 family court must provide the magistrate court with a day and
67 time in which final hearings may be scheduled before the
68 family court within the time required by law.

69 (e) Upon final hearing the petitioner must prove, by a
70 preponderance of the evidence, the allegation of domestic
71 violence or that he or she reported or witnessed domestic
72 violence against another and has, as a result, been abused,
73 threatened, harassed, or has been the subject of other actions
74 to attempt to intimidate him or her, or the petition shall be
75 dismissed by the family court. If the respondent has not been
76 served with notice of the emergency protective order, the
77 hearing may be continued to permit service to be effected.
78 The failure to obtain service upon the respondent does not
79 constitute a basis to dismiss the petition. Copies of medical
80 reports may be admitted into evidence to the same extent as
81 though the original thereof, upon proper authentication, by
82 the custodian of the records.

83 (f) A person requested by a party to be present during a
84 hearing held under the provisions of this article shall not be
85 precluded from being present unless that person is to be a

86 witness in the proceeding and a motion for sequestration has
87 been made and the motion has been granted. A person found
88 by the court to be disruptive may be precluded from being
89 present.

90 (g) Upon hearing, the family court may dismiss the
91 petition or enter a protective order for a period of 90 days
92 or, in the discretion of the court, for a period of 180 days.
93 The hearing may be continued on motion of the respondent,
94 at the convenience of the court. Otherwise, the hearing may
95 be continued by the court no more than seven days. If a
96 hearing is continued, the family court may modify the
97 emergency protective order as it considers necessary.

98 (h) Notwithstanding any other provision of this code to
99 the contrary, a petition filed pursuant to this section that
100 results in the issuance of an emergency protective order
101 naming a juvenile as the respondent in which the petition
102 for the emergency protective order is filed by or on behalf
103 of the juvenile's parent, guardian or custodian, or other
104 person with whom the juvenile resides shall be treated as a
105 petition authorized by §49-4-704 of this code, alleging the
106 juvenile is a juvenile delinquent: *Provided*, That the
107 magistrate court shall notify the prosecuting attorney in the
108 county where the emergency protective order is issued
109 within 24 hours of the issuance of the emergency protective
110 order and the prosecuting attorney may file an amended
111 verified petition to comply with the provisions of §49-4-
112 704(a) of this code within two judicial days.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART II. DEFINITIONS.

§49-1-201. Definitions related, but not limited, to child abuse and neglect.

1 When used in this chapter, terms defined in this section
2 have the meanings ascribed to them that relate to, but are
3 not limited to, child abuse and neglect, except in those
4 instances where a different meaning is provided or the

5 context in which the word is used clearly indicates that a
6 different meaning is intended.

7 “Abandonment” means any conduct that demonstrates
8 the settled purpose to forego the duties and parental
9 responsibilities to the child;

10 “Abused child” means:

11 (1) A child whose health or welfare is being harmed or
12 threatened by:

13 (A) A parent, guardian, or custodian who knowingly or
14 intentionally inflicts, attempts to inflict, or knowingly
15 allows another person to inflict, physical injury or mental or
16 emotional injury, upon the child or another child in the
17 home. Physical injury may include an injury to the child as
18 a result of excessive corporal punishment;

19 (B) Sexual abuse or sexual exploitation;

20 (C) The sale or attempted sale of a child by a parent,
21 guardian, or custodian in violation of §61-2-14h of this
22 code;

23 (D) Domestic violence as defined in §48-27-202 of this
24 code; or

25 (E) Human trafficking or attempted human trafficking,
26 in violation of §61-14-2 of this code.

27 (2) A child conceived as a result of sexual assault, as
28 that term is defined in this section, or as a result of the
29 violation of a criminal law of another jurisdiction which has
30 the same essential elements: *Provided*, That no victim of
31 sexual assault may be determined to be an abusive parent,
32 as that term is defined in this section, based upon being a
33 victim of sexual assault.

34 “Abusing parent” means a parent, guardian, or other
35 custodian, regardless of his or her age, whose conduct has

36 been adjudicated by the court to constitute child abuse or
37 neglect as alleged in the petition charging child abuse or
38 neglect.

39 “Battered parent” for the purposes of §49-4-601 *et seq.*
40 of this code means a respondent parent, guardian, or other
41 custodian who has been adjudicated by the court to have not
42 condoned the abuse or neglect and has not been able to stop
43 the abuse or neglect of the child or children due to being the
44 victim of domestic violence as defined by §48-27-202 of
45 this code, which was perpetrated by the same person or
46 persons determined to have abused or neglected the child or
47 children.

48 “Child abuse and neglect” or “child abuse or neglect”
49 means any act or omission that creates an abused child or a
50 neglected child as those terms are defined in this section.

51 “Child abuse and neglect services” means social
52 services which are directed toward:

53 (A) Protecting and promoting the welfare of children
54 who are abused or neglected;

55 (B) Identifying, preventing, and remedying conditions
56 which cause child abuse and neglect;

57 (C) Preventing the unnecessary removal of children
58 from their families by identifying family problems and
59 assisting families in resolving problems which could lead to
60 a removal of children and a breakup of the family;

61 (D) In cases where children have been removed from
62 their families, providing time-limited reunification services
63 to the children and the families so as to reunify those
64 children with their families, or some portion of the families;

65 (E) Placing children in suitable adoptive homes when
66 reunifying the children with their families, or some portion
67 of the families, is not possible or appropriate; and

68 (F) Assuring the adequate care of children or juveniles
69 who have been placed in the custody of the department or
70 third parties.

71 “Condition requiring emergency medical treatment”
72 means a condition which, if left untreated for a period of a
73 few hours, may result in permanent physical damage; that
74 condition includes, but is not limited to, profuse or arterial
75 bleeding, dislocation or fracture, unconsciousness, and
76 evidence of ingestion of significant amounts of a poisonous
77 substance.

78 “Imminent danger to the physical well-being of the
79 child” means an emergency situation in which the welfare
80 or the life of the child is threatened. These conditions may
81 include an emergency situation when there is reasonable
82 cause to believe that any child in the home is or has been
83 sexually abused or sexually exploited, or reasonable cause
84 to believe that the following conditions threaten the health,
85 life, or safety of any child in the home:

86 (A) Nonaccidental trauma inflicted by a parent,
87 guardian, custodian, sibling, babysitter or other caretaker;

88 (B) A combination of physical and other signs
89 indicating a pattern of abuse which may be medically
90 diagnosed as battered child syndrome;

91 (C) Nutritional deprivation;

92 (D) Abandonment by the parent, guardian, or custodian;

93 (E) Inadequate treatment of serious illness or disease;

94 (F) Substantial emotional injury inflicted by a parent,
95 guardian, or custodian;

96 (G) Sale or attempted sale of the child by the parent,
97 guardian, or custodian;

98 (H) The parent, guardian, or custodian's abuse of
99 alcohol or drugs or other controlled substance as defined in
100 §60A-1-101 of this code, has impaired his or her parenting
101 skills to a degree as to pose an imminent risk to a child's
102 health or safety; or

103 (I) Any other condition that threatens the health, life or
104 safety of any child in the home.

105 "Neglected child" means a child:

106 (A) Whose physical or mental health is harmed or
107 threatened by a present refusal, failure or inability of the
108 child's parent, guardian, or custodian to supply the child
109 with necessary food, clothing, shelter, supervision, medical
110 care, or education, when that refusal, failure, or inability is
111 not due primarily to a lack of financial means on the part of
112 the parent, guardian, or custodian;

113 (B) Who is presently without necessary food, clothing,
114 shelter, medical care, education, or supervision because of
115 the disappearance or absence of the child's parent or
116 custodian; or

117 (C) "Neglected child" does not mean a child whose
118 education is conducted within the provisions of §18-8-1 *et*
119 *seq.* of this code.

120 "Petitioner or copetitioner" means the department or
121 any reputable person who files a child abuse or neglect
122 petition pursuant to §49-4-601 *et seq.* of this code.

123 "Permanency plan" means the part of the case plan
124 which is designed to achieve a permanent home for the child
125 in the least restrictive setting available.

126 "Respondent" means all parents, guardians, and
127 custodians identified in the child abuse and neglect petition
128 who are not petitioners or copetitioners.

129 "Sexual abuse" means:

130 (A) Sexual intercourse, sexual intrusion, sexual contact,
131 or conduct proscribed by §61-8c-3 of this code, which a
132 parent, guardian, or custodian engages in, attempts to
133 engage in, or knowingly procures another person to engage
134 in, with a child notwithstanding the fact that for a child who
135 is less than 16 years of age, the child may have willingly
136 participated in that conduct or the child may have suffered
137 no apparent physical, mental or emotional injury as a result
138 of that conduct or, for a child 16 years of age or older, the
139 child may have consented to that conduct or the child may
140 have suffered no apparent physical injury or mental or
141 emotional injury as a result of that conduct;

142 (B) Any conduct where a parent, guardian, or custodian
143 displays his or her sex organs to a child, or procures another
144 person to display his or her sex organs to a child, for the
145 purpose of gratifying the sexual desire of the parent,
146 guardian, or custodian, of the person making that display, or
147 of the child, or for the purpose of affronting or alarming the
148 child; or

149 (C) Any of the offenses proscribed in §61-8b-7, §61-8b-
150 8, or §61-8b-9 of this code.

151 “Sexual assault” means any of the offenses proscribed
152 in §61-8b-3, §61-8b-4, or §61-8b-5 of this code.

153 “Sexual contact” means sexual contact as that term is
154 defined in §61-8b-1 of this code.

155 “Sexual exploitation” means an act where:

156 (A) A parent, custodian, or guardian, whether for
157 financial gain or not, persuades, induces, entices or coerces
158 a child to engage in sexually explicit conduct as that term is
159 defined in §61-8c-1 of this code;

160 (B) A parent, guardian, or custodian persuades, induces,
161 entices or coerces a child to display his or her sex organs for
162 the sexual gratification of the parent, guardian, custodian or
163 a third person, or to display his or her sex organs under

164 circumstances in which the parent, guardian, or custodian
165 knows that the display is likely to be observed by others who
166 would be affronted or alarmed; or

167 (C) A parent, guardian, or custodian knowingly
168 maintains or makes available a child for the purpose of
169 engaging the child in commercial sexual activity in
170 violation of §61-14-5 of this code.

171 “Sexual intercourse” means sexual intercourse as that
172 term is defined in §61-8b-1 of this code.

173 “Sexual intrusion” means sexual intrusion as that term
174 is defined in §61-8b-1 of this code.

175 “Serious physical abuse” means bodily injury which
176 creates a substantial risk of death, causes serious or
177 prolonged disfigurement, prolonged impairment of health,
178 or prolonged loss or impairment of the function of any
179 bodily organ.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the
2 following matters:

3 (1) All actions for divorce, annulment or separate
4 maintenance brought under the provisions of §48-3-1 *et*
5 *seq.*, §48-4-1 *et seq.*, or §48-5-1 *et seq.* of this code, except
6 as provided in subsections (b) and (c) of this section;

7 (2) All actions to obtain orders of child support brought
8 under the provisions of §48-11-1 *et seq.*, §48-12-1 *et seq.*,
9 and §48-14-1 *et seq.* of this code;

10 (3) All actions to establish paternity brought under the
11 provisions of §48-24-1 *et seq.* of this code and any
12 dependent claims related to such actions regarding child

13 support, parenting plans or other allocation of custodial
14 responsibility or decision-making responsibility for a child;

15 (4) All actions for grandparent visitation brought under
16 the provisions of §48-10-1 *et seq.* of this code;

17 (5) All actions for the interstate enforcement of family
18 support brought under §48-16-1 *et seq.* of this code and for
19 the interstate enforcement of child custody brought under
20 the provisions of §48-20-1 *et seq.* of this code;

21 (6) All actions for the establishment of a parenting plan
22 or other allocation of custodial responsibility or decision-
23 making responsibility for a child, including actions brought
24 under the Uniform Child Custody Jurisdiction and
25 Enforcement Act, as provided in §48-20-1 *et seq.* of this
26 code;

27 (7) All petitions for writs of habeas corpus in which the
28 issue contested is custodial responsibility for a child;

29 (8) All motions for temporary relief affecting parenting
30 plans or other allocation of custodial responsibility or
31 decision-making responsibility for a child, child support,
32 spousal support or domestic violence;

33 (9) All motions for modification of an order providing
34 for a parenting plan or other allocation of custodial
35 responsibility or decision-making responsibility for a child
36 or for child support or spousal support;

37 (10) All actions brought, including civil contempt
38 proceedings, to enforce an order of spousal or child support
39 or to enforce an order for a parenting plan or other allocation
40 of custodial responsibility or decision-making
41 responsibility for a child;

42 (11) All actions brought by an obligor to contest the
43 enforcement of an order of support through the withholding
44 from income of amounts payable as support or to contest an

45 affidavit of accrued support, filed with the circuit clerk,
46 which seeks to collect an arrearage;

47 (12) All final hearings in domestic violence
48 proceedings;

49 (13) Petitions for a change of name, exercising
50 concurrent jurisdiction with the circuit court;

51 (14) All proceedings for payment of attorney fees if the
52 family court judge has jurisdiction of the underlying action;

53 (15) All proceedings for property distribution brought
54 under §48-7-1 *et seq.* of this code;

55 (16) All proceedings to obtain spousal support brought
56 under §48-8-1 *et seq.* of this code;

57 (17) All proceedings relating to the appointment of
58 guardians or curators of minor children brought pursuant to
59 §44-10-3, §44-10-4 and §44-10-6 of this code, exercising
60 concurrent jurisdiction with the circuit court; and

61 (18) All proceedings relating to petitions for sibling
62 visitation.

63 (b) If an action for divorce, annulment, or separate
64 maintenance does not require the establishment of a
65 parenting plan or other allocation of custodial responsibility
66 or decision-making responsibility for a child and does not
67 require an award or any payment of child support, the circuit
68 court has concurrent jurisdiction with the family court over
69 the action if, at the time of the filing of the action, the parties
70 also file a written property settlement agreement executed
71 by both parties.

72 (c) If an action for divorce, annulment, or separate
73 maintenance is pending and a petition is filed pursuant to
74 the provisions of §49-4-601 through §49-4-610 of this code
75 alleging abuse or neglect of a child by either of the parties
76 to the divorce, annulment, or separate maintenance action,

77 the orders of the circuit court in which the abuse or neglect
78 petition is filed shall supersede and take precedence over an
79 order of the family court respecting the allocation of
80 custodial and decision-making responsibility for the child
81 between the parents. If no order for the allocation of
82 custodial and decision-making responsibility for the child
83 between the parents has been entered by the family court in
84 the pending action for divorce, annulment, or separate
85 maintenance, the family court shall stay any further
86 proceedings concerning the allocation of custodial and
87 decision-making responsibility for the child between the
88 parents and defer to the orders of the circuit court in the
89 abuse or neglect proceedings.

90 (d) If a family court judge is assigned as a judicial officer
91 of a domestic violence court then jurisdiction of all
92 proceedings relating to criminal misdemeanor crimes of
93 domestic violence as referenced in §48-27-301 of this code
94 involving a family or household member as referenced in §48-
95 27-204(1) through §48-27-204(6) and §48-27-204(7)(A), §48-
96 27-204(7)(B), and §48-27-204(7)(H) of this code shall be
97 concurrent with the circuit and magistrate courts.

98 (e) A family court is a court of limited jurisdiction. A
99 family court is a court of record only for the purpose of
100 exercising jurisdiction in the matters for which the
101 jurisdiction of the family court is specifically authorized in
102 this section and in chapter 48 of this code. A family court
103 may not exercise the powers given courts of record in §51-
104 5-1 of this code or exercise any other powers provided for
105 courts of record in this code unless specifically authorized
106 by the Legislature. A family court judge is not a “judge of
107 any court of record” or a “judge of a court of record” as the
108 terms are defined and used in §51-9-1 *et seq.* of this code.

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-8. Transcripts to be furnished indigent persons in juvenile delinquency and child abuse and neglect proceedings upon timely request; payment therefor.

1 In any proceeding held pursuant to §49-4-601 through
2 §49-4-725 of this code in which an indigent respondent or
3 his or her counsel has filed a written request, in the manner
4 prescribed by the Supreme Court of Appeals, evidencing an
5 intent to appeal a decision of a circuit court in the
6 proceeding, the court, upon presentation of a written
7 request, presented within 30 days after the entry of the order
8 sought to be appealed, shall authorize and direct the court
9 reporter to furnish a transcript of the testimony of the
10 proceeding or the part or parts of the transcript that have
11 specifically been requested.

12 The court, after being sufficiently satisfied of the
13 reasonableness of a voucher or claim submitted for payment
14 of the cost of preparing the transcript, shall certify the cost
15 to the State Auditor, who shall, in a timely manner, pay the
16 court reporter's fee from appropriations to the Supreme
17 Court of Appeals.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

1 (a) Any person or agency who knowingly offers, gives,
2 or agrees to give to another person money, property, service,
3 or other thing of value in consideration for the recipient's
4 locating, providing, or procuring a minor child for any
5 purpose which entails a transfer of the legal or physical
6 custody of the child, including, but not limited to, adoption
7 or placement, is guilty of a felony and subject to fine and
8 imprisonment as provided in this section.

9 (b) Any person who knowingly receives, accepts, or
10 offers to accept money, property, service, or other thing of
11 value to locate, provide or procure a minor child for any
12 purpose which entails a transfer of the legal or physical
13 custody of the child, including, but not limited to, adoption

14 or placement, is guilty of a felony and subject to fine and
15 imprisonment as provided in this section.

16 (c) Any person who violates the provisions of this
17 section is guilty of a felony and, upon conviction thereof,
18 may be confined in the state correctional facility for not less
19 than one year nor more than 10 years or, in the discretion of
20 the court, be confined in jail not more than one year and
21 fined not less than \$2,000 nor more than \$10,000.

22 (d) A child whose parent, guardian, or custodian has
23 sold or attempted to sell said child in violation of the
24 provisions of §48-22-1 *et seq.* of this code may be deemed
25 an abused child as defined by §49-1-201 of this code. The
26 court may place such a child in the custody of the
27 Department of Health and Human Resources or with
28 another responsible person as dictated by the best interests
29 of the child.

30 (e) This section does not prohibit the payment or receipt
31 of the following:

32 (1) Fees paid for reasonable and customary services
33 provided by the Department of Health and Human
34 Resources or any licensed or duly authorized adoption or
35 child-placing agency;

36 (2) Reasonable and customary legal, medical, hospital
37 or other expenses incurred in connection with the
38 pregnancy, birth, and adoption proceedings;

39 (3) Fees and expenses included in any agreement in
40 which a woman agrees to become a surrogate mother; or

41 (4) Any fees or charges authorized by law or approved
42 by a court in a proceeding relating to the placement plan,
43 prospective placement, or placement of a minor child for
44 adoption.

45 (f) At the final hearing on the adoption as provided in
46 §48-22-1 *et seq.* of this code, an affidavit of any fees and

47 expenses paid or promised by the adoptive parents shall be
48 submitted to the court.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12b. Escape from custody of the Director of Juvenile Services.

1 (a) Any person, under the age of 18 years of age, who
2 escapes or attempts to escape from the custody of the
3 Director of Juvenile Services, regardless of where that
4 person is confined or where the escape occurs, is guilty of a
5 delinquent act and subject to the jurisdiction of the circuit
6 court of the county in which the escape occurred, pursuant
7 to §49-4-701 of this code: *Provided*, That upon agreement
8 of all parties, the prosecution of the escape may be
9 transferred to the circuit court from which the juvenile was
10 originally committed.

11 (b) Any person, over the age of 18 years of age or any
12 juvenile who has been transferred to the adult jurisdiction of
13 the committing court, who escapes or attempts to escape
14 from the custody of the Director of Juvenile Services,
15 regardless of where that person is confined or where the
16 escape or attempted escape occurs, is guilty of escape and,
17 if the person is detained or confined for an offense which is
18 a felony or would have been a felony if committed by an
19 adult is guilty of a felony and, upon conviction thereof, shall
20 be imprisoned in a state correctional facility not more than
21 five years. Any person, over the age of 18 years of age or
22 any juvenile who has been transferred to the adult
23 jurisdiction of the committing court, who is detained for an
24 offense which is a misdemeanor or would have been a
25 misdemeanor if committed by an adult is guilty of a
26 misdemeanor and, upon conviction thereof, shall be
27 confined in a regional jail for not more than one year.

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-25. Falsely reporting child abuse.

1 (a) Any person who knowingly and intentionally reports
2 or causes to be reported to a law-enforcement officer, child
3 protective service worker, or judicial officer that another has
4 committed child sexual abuse, child abuse, or neglect as
5 those terms are defined in §49-1-201 of this code who when
6 doing so knows or has reason to know the accusation is false
7 and who does it with the intent to influence a child custody
8 decision shall be guilty of a misdemeanor, and, upon
9 conviction, shall be fined not more than \$1,000, sentenced
10 to not more than sixty hours of court-approved community
11 service, or both.

12 (b) In addition to any other sanctions imposed by the
13 provisions of this section, any person convicted of a
14 violation of this section shall be required to attend and
15 complete a court-approved parenting class.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-8. Possession of deadly weapons by minors; prohibitions.

1 Notwithstanding any other provision of this article
2 the contrary, a person under the age of 18 years who is not
3 married or otherwise emancipated shall not possess or carry
4 concealed or openly any deadly weapon: *Provided*, That a
5 minor may possess a firearm upon premises owned by the
6 minor or his or her family or on the premises of another with
7 the permission of his or her parent or guardian and in the
8 case of property other than his or her own or that of his or
9 her family, with the permission of the owner or lessee of the
10 property: *Provided, however*, That nothing in this section
11 shall prohibit a minor from possessing a firearm while
12 hunting in a lawful manner or while traveling from a place
13 where he or she may lawfully possess a deadly weapon, to
14 a hunting site, and returning to a place where he or she may
15 lawfully possess the weapon.

16 A violation of this section by a person under the age of
17 18 years shall subject the child to the jurisdiction of the

18 circuit court under the provisions of §49-4-701 through §49-
19 4-725 of this code, and the minor may be proceeded against
20 in the same manner as if he or she had committed an act
21 which if committed by an adult would be a crime, and may
22 be adjudicated delinquent.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-12. Incest; penalty.

1 (a) For the purposes of this section:

2 (1) "Aunt" means the sister of a person's mother or
3 father;

4 (2) "Brother" means the son of a person's mother or
5 father;

6 (3) "Daughter" means a person's natural daughter,
7 adoptive daughter, or the daughter of a person's husband or
8 wife;

9 (4) "Father" means a person's natural father, adoptive
10 father, or the husband of a person's mother;

11 (5) "Granddaughter" means the daughter of a person's
12 son or daughter;

13 (6) "Grandfather" means the father of a person's father
14 or mother;

15 (7) "Grandmother" means the mother of a person's
16 father or mother;

17 (8) "Grandson" means the son of a person's son or
18 daughter;

19 (9) "Mother" means a person's natural mother, adoptive
20 mother, or the wife of a person's father;

21 (10) "Niece" means the daughter of a person's brother
22 or sister;

23 (11) "Nephew" means the son of a person's brother or
24 sister;

25 (12) "Sexual intercourse" means any act between
26 persons involving penetration, however slight, of the female
27 sex organ by the male sex organ or involving contact
28 between the sex organs of one person and the mouth or anus
29 of another person;

30 (13) "Sexual intrusion" means any act between persons
31 involving penetration, however slight, of the female sex
32 organ or of the anus of any person by an object for the
33 purpose of degrading or humiliating the person so
34 penetrated or for gratifying the sexual desire of either party;

35 (14) "Sister" means the daughter of a person's father or
36 mother;

37 (15) "Son" means a person's natural son, adoptive son,
38 or the son of a person's husband or wife; and

39 (16) "Uncle" means the brother of a person's father or
40 mother.

41 (b) A person is guilty of incest when such person
42 engages in sexual intercourse or sexual intrusion with his or
43 her father, mother, brother, sister, daughter, son,
44 grandfather, grandmother, grandson, granddaughter,
45 nephew, niece, uncle, or aunt.

46 (c) Any person who violates the provisions of this
47 section shall be guilty of a felony, and, upon conviction
48 thereof, shall be imprisoned in the penitentiary not less than
49 5 years nor more than 15 years, or fined not less than \$500
50 nor more than \$5,000 and imprisoned in the penitentiary not
51 less than five years nor more than fifteen years.

52 (d) In addition to any penalty provided under this
53 section and any restitution which may be ordered by the
54 court under §61-11A-1 *et seq.* of this code, the court may

55 order any person convicted under the provisions of this
56 section, where the victim is a minor, to pay all or any portion
57 of the cost of medical, psychological, or psychiatric
58 treatment of the victim, the need for which results from the
59 act or acts for which the person is convicted, whether or not
60 the victim is considered to have sustained bodily injury.

61 (e) In any case where a person is convicted of an offense
62 described in this section against a child and further has or
63 may have custodial, visitation, or other parental rights to the
64 child, the court shall find that the person is an abusing parent
65 within the meaning of §49-4-601 through §49-4-610 of this
66 code, and shall take further action in accord with the
67 provisions of those sections.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11a. Convictions for offenses against children.

1 In any case where a person is convicted of an offense
2 described in this article against a child and the person has
3 custodial, visitation, or other parental rights to the child who
4 is the victim of the offense or any child who resides in the
5 same household as the victim, the court shall, at the time of
6 sentencing, find that the person is an abusing parent within
7 the meaning of §49-4-601 through §49-4-610 of this code
8 as to the child victim, and may find that the person is an
9 abusing parent as to any child who resides in the same
10 household as the victim, and shall take further action in
11 accord with the provisions of those sections.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

**§61-8C-3b. Prohibiting juveniles from manufacturing,
possessing and distributing nude or partially nude images
of minors; creating exemptions; declaring a violation to be
an act of juvenile delinquency; and providing for the
punishment thereof.**

1 (a) Any minor who intentionally possesses, creates,
2 produces, distributes, presents, transmits, posts, exchanges,
3 or otherwise disseminates a visual portrayal of another
4 minor posing in an inappropriate sexual manner or who
5 distributes, presents, transmits, posts, exchanges, or
6 otherwise disseminates a visual portrayal of himself or
7 herself posing in an inappropriate sexual manner is guilty of
8 an act of delinquency and, upon adjudication, disposition
9 may be made by the circuit court pursuant to the provisions
10 of §49-4-701 through §49-4-725 of this code.

11 (b) As used in this section:

12 (1) "Posing in an inappropriate sexual manner" means
13 exhibition of a bare female breast, female or male genitalia,
14 pubic, or rectal areas of a minor for purposes of sexual
15 titillation.

16 (2) "Visual portrayal" means:

17 (A) A photograph;

18 (B) A motion picture;

19 (C) A digital image;

20 (D) A digital video recording; or

21 (E) Any other mechanical or electronic recording
22 process or device that can preserve, for later viewing, a
23 visual image of a person that includes, but is not limited to,
24 computers, cellphones, personal digital assistance, and other
25 digital storage or transmitting devices;

26 (c) It shall be an affirmative defense to an alleged
27 violation of this section that a minor charged with
28 possession of the prohibited visual depiction did neither
29 solicit its receipt nor distribute, transmit, or present it to
30 another person by any means.

31 (d) Notwithstanding the provisions of §15-12-1 *et seq.*
32 of this code, an adjudication of delinquency under the

33 provisions of this section shall not subject the minor to the
34 requirements of that article and chapter.

ARTICLE 8D. CHILD ABUSE.

§61-8D-9. Convictions for offenses against children.

1 In any case where a person is convicted of a felony
2 offense against a child as set forth in this article and the
3 person has custodial, visitation or other parental rights to the
4 child who is the victim of the offense or any child who
5 resides in the same household as the victim, the court shall,
6 at the time of sentencing, find that the person is an abusing
7 parent within the meaning of §49-4-601 through §49-4-610
8 of this code as to the child victim, and may find that the
9 person is an abusing parent as to any child who resides in
10 the same household as the victim, and shall take such further
11 action in accord with the provisions of those sections.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-23. Punishment for juvenile convicted as an adult; eligibility for parole; factors to be considered prior to sentencing.

1 (a) Notwithstanding any other provision of law to the
2 contrary, a sentence of life imprisonment without the
3 possibility of parole may not be imposed on a person who:

4 (1) Is convicted of an offense punishable by life
5 imprisonment; and

6 (2) Was less than 18 years of age at the time the offense
7 was committed.

8 (b) Unless otherwise provided by this code, the
9 provisions of §62-12-1 *et seq.* of this code governs the
10 eligibility for parole of a person who is convicted of an
11 offense and sentenced to confinement if he or she was less
12 than 18 years of age at the time the offense was committed,
13 except that a person who is convicted of one or more

14 offenses for which the sentence or any combination of
15 sentences imposed is for a period that renders the person
16 ineligible for parole until he or she has served more than 15
17 years shall be eligible for parole after he or she has served
18 15 years if the person was less than 18 years of age at the
19 time each offense was committed.

20 (c) In addition to other factors required by law to be
21 considered prior to the imposition of a sentence, in
22 determining the appropriate sentence to be imposed on a
23 person who has been transferred to the criminal jurisdiction
24 of the court pursuant to §49-4-710 of this code and who has
25 been subsequently tried and convicted of a felony offense as
26 an adult, the court shall consider the following mitigating
27 circumstances:

28 (1) Age at the time of the offense;

29 (2) Impetuosity;

30 (3) Family and community environment;

31 (4) Ability to appreciate the risks and consequences of
32 the conduct;

33 (5) Intellectual capacity;

34 (6) The outcomes of a comprehensive mental health
35 evaluation conducted by a mental health professional
36 licensed to treat adolescents in the State of West Virginia:
37 *Provided*, That no provision of this section may be
38 construed to require that a comprehensive mental health
39 evaluation be conducted;

40 (7) Peer or familial pressure;

41 (8) Level of participation in the offense;

42 (9) Ability to participate meaningfully in his or her
43 defense;

44 (10) Capacity for rehabilitation;

- 45 (11) School records and special education evaluations;
- 46 (12) Trauma history;
- 47 (13) Faith and community involvement;
- 48 (14) Involvement in the child welfare system; and
- 49 (15) Any other mitigating factor or circumstances.

50 (d)(1) Prior to the imposition of a sentence on a
51 person who has been transferred to the criminal
52 jurisdiction of the court pursuant to §49-4-710 of this
53 code, and who has been subsequently tried and convicted
54 of a felony offense as an adult, the court shall consider
55 the outcomes of any comprehensive mental health
56 evaluation conducted by an mental health professional
57 licensed to treat adolescents in the State of West Virginia.
58 The comprehensive mental health evaluation must
59 include the following:

- 60 (A) Family interviews;
- 61 (B) Prenatal history;
- 62 (C) Developmental history;
- 63 (D) Medical history;
- 64 (E) History of treatment for substance use;
- 65 (F) Social history; and
- 66 (G) A psychological evaluation.

67 result of convictions rendered after the effective date of
68 this section. (2) The provisions of this subsection are only
69 applicable to sentencing proceedings for convictions
70 rendered after the effective date of this section and do not
71 constitute sufficient grounds for the reconsideration of
72 sentences imposed as the

ARTICLE 12. POSTMORTEM EXAMINATIONS.

***§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.**

1 (a) If in the opinion of the chief medical examiner, or of
2 the county medical examiner of the county in which the
3 death in question occurred, it is advisable and in the public
4 interest that an autopsy be made, or if an autopsy is
5 requested by either the prosecuting attorney or the judge of
6 the circuit court or other court of record having criminal
7 jurisdiction in that county, an autopsy shall be conducted by
8 the chief medical examiner or his or her designee, by a
9 member of his or her staff, or by a competent pathologist
10 designated and employed by the chief medical examiner
11 under the provisions of this article. For this purpose, the
12 chief medical examiner may employ any county medical
13 examiner who is a pathologist who holds board certification
14 or board eligibility in forensic pathology or has completed
15 an American Board of Pathology fellowship in forensic
16 pathology to make the autopsies, and the fees to be paid for
17 autopsies under this section shall be in addition to the fee
18 provided for investigations pursuant to §61-12-8 of this
19 code. A full record and report of the findings developed by
20 the autopsy shall be filed with the office of the chief medical
21 examiner by the person making the autopsy.

22 (b) Within the discretion of the chief medical examiner, or
23 of the person making the autopsy, or if requested by the
24 prosecuting attorney of the county, or of the county where any
25 injury contributing to or causing the death was sustained, a
26 copy of the report of the autopsy shall be furnished to the
27 prosecuting attorney.

28 (c) The office of the chief medical examiner shall keep
29 full, complete and properly indexed records of all deaths
30 investigated, containing all relevant information concerning
31 the death and the autopsy report if an autopsy report is made.
32 Any prosecuting attorney or law-enforcement officer may

*NOTE: This section was also amended by H. B. 4217 (Chapter 29),
which passed subsequent to the act.

33 secure copies of these records or information necessary for
34 the performance of his or her official duties.

35 (d) Copies of these records or information shall be
36 furnished, upon request, to any court of law, or to the parties
37 therein to whom the cause of death is a material issue,
38 except where the court determines that interests in a civil
39 matter conflict with the interests in a criminal proceeding,
40 in which case the interests in the criminal proceeding shall
41 take precedence. The office of chief medical examiner shall
42 be reimbursed a reasonable rate by the requesting party for
43 costs incurred in the production of records under this
44 subsection and subsection (c) of this section.

45 (e) The chief medical examiner is authorized to release
46 investigation records and autopsy reports to the
47 multidisciplinary team authorized by §49-4-402 of this code
48 and as authorized in subsection (h) of this section. At the
49 direction of the Secretary of the Department of Health and
50 Human Resources the chief medical examiner may release
51 records and information to other state agencies when
52 considered to be in the public interest.

53 (f) Any person performing an autopsy under this section
54 may keep and retain, for and on behalf of the chief medical
55 examiner, any tissue from the body upon which the autopsy
56 was performed which may be necessary for further study or
57 consideration.

58 (g) In cases of the death of any infant in the State of
59 West Virginia where sudden infant death syndrome is the
60 suspected cause of death and the chief medical examiner or
61 the medical examiner of the county in which the death in
62 question occurred considers it advisable to perform an
63 autopsy, the chief medical examiner or the medical
64 examiner of the county in which the death occurred shall
65 notify the sudden infant death syndrome program within the
66 division of maternal and child health and to inform the
67 program of all information to be given to the infant's
68 parents.

69 (h) If the chief medical officer determines that a drug
70 overdose is the cause of death of a person, the chief medical
71 examiner shall provide notice of the death to the West
72 Virginia Controlled Substances Monitoring Program
73 Database Review Committee established pursuant to §60A-
74 9-5(b) of this code and shall include in the notice any
75 information relating to the cause of the fatal overdose.

CHAPTER 62. CRIMINAL PROCEDURE.

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

§62-6B-5. Memorialization of statements of certain child witnesses; admissibility; hearing.

1 (a) After the effective date of this section, whenever any
2 law-enforcement officer, physician, psychologist, social
3 worker, or investigator, in the course of his or her
4 employment or profession or while engaged in an active
5 criminal investigation as a law-enforcement officer or an
6 agent of a prosecuting attorney, obtains a statement from a
7 child 13 years of age or younger who is an alleged victim in
8 an investigation or prosecution alleging a violation of the
9 provisions of §61-8B-3, §61-8B-4, §61-8B-5, or §61-8B-7
10 of this code, he or she shall immediately make a
11 contemporaneous written notation and recitation of the
12 statement received or obtained. An audio recording or video
13 recording with sound capability of the statement may be
14 used in lieu of the written recitation required by the
15 provisions of this section. Failure to comply with the
16 provisions of this section creates a presumption that the
17 statement is inadmissible. The statement may be admitted
18 if, after a hearing on the matter, the court finds by clear and
19 convincing evidence that the failure to comply with the
20 provisions of this section was a good faith omission and that
21 the content of the proffered statement is an accurate recital
22 of the information provided by the child and is otherwise
23 admissible.

24 (b) The provisions of this section shall not apply to:

25 (1) Medical personnel and other persons performing a
26 forensic medical examination of a child who is an alleged
27 victim; and

28 (2) Prosecuting attorneys when counseling with a child
29 in preparation for eliciting the child's testimony in court.

CHAPTER 38

(S. B. 539 - By Senators Trump, Stollings and Woelfel)

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §14-2-17a of the Code of West Virginia, 1931, as amended, relating to increasing the limit for settling claims against the Division of Highways under the shortened procedure for road condition claims.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-17a. Shortened procedure for road condition claims.

1 Notwithstanding the regular and shortened procedures
2 provided for in §14-2-16 and §14-2-17 of this code, there
3 shall be a shortened procedure for road condition claims.
4 The shortened procedure authorized by this section shall
5 apply only to a claim possessing all of the following
6 characteristics:

7 (1) The claim does not arise under an appropriation for
8 the current fiscal year.

9 (2) The claim alleges that a condition on the state's
10 highways or roads caused property damage.

11 (3) The Division of Highways concurs in the claim.

12 (4) The amount claimed does not exceed \$3,000.

13 The Division of Highways shall prepare a stipulation
14 concerning the claim and file it with the clerk. The
15 commission shall order the claim approved and shall file its
16 statement with the clerk.

CHAPTER 39

(S. B. 584 - By Senators Blair, Boso, Sypolt and
Facemire)

[Passed March 8, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the Department of Administration; Division of Corrections; Department of Environmental Protection; Department of Health and Human Resources; Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities; Division of Highways; Division of Motor Vehicles; Regional Jail and Correctional Facility Authority; State Board of Education; State of West Virginia; and Department of Veterans Assistance to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
 2 recommendations reported to it by the Legislative Claims
 3 Commission concerning various claims against the state and
 4 agencies thereof and in respect to each of the following
 5 claims, the Legislature adopts those findings of fact as its
 6 own and in respect of the claims herein, the Legislature has
 7 independently made findings of fact and determinations of
 8 award and hereby declares it to be the moral obligation of
 9 the state to pay each such claim in the amount specified
 10 below and directs the Auditor to issue warrants for the
 11 payment thereof out of any fund appropriated and available
 12 for the purpose.

13 (a) *Claims against the Department of Administration,*
 14 *Office of Technology:*

15 (TO BE PAID FROM SPECIAL REVENUE FUND)

16 (1) Ricoh USA.....\$16,781.29

17 (2) South Charleston Electric Company.....\$3,000.00

18 (b) *Claims against the Division of Corrections:*

19 (TO BE PAID FROM GENERAL REVENUE FUND)

20 (1) Shelby Skaggs.....\$24.30

21 (2) Donald B. Surber, Jr.\$70.00

22 (c) *Claim against the Department of Environmental*
 23 *Protection:*

24 (TO BE PAID FROM GENERAL REVENUE FUND)

25 (1) Potesta & Associates Inc. \$193,170.00

26 (d) *Claims against the Department of Health and*
 27 *Human Resources:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | |
|----|--|-------------|
| 29 | (1) Saunders Staffing, Inc..... | \$7,521.64 |
| 30 | (2) Social Solutions Global Inc. | \$83,781.00 |
| 31 | (e) <i>Claims against the Department of Health and</i> | |
| 32 | <i>Human Resources, Bureau for Behavioral Health and</i> | |
| 33 | <i>Health Facilities:</i> | |
| 34 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 35 | (1) Management Registry, Inc..... | \$1,229.34 |
| 36 | (2) Sunbelt Staffing | \$6,315.00 |
| 37 | (f) <i>Claims against Division of Highways:</i> | |
| 38 | (TO BE PAID FROM STATE ROAD FUND) | |
| 39 | (1) Robert A. Abell and Linda Abell | \$117.08 |
| 40 | (2) Jessica Adams and Christopher D. Adams.... | \$397.83 |
| 41 | (3) Susan M. Adams | \$500.00 |
| 42 | (4) Harmon Adkins | \$83.50 |
| 43 | (5) Carmen Archer | \$321.00 |
| 44 | (6) Vincent Lee Ash..... | \$297.89 |
| 45 | (7) Pervous A. Badilishamwalimu..... | \$83.72 |
| 46 | (8) Kimberly Bailes and James R. Bailes Jr. | \$726.61 |
| 47 | (9) Erika Bailey and Timothy C. Bailey | \$304.95 |
| 48 | (10) Randall D. Bailey and Veronica Bailey ... | \$264.43 |
| 49 | (11) Kelli Bails..... | \$500.00 |
| 50 | (12) Caleb Banks | \$500.00 |
| 51 | (13) Georgia Loraine Barido and | |
| 52 | Michael Ray Barido | \$568.05 |
| 53 | (14) Sharon Barnett..... | \$217.20 |
| 54 | (15) Charles J. Barnette | \$1,000.00 |
| 55 | (16) Timothy Barrar and Andrea Barrar | \$451.21 |
| 56 | (17) Edward J. Beech and Barbara J. Beech.... | \$297.97 |
| 57 | (18) Angelia Bell, Administratrix | |
| 58 | of the Estate of Raheem Bonds | \$75,000.00 |
| 59 | (19) Jessica Bishoff..... | \$385.24 |
| 60 | (20) Jeffrey Bland | \$391.58 |
| 61 | (21) Joseph Blevins and Sharon A. Blevins.... | \$141.00 |

| | | |
|----|---|-------------|
| 62 | (22) Jeffrey W. Boggs and Kemellia Boggs | \$250.00 |
| 63 | (23) Jeffry Boley | \$211.12 |
| 64 | (24) Joseph Bonds and Brittany Bonds..... | \$148.35 |
| 65 | (25) Ralph J. Bowers and Jeanne E. Bowers ... | \$284.73 |
| 66 | (26) David L. Bowles..... | \$236.47 |
| 67 | (27) James D. Bray Jr. and Crystal M. Bray | \$500.00 |
| 68 | (28) Gerald Brennan | \$347.92 |
| 69 | (29) Dorothy Brown..... | \$500.00 |
| 70 | (30) Julie Browning | \$500.00 |
| 71 | (31) Daniel Buckner and Traci Buckner..... | \$100.00 |
| 72 | (32) Faisal Bukeirat | \$250.00 |
| 73 | (33) Kelly Ann Bukrim..... | \$151.05 |
| 74 | (34) Margery D. Burcham..... | \$259.55 |
| 75 | (35) Craig M. Burgess | \$76.32 |
| 76 | (36) Robert W. Burkhart..... | \$133.74 |
| 77 | (37) Jason Burns and Andrea Burns | \$500.00 |
| 78 | (38) Paul Burnside | \$644.40 |
| 79 | (39) Randy Burrows and Cheryl Burrows | \$184.72 |
| 80 | (40) Shirley Burrows | \$500.00 |
| 81 | (41) Jeremy Calderwood..... | \$93.79 |
| 82 | (42) Christopher W. Cale..... | \$948.14 |
| 83 | (43) Toni K. Cameron..... | \$358.10 |
| 84 | (44) Gregory A. Carpenter..... | \$398.56 |
| 85 | (45) Larry Carter..... | \$1,000.00 |
| 86 | (46) Larry A. Casdorph..... | \$116.60 |
| 87 | (47) Dustin Caudill | \$75,000.00 |
| 88 | (48) Charleston Acoustics Supply | \$775.57 |
| 89 | (49) Richard Chaty and Leigh Ann Chaty | \$193.65 |
| 90 | (50) Cathy L. Chisler | \$500.00 |
| 91 | (51) Citynet LLG | \$500.00 |
| 92 | (52) Frances Bennett Clark | \$200.00 |
| 93 | (53) Adam T. Clay and Sara Clay..... | \$302.80 |
| 94 | (54) Dallas L. Clay and Morgan Clay..... | \$109.50 |
| 95 | (55) John Michael Coffman | \$1,000.00 |
| 96 | (56) Elizabeth Colby..... | \$250.00 |
| 97 | (57) Trevor Comer and Heather Comer..... | \$500.00 |
| 98 | (58) Janette Riblett (Siders) | |
| 99 | and Gregory Compton..... | \$682.33 |

| | | | |
|-----|------|--|------------|
| 100 | (59) | Nija Conley | \$149.08 |
| 101 | (60) | Glen J. Cook Jr. | \$116.04 |
| 102 | (61) | Johnett V. Coombs | \$256.02 |
| 103 | (62) | John Cooper and Colleen Cooper..... | \$639.32 |
| 104 | (63) | Michael S. Corley..... | \$992.27 |
| 105 | (64) | Eva L. Costa | \$250.00 |
| 106 | (65) | Paige Cotsmire | \$520.00 |
| 107 | (66) | Phillip O. Crago | \$428.14 |
| 108 | (67) | Carol C. Craig and James E. Craig..... | \$127.20 |
| 109 | (68) | Danielle Dawn Cripe and Robert Cripe | \$63.13 |
| 110 | (69) | Felicia Crogan and Aubrey Crogan..... | \$500.00 |
| 111 | (70) | Ruth Crowe and Gerard Crowe..... | \$80.74 |
| 112 | (71) | Patsy M. Culbertson | \$282.61 |
| 113 | (72) | Brittany Friend and Cory Daft | \$268.18 |
| 114 | (73) | Melissa Anne Dailey | \$250.00 |
| 115 | (74) | Mario Dalesandro..... | \$500.00 |
| 116 | (75) | Charles L. Daniels..... | \$1,365.00 |
| 117 | (76) | Robert F. Danko | \$500.00 |
| 118 | (77) | Jane K. Darby..... | \$631.30 |
| 119 | (78) | Ashleigh Davis | \$432.46 |
| 120 | (79) | Shelva L. Davis | \$500.00 |
| 121 | (80) | Tyler Davis and Raquel Davis | \$82.68 |
| 122 | (81) | Joseph Day and Carol Day | \$50.00 |
| 123 | (82) | Larry R. Dean..... | \$500.00 |
| 124 | (83) | Nicholas Bryan Dean | \$215.19 |
| 125 | (84) | Nicholas Bryan Dean | \$41.86 |
| 126 | (85) | Adoniram Defibough | |
| 127 | | and Debra Defibough | \$232.14 |
| 128 | (86) | Louis Dellamea | |
| 129 | | and Deborah I. Dellamea | \$500.00 |
| 130 | (87) | Chrisanne Diaz..... | \$529.95 |
| 131 | (88) | Shelby Dibacco | \$358.52 |
| 132 | (89) | Anthony Dituro and Courtney Dituro | \$102.99 |
| 133 | (90) | David G. Dix | \$254.70 |
| 134 | (91) | Kevin M. Doe and Mary B. Doe | \$298.34 |
| 135 | (92) | Jamie Doss | \$139.92 |
| 136 | (93) | Kevin Dotson | \$400.00 |
| 137 | (94) | Saundra L. Dotson..... | \$220.48 |
| 138 | (95) | Suzette Dunn and Philip Dunn..... | \$298.43 |

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| 139 | (96) Martin Duttine and Misty Dawn Duttine | .\$280.00 |
| 140 | (97) Rebecca Eckenrode | \$446.36 |
| 141 | (98) Ted A. Elswick..... | \$550.00 |
| 142 | (99) Tyler Farley..... | \$162.18 |
| 143 | (100) Donn-Yelle Fenton..... | \$154.64 |
| 144 | (101) Donald L. Ferguson | |
| 145 | and Lvonne D. Ferguson..... | \$217.30 |
| 146 | (102) Nancy L. Ferrell | \$305.59 |
| 147 | (103) Carol J. Findley | \$1,384.05 |
| 148 | (104) Clarice Gail Findley | \$500.00 |
| 149 | (105) Matthew Fisher and Pamela Fisher | \$105.40 |
| 150 | (106) Betty E. Fleming and James Fleming..... | \$372.01 |
| 151 | (107) Amy Fletcher..... | \$329.89 |
| 152 | (108) Debra D. Fortney and Mark Fortney..... | \$100.00 |
| 153 | (109) Charles Jason Foster..... | \$735.85 |
| 154 | (110) Titus Franz | \$500.00 |
| 155 | (111) Linda Fredrick..... | \$250.00 |
| 156 | (112) Lester D. Freeman | |
| 157 | and Delores A. Freeman | \$250.00 |
| 158 | (113) Rickey L. French | |
| 159 | and Jophenia Ellen French | \$916.83 |
| 160 | (114) Robin R. Fulks | \$1,000.00 |
| 161 | (115) Donna George | \$367.68 |
| 162 | (116) Wanda S. Gibson..... | \$500.00 |
| 163 | (117) Global Science & Technology Inc. | \$10,450.62 |
| 164 | (118) Chelsea Glover | \$143.33 |
| 165 | (119) Haley Graham and Blake E. Graham | \$288.32 |
| 166 | (120) Christina Grant and Dewey S. Grant Jr. | \$111.40 |
| 167 | (121) Timothy Griffin and Tammie Griffin..... | \$286.45 |
| 168 | (122) Dana K. Griffith | \$250.00 |
| 169 | (123) Bonnie Grisell and Sidney E. Grisell | \$500.00 |
| 170 | (124) Tracy B. Grote and Regis M. Grote | \$500.00 |
| 171 | (125) Jeanne Grubb and Stephen Grubb..... | \$325.00 |
| 172 | (126) David Hairston and Angela Hairston | \$250.00 |
| 173 | (127) Chris Hall | \$1,000.00 |
| 174 | (128) Donald L. Hall..... | \$250.00 |
| 175 | (129) Linda L. Hall and Danny Hall..... | \$101.76 |
| 176 | (130) Michael Hanket | \$500.00 |
| 177 | (131) Chevele Hardiman..... | \$500.00 |

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|-----|--|------------|
| 178 | (132) Christian Harper | \$388.74 |
| 179 | (133) Pamela M. Harper | \$500.00 |
| 180 | (134) Jerry L. Harris | \$68.90 |
| 181 | (135) Donald Ray Hatcher Jr. | |
| 182 | and Sigrid Hatcher | \$500.00 |
| 183 | (136) Noah Haverland | \$6,605.58 |
| 184 | (137) Robert M. Haverland..... | \$947.56 |
| 185 | (138) Brandi Haynes and David Haynes | \$1,000.00 |
| 186 | (139) William D. Helms Sr..... | \$132.44 |
| 187 | (140) Opal Gay Vance and Nikki Henderson.... | \$188.68 |
| 188 | (141) Robert G. Hendricks..... | \$138.71 |
| 189 | (142) Donna Hickman | \$346.95 |
| 190 | (143) Kathy J. Hickman and Edward Hickman..... | \$240.19 |
| 191 | (144) Kyle D. Hill..... | \$322.86 |
| 192 | (145) Cynthia R. Hinkle..... | \$613.86 |
| 193 | (146) Cynthia R. Hinkle..... | \$322.72 |
| 194 | (147) Tammy K. Hoak..... | \$315.95 |
| 195 | (148) Andy Garland and Margaret Hodge | \$438.68 |
| 196 | (149) Maynard L. Holliday | \$190.80 |
| 197 | (150) Larry D. Huffman..... | \$759.98 |
| 198 | (151) Christine E. Hufford | |
| 199 | and James B. Hufford | \$250.00 |
| 200 | (152) Mary Ellen Humphrey..... | \$201.40 |
| 201 | (153) Christopher Humphreys | |
| 202 | and Susan M. Humphreys | \$500.00 |
| 203 | (154) Brian Hundley | \$325.80 |
| 204 | (155) James R. Hunt | \$36.99 |
| 205 | (156) Michael Hunt..... | \$153.70 |
| 206 | (157) Henry Hunter..... | \$100.00 |
| 207 | (158) Larry Hurst | \$185.00 |
| 208 | (159) Jeremy S. Hutchinson..... | \$323.30 |
| 209 | (160) Patricia Hvizdak | \$112.30 |
| 210 | (161) Jennifer Jackson, Franklin Jackson | |
| 211 | and Tammy Jackson..... | \$500.00 |
| 212 | (162) Robert L. Jackson Jr. | \$1,698.44 |
| 213 | (163) Mark D. Jarrett | \$250.00 |
| 214 | (164) Norma Jarvis | \$1,271.77 |
| 215 | (165) William Steve Javage | \$1,210.31 |
| 216 | (166) Darlene Johnson and James Johnson | \$244.86 |

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| 217 | (167) Heather R. Johnson and James Johnson | \$254.35 |
| 218 | (168) Jack Johnson..... | \$57.00 |
| 219 | (169) Rebecca Anne Johnson | |
| 220 | and Troy Johnson | \$250.00 |
| 221 | (170) Sherry L. Johnson..... | \$168.54 |
| 222 | (171) Jack Jones Jr. and Cristy Jones..... | \$146.18 |
| 223 | (172) Jason Jones | \$163.91 |
| 224 | (173) Sheila K. Jones-Marino | \$492.05 |
| 225 | (174) Linsey Justice | \$398.32 |
| 226 | (175) Michael Alexander Justice | |
| 227 | and Amber Justice | \$84.75 |
| 228 | (176) John E. Kester | \$500.00 |
| 229 | (177) Tim Kiehle | \$255.02 |
| 230 | (178) Stephen J. Kindler and Kathleen Kindler | \$808.15 |
| 231 | (179) Thomas Lee Kirk..... | \$435.65 |
| 232 | (180) Roger Kirtley..... | \$217.30 |
| 233 | (181) Susan Knauss | \$286.31 |
| 234 | (182) Jennifer Lacy and Brian Lacy | \$250.00 |
| 235 | (183) Eric T. Lafferty..... | \$500.00 |
| 236 | (184) Fonda Lambert | \$596.33 |
| 237 | (185) Shana Lambert and Robert Lambert | \$668.96 |
| 238 | (186) Justin Lantz and Robert Lantz..... | \$405.07 |
| 239 | (187) Michael Law Jr..... | \$129.14 |
| 240 | (188) Rodney Legg and Retha Legg..... | \$193.55 |
| 241 | (189) Jennifer K. Lester | |
| 242 | and Michael Alan Leist | \$690.85 |
| 243 | (190) Patrick D. Leonard | |
| 244 | and Lelah A. Leonard | \$500.00 |
| 245 | (191) Lorrie Lewis | \$723.00 |
| 246 | (192) Joyce Likens and Lucian Likens | \$586.54 |
| 247 | (193) Karen Lonsinger..... | \$228.27 |
| 248 | (194) Stacey Losh and Gregory Losh | \$500.00 |
| 249 | (195) Demetrio A. Lozano and Jenelle Swiger | |
| 250 | and Mike Swiger | \$500.00 |
| 251 | (196) Erin Mader | \$500.00 |
| 252 | (197) Charles V. Madous | |
| 253 | and Kimberly A. Madous | \$419.39 |
| 254 | (198) Jarrell Mairs | \$183.38 |
| 255 | (199) Perry Mamula and Andrea J. Mamula | \$209.88 |

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| 256 | (200) Lissa D. Marcum | \$845.45 |
| 257 | (201) Jordan Margenau | |
| 258 | and Matthew Margenau | \$500.00 |
| 259 | (202) Sheila K. Jones-Marino | |
| 260 | and Vincent Marino | \$288.32 |
| 261 | (203) Johnnie Marks | \$500.00 |
| 262 | (204) Carey Marra | \$712.15 |
| 263 | (205) Stephen C. Martin | \$118.70 |
| 264 | (206) John L. Mazeska..... | \$135.00 |
| 265 | (207) Larry F. Mazza | \$833.28 |
| 266 | (208) Stephanie Martin and Jason McClain..... | \$500.00 |
| 267 | (209) Devin McCoy and Sherry McCoy..... | \$176.84 |
| 268 | (210) Kenneth McGee | |
| 269 | and McGee Motors LTD..... | \$630.00 |
| 270 | (211) Jonathan McGoldrick | \$108.28 |
| 271 | (212) Jared McGoskey | \$132.00 |
| 272 | (213) Delmas E. McKinney | \$362.00 |
| 273 | (214) George McQuain..... | \$87.00 |
| 274 | (215) Melissa Meade and Kristina Meade | \$528.58 |
| 275 | (216) Rita Sue Meador and Michael H. Meador.... | \$461.10 |
| 276 | (217) Tammy J. Meadows | \$500.84 |
| 277 | (218) Katelynn Menshouse | |
| 278 | and Justin Menshouse..... | \$500.00 |
| 279 | (219) Matthew D. Milburn..... | \$318.00 |
| 280 | (220) Jerri L. Miller | \$167.37 |
| 281 | (221) Jerri L. Miller | \$301.36 |
| 282 | (222) Stacy L. Miller and Bobby E. Miller..... | \$250.00 |
| 283 | (223) Elissa Momen..... | \$77.36 |
| 284 | (224) Nickolas Money penny..... | \$1,469.69 |
| 285 | (225) Kelly Ann Mulvene..... | \$441.17 |
| 286 | (226) Connie Mollohan and Edith Myerly..... | \$223.59 |
| 287 | (227) Richard L. Nester Sr. | |
| 288 | and Donna S. Nester | \$100.70 |
| 289 | (228) Jeremy Newman..... | \$221.17 |
| 290 | (229) Tyler J. Norman | \$450.77 |
| 291 | (230) Charles Nuckles Jr..... | \$1,000.00 |
| 292 | (231) Bobby J. Nutter and Sandra Nutter | \$116.60 |
| 293 | (232) Erika A. Oxley | \$493.11 |
| 294 | (233) Chelsie Palmeri | \$315.00 |

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| 295 | (234) Nancy L. Parker and Clarence Parker | \$500.00 |
| 296 | (235) Jon S. Parlier | \$79.00 |
| 297 | (236) Eva Jo Patterson | \$4,000.00 |
| 298 | (237) Mary K. Paul and Michael Jason Paul | \$456.05 |
| 299 | (238) Dona L. Pecjak | \$332.05 |
| 300 | (239) Melody Pendergrass and | |
| 301 | Gregory T. Pendergrass | \$182.08 |
| 302 | (240) Racheal Perdue and Chad S. Perdue | \$500.00 |
| 303 | (241) Stanley J. Perdue | \$500.00 |
| 304 | (242) Pamela Perdue, Administratrix | |
| 305 | of the Estate of Lauren Perdue | \$75,000.00 |
| 306 | (243) Kevin J. Phillips | \$234.42 |
| 307 | (244) Mary Phillips | \$69.00 |
| 308 | (245) Carole L. Pierson | \$256.00 |
| 309 | (246) Kellie A. Piggott and Robert D. Piggott | \$170.92 |
| 310 | (247) Stacey J. Pinkerton | |
| 311 | and Jason L. Pinkerton | \$183.39 |
| 312 | (248) Sonya L. Piper and Robert Piper | \$500.00 |
| 313 | (249) Jeremy A. Posey | \$500.00 |
| 314 | (250) Robert Preston | \$355.24 |
| 315 | (251) David A. Prichard | \$275.60 |
| 316 | (252) Lester Pritt | \$250.00 |
| 317 | (253) Bryan L. Raber | \$127.20 |
| 318 | (254) Herbert Gary Radcliff and Lela Radcliff | \$500.00 |
| 319 | (255) Jeffery Raddish | \$500.00 |
| 320 | (256) Donnetta Rainwater | \$500.00 |
| 321 | (257) Shelia J. Ratliff and Robert E. Ratliff | \$708.75 |
| 322 | (258) Dominic J. Raymond II | |
| 323 | and Kathy Raymond | \$500.00 |
| 324 | (259) Marcie Reeder and Shann B. Reeder | \$143.10 |
| 325 | (260) Lori E. Richards | \$270.30 |
| 326 | (261) Gary L. Richardson | \$250.00 |
| 327 | (262) Dale Richmond | \$170.00 |
| 328 | (263) Jeffrey O. Ridgeway | |
| 329 | and Kimberly D. Ridgeway | \$265.40 |
| 330 | (264) Chessi Roberts | \$500.00 |
| 331 | (265) Eric J. Robey and Lori Robey | \$250.00 |
| 332 | (266) Olivia Loraine Rogers | |
| 333 | and Mark Douglas Rogers Jr. | \$208.65 |

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| 334 | (267) Edward Ross..... | \$161.00 |
| 335 | (268) Joshua T. Roth and Michelle Roth..... | \$500.00 |
| 336 | (269) Bruce R. Rothschild..... | \$450.00 |
| 337 | (270) Dakota Rowland..... | \$250.00 |
| 338 | (271) Sylvia Ann Sacco..... | \$864.36 |
| 339 | (272) Regina Dawn Sacre and Mark Sacre..... | \$500.00 |
| 340 | (273) Kevin L. Salisbury and Marla Salisbury..... | \$125.61 |
| 341 | (274) Kaitlyn Johnson and Justin Samuels..... | \$442.98 |
| 342 | (275) Everett E. Sansom and Carolyn Sansom..... | \$115.00 |
| 343 | (276) Lewis Saunders..... | \$179.18 |
| 344 | (277) Deborah G. Sbarra..... | \$241.38 |
| 345 | (278) Tommy Seabolt..... | \$129.04 |
| 346 | (279) Keesha Sedlacek..... | \$91.10 |
| 347 | (280) Michael L. Shafer and Kathryn Shafer..... | \$500.00 |
| 348 | (281) Charles R. Shamblin..... | \$323.29 |
| 349 | (282) Moe R. Shamshiry..... | \$231.00 |
| 350 | (283) Kenny Sharer and Cynthia Sharer..... | \$500.00 |
| 351 | (284) Rahul Sharma and Rupa Sharma..... | \$188.45 |
| 352 | (285) David R. Sheets..... | \$250.00 |
| 353 | (286) David L. Shell..... | \$500.00 |
| 354 | (287) Brandy G. Collins Sheppard | |
| 355 | and Erma L. Sheppard..... | \$606.68 |
| 356 | (288) Tracie Simon and Stephen Simon..... | \$20.85 |
| 357 | (289) Marissa B. Simpkins | |
| 358 | and Aaron Simpkins..... | \$159.97 |
| 359 | (290) Terresa M. Simpkins | |
| 360 | and Larry E. Simpkins..... | \$122.57 |
| 361 | (291) Harry Sirbaugh III..... | \$329.66 |
| 362 | (292) Jame Slack and Stella Slack..... | \$255.45 |
| 363 | (293) Edward W. Sloan..... | \$225.77 |
| 364 | (294) Roger D. Smallwood..... | \$598.74 |
| 365 | (295) Lisa Lynn Smith..... | \$393.53 |
| 366 | (296) Michelle D. Smith..... | \$329.28 |
| 367 | (297) Randolph Smith and Brittany Smith..... | \$3,500.00 |
| 368 | (298) Randy G. Smith..... | \$80.00 |
| 369 | (299) Tanner Smith..... | \$207.00 |
| 370 | (300) Wain Smith..... | \$500.00 |
| 371 | (301) Douglas Smolder..... | \$250.00 |
| 372 | (302) Brittany Spencer and Regina Spencer..... | \$500.00 |

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| 373 | (303) Ralph Sprigle and Cheryl Sprigle..... | \$1,001.66 |
| 374 | (304) Donald Standifur and Loretta Standifur..... | \$796.84 |
| 375 | (305) Francis Joseph Stanek | \$1,000.00 |
| 376 | (306) Jay F. Starcher | \$81.47 |
| 377 | (307) Steven P. Starkey | \$333.96 |
| 378 | (308) Sandra L. Stephens and James Stephens | \$540.00 |
| 379 | (309) Randall Stephenson | \$633.77 |
| 380 | (310) Triston Stewart..... | \$637.60 |
| 381 | (311) Donna Stanley and Roger Stoffel..... | \$473.29 |
| 382 | (312) Gregory Stone and Jill Stone..... | \$500.00 |
| 383 | (313) Sue E. Sturgill and Richard Sturgill | \$181.66 |
| 384 | (314) Jarin Hongraisan | |
| 385 | and Phenphone P. Suanse..... | \$500.00 |
| 386 | (315) Lorraine Swatt..... | \$25,000.00 |
| 387 | (316) Brenda R. Talbott | \$250.00 |
| 388 | (317) Fern S. Teel | \$930.18 |
| 389 | (318) Kandace Thompson | |
| 390 | and Joseph Thompson..... | \$318.47 |
| 391 | (319) Pamela Thompson | \$98.44 |
| 392 | (320) Rodney Thompson | \$253.54 |
| 393 | (321) Lisa D. Tignor | \$500.00 |
| 394 | (322) Gary Tucker | \$271.36 |
| 395 | (323) Brenda Turner and Harold R. Turner | \$256.79 |
| 396 | (324) James W. Turner | \$321.34 |
| 397 | (325) Clinton Uphold..... | \$300.00 |
| 398 | (326) Stephen W. Van Buren | |
| 399 | and Lory Van Buren..... | \$206.70 |
| 400 | (327) Nina VanWay and Brian VanWay | \$181.90 |
| 401 | (328) Hobert V. Varney | \$394.32 |
| 402 | (329) Ryan W. Vaughan | \$500.00 |
| 403 | (330) Michael A. Vecchio..... | \$500.00 |
| 404 | (331) Marguerite Wageman..... | \$250.00 |
| 405 | (332) Sharon D. Walker..... | \$126.67 |
| 406 | (333) Heather L. Walls | \$382.44 |
| 407 | (334) Jeffrey Walls, Panhandle | |
| 408 | Pre-Owned Auto Sales Inc..... | \$448.19 |
| 409 | (335) Ann S. Walters | \$239.76 |
| 410 | (336) Ashley M. Walters | |
| 411 | and Maculette Walters..... | \$344.98 |

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| 412 | (337) Jessie Ware and Theodore J. Ware..... | \$855.40 |
| 413 | (338) Marion M. Washington | \$296.38 |
| 414 | (339) Ricky A. Weaver | \$500.00 |
| 415 | (340) West Virginia Company Inc..... | \$259.70 |
| 416 | (341) Amy Williams | \$76.84 |
| 417 | (342) Derrien Williams | \$382.81 |
| 418 | (343) Erin Williams and Paul Williams..... | \$500.00 |
| 419 | (344) Robert L. Williams..... | \$334.00 |
| 420 | (345) Bryan M. Willis..... | \$209.21 |
| 421 | (346) Robin Willis | \$130.00 |
| 422 | (347) John A. Wilson II | \$208.82 |
| 423 | (348) Don R. Wilson Jr..... | \$575.00 |
| 424 | (349) Phillip Wine | \$500.00 |
| 425 | (350) Rebecca J. Wiseman..... | \$249.92 |
| 426 | (351) Roger Lee Withrow | \$136.96 |
| 427 | (352) Sara E. Withrow | \$306.49 |
| 428 | (353) Terry J. Withrow | \$759.00 |
| 429 | (354) Jeffery Allen Wood | \$541.61 |
| 430 | (355) Richard S. Woolley | \$335.88 |
| 431 | (356) Gary Lucas Wootten..... | \$151.41 |
| 432 | (357) William L. Wykle and Katrina Wykle | \$429.09 |
| 433 | (358) Larry H. Yeager and Elizabeth R. Yeager .. | \$500.00 |
| 434 | (359) Samantha Yearego..... | \$198.39 |
| 435 | (360) Heather Zannino..... | \$756.11 |
| 436 | (361) Kenneth K. Zara | \$250.00 |

437 (g) *Claim against the Division of Motor Vehicles:*

438 (TO BE PAID FROM GENERAL REVENUE FUND)

439 (1) Jackson Kelly, PLLC

\$590.00

440 (h) *Claims against the Regional Jail and Correctional*
 441 *Facility Authority:*

442 (TO BE PAID FROM SPECIAL REVENUE FUND)

443 (1) Gary R. Baker

\$647.00

444 (2) Michael Jay Bostic.....

\$1,576.00

445 (3) Gregory L. Gillum, II.....\$200.00

446 (4) Tarryn Hoffman\$100.00

447 (5) Jeremy Matthew Moore\$100.00

448 (6) Harry R. Walker, Jr.\$36.86

449 (i) *Claim against the State Board of Education:*

450 (TO BE PAID FROM GENERAL REVENUE FUND)

451 (1) USA Presort, Inc., dba Infocon.....\$254.47

452 (j) *Claim against the State of West Virginia:*

453 (TO BE PAID FROM GENERAL REVENUE FUND)

454 (1) Davie Lee Hurt.....\$1,250,000.00

455 (k) *Claim against the Division of Veterans Assistance:*

456 (TO BE PAID FROM GENERAL REVENUE FUND)

457 (1) G4S Secure Solutions (USA) Inc.....\$2,546.34

458 (l) *Claim against the Public Service Commission of*
 459 *West Virginia:*

460 (TO BE PAID FROM SPECIAL REVENUE FUND)

461 (1) Pullman Power, LLC\$204,176.95

462 The Legislature finds that the above moral obligations
 463 and the appropriations made in satisfaction thereof shall be
 464 the full compensation for all claimants and that prior to the
 465 payments to any claimant provided in this bill, the
 466 Legislative Claims Commission shall receive a release from
 467 said claimant releasing any and all claims for moral
 468 obligations arising from the matters considered by the
 469 Legislature in the finding of the moral obligations and the
 470 making of the appropriations for said claimant. The
 471 Legislative Claims Commission shall deliver all releases

472 obtained from claimants to the department against which the
473 claim was allowed.



CHAPTER 40

**(Com. Sub. for H. B. 2028 - By Delegates Folk,
Hanshaw, Shott, Dean, Fleischauer, Fluharty,
McGeehan, Paynter, Martin and Wilson)**

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §14-2-2 of the Code of West Virginia, 1931, as amended, relating to the venue for suits and other actions against the state; allowing a plaintiff or petitioner to file a claim or petition against the state, a state officer, or state agency in the circuit court of a county in which the plaintiff or petitioner resides or in which a claim arose or, alternatively, in the circuit court of Kanawha County.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-2. Venue for certain suits and actions.

1 (a) Any suit, action, or proceeding in which the state,
2 the Governor, any other state officer, or a state agency is
3 made a party defendant, or any suit attempting to enjoin or
4 otherwise suspend or affect a judgment or decree on behalf
5 of the state obtained in any circuit court, may be brought
6 and prosecuted in the circuit court of any county wherein
7 the plaintiff or petitioner who is appearing in the action or
8 proceeding resides, or where the cause of action arose; or,
9 alternatively, in the circuit court of Kanawha County.

10 (b) Any proceeding for injunctive or mandamus relief
11 involving the taking, title, or collection for or prevention of
12 damage to real property may be brought and presented in
13 the circuit court of the county in which the real property
14 affected is situate.

15 (c) This section shall apply only to such proceedings as
16 are not prohibited by the Constitutional immunity of the
17 state from suit under section thirty-five, article six of the
18 Constitution of the State.



CHAPTER 41

**(H. B. 4433 - By Delegates Nelson, Boggs, Ambler,
Anderson, Frich, Hamilton, C. Miller, Walters,
Longstreth, Pethtel and Sponaugle)**

[Passed March 3, 2018; in effect from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT recognizing and declaring certain claims against an agency of the state to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the Department of Health and Human Resources to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commodities
3 received and/or services rendered by certain claimants
4 herein and has considered these claims against the state, and
5 agency thereof, which have arisen due to over-expenditures

6 of the departmental appropriations by officers of the state
7 spending units, the claims having been previously
8 considered by the Legislative Claims Commission which
9 also found that the state has received the benefit of the
10 commodities received and/or services rendered by the
11 claimants, but were denied by the Legislative Claims
12 Commission on the purely statutory grounds that to allow
13 the claims would be condoning illegal acts contrary to the
14 laws of the state. The Legislature, pursuant to its findings
15 of fact and also by the adoption of the findings of fact by the
16 Legislative Claims Commission as its own, while not
17 condoning such illegal acts, hereby declares it to be the
18 moral obligation of the state to pay these claims in the
19 amounts specified below and directs the Auditor to issue
20 warrants upon receipt of properly executed requisitions
21 supported by itemized invoices, statements or other
22 satisfactory documents as required by §12-3-10 of the Code
23 of West Virginia, 1931, as amended, for the payments
24 thereof out of any fund appropriated and available for the
25 purpose.

26 *Claims against the Department of Health and Human*
27 *Resources:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | |
|----|------------------------------------|--------------|
| 29 | (1) Adams-Reed Funeral Home..... | \$3,750.00 |
| 30 | (2) DeGarmo Funeral Home..... | \$1,250.00 |
| 31 | (3) Dodd & Reed Funeral Home | \$3,750.00 |
| 32 | (4) Ford Funeral Home, Inc..... | \$6,250.00 |
| 33 | (5) Melton Mortuary, Inc. | \$27,500.00 |
| 34 | (6) Morgan Funeral Home..... | \$1,250.00 |
| 35 | (7) Sunbelt Staffing | \$164,486.95 |



CHAPTER 42

(S. B. 444 - By Senator Trump)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to repeal §17C-15-29 and §17C-15-38 of the Code of West Virginia, 1931, as amended, relating to repealing antiquated and inoperative provisions of the code regarding approval of safety glass and lighting in motor vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. EQUIPMENT.

§1. Repeal of sections relating to approval of vehicle equipment by Commissioner of Division of Highways.

1 That §17C-15-29 and §17C-15-38 of the Code of West
2 Virginia, 1931, as amended, are hereby repealed.



CHAPTER 43

**(H. B. 2612 - By Delegates Walters, Howell,
Summers, Fluharty and Frich)**

[Passed February 13, 2018; in effect ninety days from passage.]
[Approved by the Governor on February 21, 2018.]

AN ACT to repeal §17C-14-1 of the Code of West Virginia, 1931, as amended, relating to unattended motor vehicles; and penalty.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to unattended motor vehicles and penalties.

1 §17C-14-1 of the Code of West Virginia, 1931, as
2 amended, is hereby repealed.



CHAPTER 44

(Com. Sub. for H. B. 2464 - By Delegate Cowles)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §46A-6-107 of the Code of West Virginia, 1931, as amended, relating to disclaimers and exclusions of warranties for used manufactured homes; providing that a consumer may waive the warranties of merchantability and fitness for a particular use; providing that a consumer may waive a particular defect or malfunction which the merchant has identified and disclosed in writing to the consumer; providing for the manner and content of waivers; and providing a definition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-107. Disclaimer of warranties and remedies prohibited.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, with respect to goods which are the subject of
3 or are intended to become the subject of a consumer
4 transaction, no merchant may:

5 (1) Exclude, modify, or otherwise attempt to limit any
6 warranty, express, or implied, including the warranties of
7 merchantability and fitness for a particular purpose; or

8 (2) Exclude, modify or attempt to limit any remedy
9 provided by law, including the measure of damages
10 available, for a breach of warranty, express, or implied.

11 (b) A consumer who purchases a used manufactured
12 home may waive the warranties of merchantability and
13 fitness for a particular purpose, or waive a warranty as to a
14 particular defect or malfunction which the merchant has
15 identified and disclosed in writing to the consumer, if the
16 used manufactured home is not being sold for human
17 habitation: *Provided*, That notice be posted on the front door
18 of the used manufactured home that it is not being sold for
19 human habitation: *Provided, however*, That the waiver is
20 not effective unless the waiver:

21 (1) Is in writing;

22 (2) Is conspicuous and is in plain language;

23 (3) Identifies with particularity the disclosed defect or
24 malfunction, if any, in the used manufactured home for
25 which the warranty is to be waived;

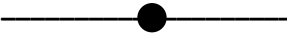
26 (4) Describes any additional defects or malfunctions, if
27 any, disclosed to the merchant by a previous owner of the
28 used manufactured home or discoverable by the merchant
29 after an inspection of the used manufactured home;

30 (5) States that the warranty being waived applies only
31 to the disclosed defect or malfunction, if any, to the extent
32 the merchant intends to waive a warranty as to a specific
33 defect;

34 (6) Acknowledges that the used manufactured home
35 will not be used for human habitation: *Provided*, That the
36 consumer shall sign or initial such provision in order to
37 evidence the consumer's acknowledgment thereof; and

38 (7) Is signed by both the consumer and the merchant
39 before the sales contract is executed.

40 For purposes of this subsection, “used manufactured
41 home” means a manufactured home, as defined in §21-9-2
42 of this code, that is more than four years old from its date of
43 production and has previously been occupied, used, or sold
44 for purposes other than resale.



CHAPTER 45

**(Com. Sub. for H. B. 4150 - By Delegates Howell, C.
Miller, Hill, Storch, Dean, Lynch, Hamrick, Ward,
Atkinson, Queen and Maynard)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
to amend and reenact §46A-6F-501; all relating generally to
prohibiting telemarketing companies from transmitting
misleading or inaccurate caller identification information; and
providing exceptions thereto.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6F. TELEMARKETING.

PART V. UNFAIR OR DECEPTIVE ACTS OR PRACTICES; PENALTIES.

§46A-6F-501. Unfair or deceptive acts or practices.

1 It is an unfair or deceptive act or practice and a violation
2 of this article for any seller or telemarketer to engage in the
3 following conduct:

4 (1) To advertise or represent that registration as a
5 telemarketer equals an endorsement or approval by the state
6 or any governmental agency of the state;

7 (2) To request or receive payment of any fee or
8 consideration for goods or services represented to remove
9 derogatory information from, or improve, a person's credit
10 history, credit record, or credit rating until:

11 (A) The time frame in which the telemarketer has
12 represented all of the goods or services will be provided to
13 that person has expired; and

14 (B) The telemarketer has provided the person with
15 documentation in the form of a consumer report from a
16 consumer reporting agency demonstrating that the promised
17 results have been achieved, such report having been issued
18 more than six months after the results were achieved;

19 (3) To obtain or submit for payment a check, draft, or
20 other form of negotiable paper drawn on a person's
21 checking, savings, share, or similar account, without that
22 person's express verifiable authorization. Such
23 authorization shall be deemed verifiable if any of the
24 following means are employed:

25 (A) Express written authorization by the customer,
26 which may include the customer's signature on the
27 negotiable instrument; or

28 (B) Express oral authorization which is tape recorded
29 and made available upon request to the customer's bank and
30 which evidences clearly both the customer's authorization
31 of payment for the goods and services that are the subject of
32 the sales offer and the customer's receipt of all of the
33 following information:

34 (i) The date of the draft(s);

35 (ii) The amount of the draft(s);

- 36 (iii) The payor's name;
- 37 (iv) The number of draft payments (if more than one);
- 38 (v) A telephone number for customer inquiry that is
39 answered during normal business hours; and
- 40 (vi) The date of the customer's oral authorization.
- 41 (C) Written confirmation of the transaction, sent to the
42 customer prior to submission for payment of the customer's
43 check, draft, or other form of negotiable paper, that
44 includes:
- 45 (i) All of the information contained in subparagraphs (i)
46 through (vi), paragraph (B), subdivision (3) of this section;
47 and
- 48 (ii) The procedures by which the customer can obtain a
49 refund from the telemarketer in the event the confirmation
50 is inaccurate;
- 51 (4) To procure the services of any professional delivery,
52 courier or other pick-up service to obtain immediate receipt
53 and possession of a consumer's payment unless:
- 54 (A) Such service is requested by the consumer;
- 55 (B) The consumer is informed that he or she can inspect
56 the goods or services prior to payment and may refuse to
57 accept the goods or services; and
- 58 (C) The consumer is actually afforded an opportunity to
59 inspect the goods or services prior to payment;
- 60 (5) To engage in any other unfair or deceptive conduct
61 which will create a likelihood of confusion or
62 misunderstanding to any reasonable consumer;
- 63 (6) To misrepresent the requirements of this section;

64 (7) To provide substantial assistance or support to any
65 telemarketer when that person knows or consciously avoids
66 knowing that the telemarketer is engaged in any act or
67 practice that violates this section;

68 (8) To engage in any “unfair methods of competition
69 and unfair or deceptive acts or practices” as specified in
70 §46A-6-102(f) of this code and made unlawful by the
71 provisions of §46A-6-102 of this code; or

72 (9) To engage in transmission of misleading or
73 inaccurate caller identification information, including, but
74 not limited to, circumventing caller identification
75 technology that allows the consumer to identify from what
76 phone number or organization the call has originated from,
77 or to otherwise misrepresent the origin and nature of the
78 solicitation: *Provided*, That the provisions of this subsection
79 do not apply to a communications service provider that
80 delivers a communication originated by another person or
81 entity.



CHAPTER 46

**(Com. Sub. for S. B. 273 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §16-5H-2 and §16-5H-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5Y-2, §16-5Y-4, and §16-5Y-5 of said code; to amend said code by adding thereto a new article, designated §16-54-1, §16-54-2, §16-54-3, §16-54-4, §16-54-5, §16-54-6, §16-54-7, §16-54-8, and §16-54-9; to amend and reenact §30-3-14 of said code; to

amend and reenact §30-3A-1, §30-3A-2, §30-3A-3, and §30-3A-4 of said code; to amend and reenact §30-4-19 of said code; to amend and reenact §30-5-6 of said code; to amend and reenact §30-7-11 of said code; to amend and reenact §30-8-18 of said code; to amend and reenact §30-10-19 of said code; to amend and reenact §30-14-12a of said code; to amend and reenact §30-36-2 of said code; to amend said code by adding thereto a new section, designated §60A-5-509; and to amend and reenact §60A-9-4, §60A-9-5, and §60A-9-5a of said code, all relating to reducing the use of certain prescription drugs; providing for an exemption from registration for office-based, medication-assisted treatment program in specified cases; providing for an exemption for medication-assisted treatment programs; clarifying physician responsibility for medication-assisted treatment; clarifying definition of “pain management clinic”; providing for emergency rulemaking; defining terms; providing for an advance directive; requiring consultation with patients prior to prescribing an opioid; limiting the amount of opioid prescriptions; requiring a narcotics contract in certain circumstances; providing exceptions to prescribing limits; providing for referral to a pain clinic or pain specialist; providing reports to licensing boards regarding abnormal or unusual prescribing practices; requiring referral to certain alternative treatments; requiring insurance coverage for certain procedures to treat chronic pain; updating board’s titles; requiring the Board of Pharmacy to report quarterly to various licensing boards; exempting the Board of Pharmacy from certain purchasing requirements; clarifying who must report to the Controlled Substances Monitoring Program Database; clarifying the practice of acupuncture; precluding retaliation against a health care provider for declining to prescribe a narcotic; and permitting the investigation and discipline for abnormal and unusual prescribing and dispensing of prescription drugs.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

§16-5H-2. Definitions.

1 “Chronic pain” means pain that has persisted after
2 reasonable medical efforts have been made to relieve the
3 pain or cure its cause and that has continued, either
4 continuously or episodically, for longer than three
5 continuous months. For purposes of this article, “chronic
6 pain” does not include pain directly associated with a
7 terminal condition.

8 “Director” means the Director of the Office of Health
9 Facility Licensure and Certification within the Office of the
10 Inspector General.

11 “Owner” means any person, partnership, association, or
12 corporation listed as the owner of a pain management clinic
13 on the licensing forms required by this article.

14 “Pain management clinic” means all privately-owned
15 pain management clinics, facilities, or offices not otherwise
16 exempted from this article and which meet both of the
17 following criteria:

18 (1) Where in any month more than 50 percent of patients
19 of the clinic are prescribed or dispensed Schedule II opioids
20 or other Schedule II controlled substances specified in rules
21 promulgated pursuant to this article for chronic pain
22 resulting from conditions that are not terminal; and

23 (2) The facility meets any other identifying criteria
24 established by the secretary by rule.

25 “Physician” means an individual authorized to practice
26 medicine or surgery or osteopathic medicine or surgery in
27 this state.

28 “Prescriber” means an individual who is authorized by
29 law to prescribe drugs or drug therapy related devices in the
30 course of the individual’s professional practice, including
31 only a medical or osteopathic physician authorized to
32 practice medicine or surgery; a physician assistant or

33 osteopathic physician assistant who holds a certificate to
34 prescribe drugs; or an advanced nurse practitioner who
35 holds a certificate to prescribe.

36 “Secretary” means the Secretary of the West Virginia
37 Department of Health and Human Resources. The secretary
38 may define in rules any term or phrase used in this article
39 which is not expressly defined.

§16-5H-9. Rules.

1 (a) The Secretary of the Department of Health and
2 Human Resources, in collaboration with the West Virginia
3 Board of Medicine and the West Virginia Board of
4 Osteopathy, shall promulgate rules in accordance with the
5 provisions of §29A-1-1 *et seq.* of this code for the licensure
6 of pain management clinics to ensure adequate care,
7 treatment, health, safety, welfare, and comfort of patients at
8 these facilities. These rules shall include, at a minimum:

9 (1) The process to be followed by applicants seeking a
10 license;

11 (2) The qualifications and supervision of licensed and
12 nonlicensed personnel at pain management clinics and
13 training requirements for all facility health care practitioners
14 who are not regulated by another board;

15 (3) The provision and coordination of patient care,
16 including the development of a written plan of care;

17 (4) The management, operation, staffing, and equipping
18 of the pain management clinic;

19 (5) The clinical, medical, patient, and business records
20 kept by the pain management clinic;

21 (6) The procedures for inspections and for the review of
22 utilization and quality of patient care;

23 (7) The standards and procedures for the general
24 operation of a pain management clinic, including facility

25 operations, physical operations, infection control
26 requirements, health and safety requirements, and quality
27 assurance;

28 (8) Identification of drugs that may be used to treat
29 chronic pain that identify a facility as a pain management
30 clinic, including, at a minimum, tramadol and carisoprodol;

31 (9) Any other criteria that identify a facility as a pain
32 management clinic;

33 (10) The standards and procedures to be followed by an
34 owner in providing supervision, direction, and control of
35 individuals employed by or associated with a pain
36 management clinic;

37 (11) Data collection and reporting requirements; and

38 (12) Such other standards or requirements as the
39 secretary determines are appropriate.

40 (b) The rules authorized by this section may be filed as
41 emergency rules if deemed necessary to promptly effectuate
42 the purposes of this article. The Legislature finds that the
43 changes made to this article during the 2018 regular session
44 of the Legislature constitute an emergency for the purposes
45 of filing any amendment to existing rules.

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-2. Definitions.

1 “Addiction” means a primary, chronic disease of brain
2 reward, motivation, memory, and related circuitry.
3 Dysfunction in these circuits leads to characteristic
4 biological, psychological, social, and spiritual
5 manifestations which is reflected in an individual
6 pathologically pursuing reward or relief by substance use,
7 or both, and other behaviors. Addiction is characterized by
8 inability to consistently abstain; impairment in behavioral

9 control; craving; diminished recognition of significant
10 problems with one's behaviors; interpersonal problems with
11 one's behaviors and interpersonal relationships; a
12 dysfunctional emotional response; and as addiction is
13 currently defined by the American Society of Addiction
14 Medicine.

15 "Administrator" means an individual designated by the
16 governing body to be responsible for the day-to-day
17 operation of the opioid treatment programs.

18 "Advanced alcohol and drug abuse counselor" means an
19 alcohol and drug abuse counselor who is certified by the
20 West Virginia Certification Board for Addiction and
21 Prevention Professionals who demonstrates a high degree of
22 competence in the addiction counseling field.

23 "Alcohol and drug abuse counselor" means a counselor
24 certified by the West Virginia Certification Board for
25 Addiction and Prevention Professionals for specialized
26 work with patients who have substance use problems.

27 "Biopsychosocial" means of, relating to, or concerned
28 with, biological, psychological, and social aspects in
29 contrast to the strictly biomedical aspects of disease.

30 "Center for Substance Abuse Treatment" means the
31 center under the Substance Abuse and Mental Health
32 Services Administration that promotes community-based
33 substance abuse treatment and recovery services for
34 individuals and families in the community and provides
35 national leadership to improve access, reduce barriers, and
36 promote high quality, effective treatment and recovery
37 services.

38 "Controlled Substances Monitoring Program Database"
39 means the database maintained by the West Virginia Board
40 of Pharmacy pursuant to §60A-9-3 of this code that
41 monitors and tracks certain prescriptions written or
42 dispensed by dispensers and prescribers in West Virginia.

43 “Director” means the Director of the Office of Health
44 Facility Licensure and Certification.

45 “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 “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 “Medical director” means a physician licensed within
56 the State of West Virginia who assumes responsibility for
57 administering all medical services performed by the
58 medication-assisted treatment program, either by
59 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 “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 “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 “Medication-assisted treatment medication” means any
75 medication that is approved by the United States Food and
76 Drug Administration under Section 505 of the Federal Food,

77 Drug and Cosmetic Act, 21 U. S. C. § 355, for use in the
78 treatment of substance use disorders that is an opioid agonist
79 or partial opioid agonist and is listed on the Schedule of
80 Controlled Substances in §60A-2-2201 *et seq.* of this code.

81 “Office-based, medication-assisted treatment” means
82 all publicly or privately owned clinics, facilities, offices, or
83 programs that provide medication-assisted treatment to
84 individuals with substance use disorders through the
85 prescription, administration, or dispensing of a medication-
86 assisted treatment medication in the form of a partial opioid
87 agonist.

88 “Opioid agonist” means substances that bind to and
89 activate the opiate receptors resulting in analgesia and pain
90 regulation, respiratory depression, and a wide variety of
91 behavioral changes. As used in this article, the term “opioid
92 agonist” does not include partial agonist medications used
93 as an alternative to opioid agonists in the treatment of opioid
94 addiction.

95 ”Opioid treatment program” means all publicly- or
96 privately-owned medication-assisted treatment programs in
97 clinics, facilities, offices, or programs that provide
98 medication-assisted treatment to individuals with substance
99 use disorders through on-site administration or dispensing
100 of a medication-assisted treatment medication in the form
101 of an opioid agonist or partial opioid agonist.

102 “Owner” means any person, partnership, association, or
103 corporation listed as the owner of a medication-assisted
104 treatment program on the licensing or registration forms
105 required by this article.

106 “Partial opioid agonist” means a Federal Drug
107 Administration approved medication that is used as an
108 alternative to opioid agonists for the treatment of substance
109 use disorders and that binds to and activates opiate
110 receptors, but not to the same degree as full agonists.

111 “Physician” means an individual licensed in this state to
112 practice allopathic medicine or surgery by the West Virginia
113 Board of Medicine or osteopathic medicine or surgery by
114 the West Virginia Board of Osteopathic Medicine and that
115 meets the requirements of this article.

116 “Prescriber” means a person authorized in this state,
117 working within their scope of practice, to give direction,
118 either orally or in writing, for the preparation and
119 administration of a remedy to be used in the treatment of
120 substance use disorders.

121 “Program sponsor” means the person named in the
122 application for the certification and licensure of an opioid
123 treatment program who is responsible for the administrative
124 operation of the opioid treatment program and who assumes
125 responsibility for all of its employees, including any
126 practitioners, agents, or other persons providing medical,
127 rehabilitative, or counseling services at the program.

128 “Secretary” means the Secretary of the West Virginia
129 Department of Health and Human Resources or his or her
130 designee.

131 “State opioid treatment authority” means the agency or
132 individual designated by the Governor to exercise the
133 responsibility and authority of the state for governing the
134 treatment of substance use disorders, including, but not
135 limited to, the treatment of opiate addiction with opioid
136 drugs.

137 “State oversight agency” means the agency or office of
138 state government identified by the secretary to provide
139 regulatory oversight of medication-assisted treatment
140 programs on behalf of the State of West Virginia.

141 “Substance” means the following:

142 (1) Alcohol;

143 (2) Controlled substances defined by §60A-2-204,
144 §60A-2-206, §60A-2-208, and §60A-2-210 of this code; or

145 (3) Any chemical, gas, drug, or medication consumed
146 which causes clinically and functionally significant
147 impairment, such as health problems, disability, and failure
148 to meet major responsibilities at work, school, or home.

149 “Substance Abuse and Mental Health Services
150 Administration” means the agency under the United States
151 Department of Health and Human Services responsible for
152 the accreditation and certification of medication-assisted
153 treatment programs and that provides leadership, resources,
154 programs, policies, information, data, contracts, and grants
155 for the purpose of reducing the impact of substance abuse
156 and mental or behavioral illness.

157 “Substance use disorder” means patterns of symptoms
158 resulting from use of a substance that the individual
159 continues to take, despite experiencing problems as a result;
160 or as defined in the most recent edition of the American
161 Psychiatric Association’s Diagnostic and Statistical Manual
162 of Mental Disorders.

163 “Telehealth” means the mode of delivering health care
164 services and public health via information and
165 communication technologies to facilitate the diagnosis,
166 consultation, treatment education, care management, and
167 self-management of a patient’s health care while the patient
168 is at the originating site and the health care provider is at a
169 distant site.

170 “Variance” means written permission granted by the
171 secretary to a medication-assisted treatment program that a
172 requirement of this article or rules promulgated pursuant to
173 this article may be accomplished in a manner different from
174 the manner set forth in this article or associated rules.

175 “Waiver” means a formal, time-limited agreement
176 between the designated oversight agency and the

177 medication-assisted treatment program that suspends a rule,
178 policy, or standard for a specific situation so long as the
179 health and safety of patients is better served in the situation
180 by suspension of the rule, policy, or standard than by
181 enforcement.

§16-5Y-4. Office-based, medication-assisted treatment programs to obtain registration; application; fees and inspections.

1 (a) No person, partnership, association, or corporation
2 may operate an office-based, medication-assisted treatment
3 program without first obtaining a registration from the
4 secretary in accordance with the provisions of this article
5 and the rules lawfully promulgated pursuant to this article.

6 (b) Any person, partnership, association, or corporation
7 desiring a registration to operate an office-based,
8 medication-assisted treatment program in this state shall file
9 with the Office of Health Facility Licensure and
10 Certification an application in such form and with such
11 information as the secretary shall prescribe and furnish
12 accompanied by an application fee.

13 (c) The Director of the Office of Health Facility
14 Licensure and Certification or his or her designee shall
15 inspect and review all documentation submitted with the
16 application. The director shall then provide a
17 recommendation to the secretary whether to approve or
18 deny the application for registration. The secretary shall
19 issue a registration if the facility is in compliance with the
20 provisions of this article and with the rules lawfully
21 promulgated pursuant to this article.

22 (d) A registration shall be issued in one of three
23 categories:

24 (1) An initial 12-month registration shall be issued to an
25 office-based, medication-assisted treatment program
26 establishing a new program or service for which there is
27 insufficient consumer participation to demonstrate

28 substantial compliance with this article and with all rules
29 promulgated pursuant to this article;

30 (2) A provisional registration shall be issued when an
31 office-based, medication-assisted treatment program seeks
32 a renewal registration, or is an existing program as of the
33 effective date of this article and is seeking an initial
34 registration, and the office-based, medication-assisted
35 treatment program is not in substantial compliance with this
36 article and with all rules promulgated pursuant to this
37 article, but does not pose a significant risk to the rights,
38 health, and safety of a consumer. It shall expire not more
39 than six months from the date of issuance, and may not be
40 consecutively reissued; or

41 (3) A renewal registration shall be issued when an
42 office-based, medication-assisted treatment program is in
43 substantial compliance with this article and with all rules
44 promulgated pursuant to this article. A renewal registration
45 shall expire not more than one year from the date of
46 issuance.

47 (e) At least 60 days prior to the registration expiration
48 date, an application for renewal shall be submitted by the
49 office-based, medication-assisted treatment program to the
50 secretary on forms furnished by the secretary. A
51 registration shall be renewed if the secretary determines that
52 the applicant is in compliance with this article and with all
53 rules promulgated pursuant to this article. A registration
54 issued to one program location pursuant to this article is not
55 transferrable or assignable. Any change of ownership of a
56 registered office-based, medication-assisted treatment
57 program requires submission of a new application. The
58 office-based, medication-assisted treatment program shall
59 notify the secretary of any change in ownership within 10
60 days of the change and must submit a new application
61 within the time frame prescribed by the secretary.

62 (f) Any person, partnership, association, or corporation
63 seeking to obtain or renew a registration for an office-based,

64 medication-assisted treatment program in this state must
65 submit to the secretary the following documentation:

66 (1) Full operating name of the program as advertised;

67 (2) Legal name of the program as registered with the
68 West Virginia Secretary of State;

69 (3) Physical address of the program;

70 (4) Preferred mailing address for the program;

71 (5) Email address to be used as the primary contact for
72 the program;

73 (6) Federal Employer Identification Number assigned to
74 the program;

75 (7) All business licenses issued to the program by this
76 state, the state Tax Department, the Secretary of State, and
77 all other applicable business entities;

78 (8) Brief description of all services provided by the
79 program;

80 (9) Hours of operation;

81 (10) Legal Registered Owner Name – name of the
82 person registered as the legal owner of the program. If more
83 than one legal owner (i.e., partnership, corporation, etc.) list
84 each legal owner separately, indicating the percentage of
85 ownership;

86 (11) Medical director's full name, medical license
87 number, Drug Enforcement Administration registration
88 number, and a listing of all current certifications;

89 (12) For each physician, counselor, or social worker of
90 the program, provide the following:

91 (A) Employee's role and occupation within the
92 program;

- 93 (B) Full legal name;
- 94 (C) Medical license, if applicable;
- 95 (D) Drug Enforcement Administration registration
96 number, if applicable;
- 97 (E) Drug Enforcement Administration identification
98 number to prescribe buprenorphine for addiction, if
99 applicable; and
- 100 (F) Number of hours worked at program per week;
- 101 (13) Name and location address of all programs owned
102 or operated by the applicant;
- 103 (14) Notarized signature of applicant;
- 104 (15) Check or money order for registration fee;
- 105 (16) Verification of education and training for all
106 physicians, counselors, and social workers practicing at or
107 used by referral by the program such as fellowships,
108 additional education, accreditations, board certifications,
109 and other certifications; and
- 110 (17) Board of Pharmacy Controlled Substance
111 Prescriber Report for each prescriber practicing at the
112 program for the three months preceding the date of
113 application.
- 114 (g) Upon satisfaction that an applicant has met all of the
115 requirements of this article, the secretary shall issue a
116 registration to operate an office-based, medication-assisted
117 treatment program. An entity that obtains this registration
118 may possess, have custody or control of, and dispense drugs
119 indicated and approved by the United States Food and Drug
120 Administration for the treatment of substance use disorders.
- 121 (h) The office-based, medication-assisted treatment
122 program shall display the current registration in a prominent

123 location where services are provided and in clear view of all
124 patients.

125 (i) The secretary or his or her designee shall perform
126 complaint and verification inspections on all office-based,
127 medication-assisted treatment programs that are subject to
128 this article and all rules adopted pursuant to this article to
129 ensure continued compliance.

130 (j) Any person, partnership, association, or corporation
131 operating an office-based, medication-assisted treatment
132 program shall be permitted to continue operation until the
133 effective date of the new rules promulgated pursuant to this
134 article. At that time a person, partnership, association, or
135 corporation shall file for registration within six months
136 pursuant to the licensing procedures and requirements of
137 this section and the new rules promulgated hereunder. The
138 existing procedures of the person, partnership, association,
139 or corporation shall remain effective until receipt of the
140 registration.

141 (k) A person, partnership, association, or corporation
142 providing office-based, medication-assisted treatment to no
143 more than 30 patients of their practice or program is exempt
144 from the registration requirement contained in §16-5Y-4(a)
145 of this code: *Provided*, That it:

146 (1) Operates in compliance with all legislative rules
147 promulgated pursuant to this article regulating office-based,
148 medication-assisted treatment; and

149 (2) Attests to the Office of Health Facility Licensure and
150 Certification on a form prescribed by the secretary that the
151 person, partnership, association, or corporation requires
152 counselling and drug screens, has implemented diversion
153 control measures, will provide patient numbers upon
154 request, and will provide any other information required by
155 the secretary in rule; and

156 (3) Is prohibited from establishing an office-based,
157 medication-assisted treatment at any other location or
158 facility after the submission of an attestation submitted
159 pursuant to §16-5Y-4(k)(2) of this code. This subdivision
160 includes any person, partnership, association, or corporation
161 that has an ownership interest in a partnership, association,
162 or corporation or other corporate entity providing office-
163 based, medication-assisted treatment.

§16-5Y-5. Operational requirements.

1 (a) The medication-assisted treatment program shall be
2 licensed and registered in this state with the secretary, the
3 Secretary of State, the state Tax Department, and all other
4 applicable business or licensing entities.

5 (b) The program sponsor need not be a licensed
6 physician but shall employ a licensed physician for the
7 position of medical director, when required by the rules
8 promulgated pursuant to this article.

9 (c) Each medication-assisted treatment program shall
10 designate a medical director. If the medication-assisted
11 treatment program is accredited by a Substance Abuse and
12 Mental Health Services Administration approved
13 accrediting body that meets nationally accepted standards
14 for providing medication-assisted treatment, including the
15 Commission on Accreditation of Rehabilitation Facilities or
16 the Joint Commission on Accreditation of Healthcare
17 Organizations, then the program may designate a medical
18 director to oversee all facilities associated with the
19 accredited medication-assisted treatment program. The
20 medical director shall be responsible for the operation of the
21 medication-assisted treatment program, as further specified
22 in the rules promulgated pursuant to this article. He or she
23 may delegate the day-to-day operation of a medication-
24 assisted treatment program as provided in rules promulgated
25 pursuant to this article. Within 10 days after termination of
26 a medical director, the medication-assisted treatment
27 program shall notify the director of the identity of another

28 medical director for that program. Failure to have a medical
29 director practicing at the program may be the basis for a
30 suspension or revocation of the program license. The
31 medical director shall:

32 (1) Have a full, active, and unencumbered license to
33 practice allopathic medicine or surgery from the West
34 Virginia Board of Medicine or to practice osteopathic
35 medicine or surgery from the West Virginia Board of
36 Osteopathic Medicine in this state and be in good standing
37 and not under any probationary restrictions;

38 (2) Meet both of the following training requirements:

39 (A) If the physician prescribes a partial opioid agonist,
40 he or she shall complete the requirements for the Drug
41 Addiction Treatment Act of 2000; and

42 (B) Complete other programs and continuing education
43 requirements as further described in the rules promulgated
44 pursuant to this article;

45 (3) Practice at the licensed or registered medication-
46 assisted treatment program a sufficient number of hours,
47 based upon the type of medication-assisted treatment
48 license or registration issued pursuant to this article, to
49 ensure regulatory compliance, and carry out those duties
50 specifically assigned to the medical director as further
51 described in the rules promulgated pursuant to this article;

52 (4) Be responsible for monitoring and ensuring
53 compliance with all requirements related to the licensing
54 and operation of the medication-assisted treatment program;

55 (5) Supervise, control, and direct the activities of each
56 individual working or operating at the medication-assisted
57 treatment program, including any employee, volunteer, or
58 individual under contract, who provides medication-
59 assisted treatment at the program or is associated with the
60 provision of that treatment. The supervision, control, and

61 direction shall be provided in accordance with rules
62 promulgated by the secretary; and

63 (6) Complete other requirements prescribed by the
64 secretary by rule.

65 (d) Each medication-assisted treatment program shall
66 designate counseling staff, either employees, or those used
67 on a referral-basis by the program, which meet the
68 requirements of this article and the rules promulgated
69 pursuant to this article. The individual members of the
70 counseling staff shall have one or more of the following
71 qualifications:

72 (1) Be a licensed psychiatrist;

73 (2) Certification as an alcohol and drug counselor;

74 (3) Certification as an advanced alcohol and drug
75 counselor;

76 (4) Be a counselor, psychologist, marriage and family
77 therapist, or social worker with a master's level education
78 with a specialty or specific training in treatment for
79 substance use disorders, as further described in the rules
80 promulgated pursuant to this article;

81 (5) Under the direct supervision of an advanced alcohol
82 and drug counselor, be a counselor with a bachelor's degree
83 in social work or another relevant human services field:
84 *Provided*, That the individual practicing with a bachelor's
85 degree under supervision applies for certification as an
86 alcohol and drug counselor within three years of the date of
87 employment as a counselor; or

88 (6) Be a counselor with a graduate degree actively
89 working toward licensure or certification in the individual's
90 chosen field under supervision of a licensed or certified
91 professional in that field and/or advanced alcohol and drug
92 counselor.

93 (e) The medication-assisted treatment program shall be
94 eligible for, and not prohibited from, enrollment with West
95 Virginia Medicaid and other private insurance. Prior to
96 directly billing a patient for any medication-assisted
97 treatment, a medication-assisted treatment program must
98 receive either a rejection of prior authorization, rejection of
99 a submitted claim, or a written denial from a patient's
100 insurer or West Virginia Medicaid denying coverage for
101 such treatment: *Provided*, That the secretary may grant a
102 variance from this requirement pursuant to §15-5Y-6 of this
103 code. The program shall also document whether a patient
104 has no insurance. At the option of the medication-assisted
105 treatment program, treatment may commence prior to
106 billing.

107 (f) The medication-assisted treatment program shall
108 apply for and receive approval as required from the United
109 States Drug Enforcement Administration, Center for
110 Substance Abuse Treatment, or an organization designated
111 by Substance Abuse and Mental Health and Mental Health
112 Administration.

113 (g) All persons employed by the medication-assisted
114 treatment program shall comply with the requirements for
115 the operation of a medication-assisted treatment program
116 established within this article or by any rule adopted
117 pursuant to this article.

118 (h) All employees of an opioid treatment program shall
119 furnish fingerprints for a state and federal criminal records
120 check by the Criminal Identification Bureau of the West
121 Virginia State Police and the Federal Bureau of
122 Investigation. The fingerprints shall be accompanied by a
123 signed authorization for the release of information and
124 retention of the fingerprints by the Criminal Identification
125 Bureau and the Federal Bureau of Investigation. The opioid
126 treatment program shall be subject to the provisions of §16-
127 49-1 *et seq.* of this code and subsequent rules promulgated
128 thereunder.

129 (i) The medication-assisted treatment program shall not
130 be owned by, nor shall it employ or associate with, any
131 physician or prescriber:

132 (1) Whose Drug Enforcement Administration number is
133 not currently full, active, and unencumbered;

134 (2) Whose application for a license to prescribe,
135 dispense, or administer a controlled substance has been
136 denied by and is not full, active, and unencumbered in any
137 jurisdiction; or

138 (3) Whose license is anything other than a full, active,
139 and unencumbered license to practice allopathic medicine
140 or surgery by the West Virginia Board of Medicine or
141 osteopathic medicine or surgery by the West Virginia Board
142 of Osteopathic Medicine in this state, and, who is in good
143 standing and not under any probationary restrictions.

144 (j) A person may not dispense any medication-assisted
145 treatment medication, including a controlled substance as
146 defined by §60A-1-101 of this code, on the premises of a
147 licensed medication-assisted treatment program, unless he
148 or she is a physician or pharmacist licensed in this state and
149 employed by the medication-assisted treatment program
150 unless the medication-assisted treatment program is a
151 federally certified narcotic treatment program. Prior to
152 dispensing or prescribing medication-assisted treatment
153 medications, the treating physician must access the
154 Controlled Substances Monitoring Program Database to
155 ensure the patient is not seeking medication-assisted
156 treatment medications that are controlled substances from
157 multiple sources and to assess potential adverse drug
158 interactions, or both. Prior to dispensing or prescribing
159 medication-assisted treatment medications, the treating
160 physician shall also ensure that the medication-assisted
161 treatment medication utilized is related to an appropriate
162 diagnosis of a substance use disorder and approved for such
163 usage. The physician shall also review the Controlled
164 Substances Monitoring Program Database no less than

165 quarterly and at each patient's physical examination. The
166 results obtained from the Controlled Substances Monitoring
167 Program Database shall be maintained with the patient's
168 medical records.

169 (k) A medication-assisted treatment program
170 responsible for medication administration shall comply
171 with:

172 (1) The West Virginia Board of Pharmacy regulations;

173 (2) The West Virginia Board of Examiners for
174 Registered Professional Nurses regulations;

175 (3) All applicable federal laws and regulations relating
176 to controlled substances; and

177 (4) Any requirements as specified in the rules
178 promulgated pursuant to this article.

179 (l) Each medication-assisted treatment program location
180 shall be licensed separately, regardless of whether the
181 program is operated under the same business name or
182 management as another program.

183 (m) The medication-assisted treatment program shall
184 develop and implement patient protocols, treatment plans,
185 or treatment strategies and profiles, which shall include, but
186 not be limited by, the following guidelines:

187 (1) When a physician diagnoses an individual as having
188 a substance use disorder, the physician may treat the
189 substance use disorder by managing it with medication in
190 doses not exceeding those approved by the United States
191 Food and Drug Administration as indicated for the
192 treatment of substance use disorders and not greater than
193 those amounts described in the rules promulgated pursuant
194 to this article. The treating physician and treating
195 counselor's diagnoses and treatment decisions shall be
196 made according to accepted and prevailing standards for
197 medical care;

198 (2) The medication-assisted treatment program shall
199 maintain a record of all of the following:

200 (A) Medical history and physical examination of the
201 individual;

202 (B) The diagnosis of substance use disorder of the
203 individual;

204 (C) The plan of treatment proposed, the patient's
205 response to the treatment, and any modification to the plan
206 of treatment;

207 (D) The dates on which any medications were
208 prescribed, dispensed, or administered, the name and
209 address of the individual for whom the medications were
210 prescribed, dispensed, or administered, and the amounts and
211 dosage forms for any medications prescribed, dispensed, or
212 administered;

213 (E) A copy of the report made by the physician or
214 counselor to whom referral for evaluation was made, if
215 applicable; and

216 (F) A copy of the coordination of care agreement, which
217 is to be signed by the patient, treating physician, and treating
218 counselor. If a change of treating physician or treating
219 counselor takes place, a new agreement must be signed. The
220 coordination of care agreement must be updated or
221 reviewed at least annually. If the coordination of care
222 agreement is reviewed, but not updated, this review must be
223 documented in the patient's record. The coordination of care
224 agreement will be provided in a form prescribed and made
225 available by the secretary;

226 (3) Medication-assisted treatment programs shall report
227 information, data, statistics, and other information as
228 directed in this code, and the rules promulgated pursuant to
229 this article to required agencies and other authorities;

230 (4) A prescriber authorized to prescribe a medication-
231 assisted treatment medication who practices at a
232 medication-assisted treatment program is responsible for
233 maintaining the control and security of his or her
234 prescription blanks and any other method used for
235 prescribing a medication-assisted treatment medication.
236 The prescriber shall comply with all state and federal
237 requirements for tamper-resistant prescription paper. In
238 addition to any other requirements imposed by statute or
239 rule, the prescriber shall notify the secretary and appropriate
240 law-enforcement agencies in writing within 24 hours
241 following any theft or loss of a prescription blank or breach
242 of any other method of prescribing a medication-assisted
243 treatment medication; and

244 (5) The medication-assisted treatment program shall
245 have a drug testing program to ensure a patient is in
246 compliance with the treatment strategy.

247 (n) Medication-assisted treatment programs shall only
248 prescribe, dispense, or administer liquid methadone to
249 patients pursuant to the restrictions and requirements of the
250 rules promulgated pursuant to this article.

251 (o) The medication-assisted treatment program shall
252 immediately notify the secretary, or his or her designee, in
253 writing of any changes to its operations that affect the
254 medication-assisted treatment program's continued
255 compliance with the certification and licensure
256 requirements.

257 (p) If a physician treats a patient with more than 16
258 milligrams per day of buprenorphine then clear medical
259 notes shall be placed in the patient's medical file indicating
260 the clinical reason or reasons for the higher level of dosage.

261 (q) If a physician is not the patient's obstetrical or
262 gynecological provider, the physician shall consult with the
263 patient's obstetrical or gynecological provider to the extent

264 possible to determine whether the prescription is
265 appropriate for the patient.

266 (r) A practitioner providing medication-assisted
267 treatment may perform certain aspects of telehealth if
268 permitted under his or her scope of practice.

269 (s) The physician shall follow the recommended
270 manufacturer's tapering schedule for the medication-
271 assisted treatment medication. If the schedule is not
272 followed, the physician shall document in the patient's
273 medical record and the clinical reason why the schedule was
274 not followed. The secretary may investigate a medication-
275 assisted treatment program if a high percentage of its
276 patients are not following the recommended tapering
277 schedule.

ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-1. Definitions.

1 As used in this section:

2 "Acute pain" means a time limited pain caused by a
3 specific disease or injury.

4 "Chronic pain" means a noncancer, non-end of life pain
5 lasting more than three months or longer than the duration
6 of normal tissue healing.

7 "Health care practitioner" or "practitioner" means:

8 (1) A physician licensed pursuant to the provisions of
9 §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code;

10 (2) A podiatrist licensed pursuant to the provisions of
11 §30-3-1 *et seq.* of this code;

12 (3) A physician assistant with prescriptive authority as
13 set forth in §30-3E-3 of this code;

14 (4) An advanced practice registered nurse with
15 prescriptive authority as set forth in §30-7-15a of this code;

16 (5) A dentist licensed pursuant to the provisions of §30-
17 4-1 *et seq.* of this code; and

18 (6) An optometrist licensed pursuant to the provisions
19 of §30-8-1 *et seq.* of this code;

20 “Office” means the Office of Drug Control Policy.

21 “Pain clinic” means the same as that term is defined in
22 §16-5H-2 of this code.

23 “Pain specialist” means a practitioner who is board
24 certified in pain management or a related field.

§16-54-2. Voluntary nonopioid advanced directive form.

1 (a) The office shall establish a voluntary nonopioid
2 advanced directive form. The form shall be available on the
3 office’s web site. The form shall indicate to a health care
4 practitioner that an individual may not be administered or
5 offered a prescription or medication order for an opioid. The
6 advance directive shall be filed in the individual’s medical
7 record in either a health care facility or a private office of a
8 practitioner, or both, and shall be transferred with the person
9 from one practitioner to another or from one health care
10 facility to another.

11 (b) An individual may revoke the voluntary nonopioid
12 advanced directive form for any reason and may do so by
13 written or oral means.

14 (c) A practitioner without actual knowledge of an
15 advance directive as set forth in §16-54-2(a) of this code and
16 who prescribes an opioid in a medical emergency situation
17 is not civilly or criminally liable for failing to act in
18 accordance with the directives unless the act or omission
19 was the result of a practitioner’s gross negligence or willful
20 misconduct. For purposes of this section, a “medical

21 emergency situation” shall mean an acute injury or illness
22 that poses an immediate risk to a person’s life or long-term
23 health.

§16-54-3. Opioid prescription notifications.

1 Prior to issuing a prescription for an opioid, a
2 practitioner shall:

3 (1) Advise the patient regarding the quantity of the
4 opioid and a patient’s option to fill the prescription in a
5 lesser quantity; and

6 (2) Inform the patient of the risks associated with the
7 opioid prescribed.

§16-54-4. Opioid prescription limitations.

1 (a) When issuing a prescription for an opioid to an adult
2 patient seeking treatment in an emergency room for
3 outpatient use, a health care practitioner may not issue a
4 prescription for more than a four-day supply.

5 (b) When issuing a prescription for an opioid to an adult
6 patient seeking treatment in an urgent care facility setting
7 for outpatient use, a health care practitioner may not issue a
8 prescription for more than a four-day supply: *Provided,*
9 That an additional dosing for up to no more than a seven-
10 day supply may be permitted, but only if the medical
11 rationale for more than a four-day supply is documented in
12 the medical record.

13 (c) A health care practitioner may not issue an opioid
14 prescription to a minor for more than a three-day supply and
15 shall discuss with the parent or guardian of the minor the
16 risks associated with opioid use and the reasons why the
17 prescription is necessary.

18 (d) A dentist or an optometrist may not issue an opioid
19 prescription for more than a three-day supply at any time.

20 (e) A practitioner may not issue an initial opioid
21 prescription for more than a seven-day supply. The
22 prescription shall be for the lowest effective dose which in
23 the medical judgement of the practitioner would be the best
24 course of treatment for this patient and his or her condition.

25 (f) Prior to issuing an initial opioid prescription, a
26 practitioner shall:

27 (1) Take and document the results of a thorough medical
28 history, including the patient's experience with nonopioid
29 medication, nonpharmacological pain management
30 approaches, and substance abuse history;

31 (2) Conduct, as appropriate, and document the results of
32 a physical examination;

33 (3) Develop a treatment plan, with particular attention
34 focused on determining the cause of the patient's pain; and

35 (4) Access relevant prescription monitoring information
36 under the Controlled Substances Monitoring Program
37 Database.

38 (g) Notwithstanding any provision of this code or
39 legislative rule to the contrary, no medication listed as a
40 Schedule II controlled substance as set forth in §60A-2-206
41 of this code, may be prescribed by a practitioner for greater
42 than a 30-day supply: *Provided*, That two additional
43 prescriptions, each for a 30-day period for a total of a 90-
44 day supply, may be prescribed if the practitioner accesses
45 the West Virginia Controlled Substances Monitoring
46 Program Database as set forth in §60A-9-1 *et seq.* of this
47 code: *Provided, however*, That the limitations in this section
48 do not apply to cancer patients, patients receiving hospice
49 care from a licensed hospice provider, patients receiving
50 palliative care, a patient who is a resident of a long-term care
51 facility, or a patient receiving medications that are being
52 prescribed for use in the treatment of substance abuse or
53 opioid dependence.

54 (h) A practitioner is required to conduct and document
55 the results of a physical examination every 90 days for any
56 patient for whom he or she continues to treat with any
57 Schedule II controlled substance as set forth in §60-2-206
58 of this code.

59 (i) A veterinarian licensed pursuant to the provisions of
60 §30-10-1 *et seq.* of this code may not issue more than an
61 initial opioid prescription for more than a seven-day supply.
62 The prescription shall be for the lowest effective dose which
63 in the medical judgment of the veterinarian would be the
64 best course of treatment for this patient and his or her
65 condition.

66 (j) A prescription for any opioid drug listed on Schedule
67 II as set forth in §60A-2-206 of this code for greater than a
68 seven-day period shall require the patient to execute a
69 narcotics contract with their prescribing practitioner. The
70 contract shall be made a part of the patient's medical record.
71 The narcotics contract is required to provide that:

72 (1) The patient agrees only to obtain scheduled
73 medications from this particular prescribing practitioner;

74 (2) The patient agrees he or she will only fill those
75 prescriptions at a single pharmacy which includes a
76 pharmacy with more than one location;

77 (3) The patient agrees to notify the prescribing
78 practitioner within 72 hours of any emergency where he or
79 she is prescribed scheduled medication; and

80 (4) If the patient fails to honor the provisions of the
81 narcotics contract, the prescribing practitioner may either
82 terminate the provider-patient relationship or continue to
83 treat the patient without prescribing a Schedule II opioid for
84 the patient. Should the practitioner decide to terminate the
85 relationship, he or she is required to do so pursuant to the
86 provisions of this code and any rules promulgated
87 hereunder. Termination of the relationship for the patient's

88 failure to honor the provisions of the contract is not subject
89 to any disciplinary action by the practitioner's licensing
90 board.

§16-54-5. Subsequent prescriptions; limitations.

1 (a) No fewer than six days after issuing the initial
2 prescription as set forth in §16-54-4 of this code, the
3 practitioner, after consultation with the patient, may issue a
4 subsequent prescription for an opioid to the patient if:

5 (1) The subsequent prescription would not be deemed
6 an initial prescription pursuant to §16-54-4 of this code;

7 (2) The practitioner determines the prescription is
8 necessary and appropriate to the patient's treatment needs
9 and documents the rationale for the issuance of the
10 subsequent prescription; and

11 (3) The practitioner determines that issuance of the
12 subsequent prescription does not present an undue risk of
13 abuse, addiction, or diversion and documents that
14 determination.

15 (b) Prior to issuing the subsequent prescription of the
16 course of treatment, a practitioner shall discuss with the
17 patient, or the patient's parent or guardian if the patient is
18 under 18 years of age, the risks associated with the drug
19 being prescribed. This discussion shall include:

20 (1) The risks of addiction and overdose associated with
21 opioid drugs and the dangers of taking opioid drugs with
22 alcohol, benzodiazepines, and other central nervous system
23 depressants;

24 (2) The reasons why the prescription is necessary;

25 (3) Alternative treatments that may be available; and

26 (4) Risks associated with the use of the drugs being
27 prescribed, specifically that opioids are highly addictive,
28 even when taken as prescribed, that there is a risk of

29 developing a physical or psychological dependence on the
30 controlled substance, and that the risks of taking more
31 opioids than prescribed, or mixing sedatives,
32 benzodiazepines, or alcohol with opioids, can result in fatal
33 respiratory depression.

34 (c) The discussion as set forth in §16-54-5(b) of this
35 code shall be included in a notation in the patient's medical
36 record.

§16-54-6. Ongoing treatment; referral to pain clinic or pain specialist.

1 (a) At the time of the issuance of the third prescription
2 for a prescription opioid the practitioner shall consider
3 referring the patient to a pain clinic or a pain specialist. The
4 practitioner shall discuss the benefits of seeking treatment
5 through a pain clinic or a pain specialist and provide him or
6 her with an understanding of any risks associated by
7 choosing not to pursue that as an option.

8 (b) If the patient declines to seek treatment from a pain
9 clinic or a pain specialist and opts to remain a patient of the
10 practitioner, and the practitioner continues to prescribe an
11 opioid for pain as provided in this code, the practitioner
12 shall:

13 (1) Note in the patient's medical records that the patient
14 knowingly declined treatment from a pain clinic or pain
15 specialist;

16 (2) Review, at a minimum of every three months, the
17 course of treatment, any new information about the etiology
18 of the pain, and the patient's progress toward treatment
19 objectives and document the results of that review;

20 (3) Assess the patient prior to every renewal to
21 determine whether the patient is experiencing problems
22 associated with physical and psychological dependence and
23 document the results of that assessment; and

24 (4) Periodically make reasonable efforts, unless
25 clinically contraindicated, to either stop the use of the
26 controlled substance, decrease the dosage, try other drugs or
27 treatment modalities in an effort to reduce the potential for
28 abuse or the development of physical or psychological
29 dependence, and document with specificity the efforts
30 undertaken.

§16-54-7. Exceptions.

1 (a) This article does not apply to a prescription for a
2 patient who is currently in active treatment for cancer,
3 receiving hospice care from a licensed hospice provider or
4 palliative care provider, or is a resident of a long-term care
5 facility, or to any medications that are being prescribed for
6 use in the treatment of substance abuse or opioid
7 dependence.

8 (b) A practitioner may prescribe an initial seven-day
9 supply of an opioid to a post-surgery patient immediately
10 following a surgical procedure. Based upon the medical
11 judgment of the practitioner, a subsequent prescription may
12 be prescribed by the practitioner pursuant to the provisions
13 of this code. Nothing in this section authorizes a practitioner
14 to prescribe any medication which he or she is not permitted
15 to prescribe pursuant to their practice act.

16 (c) A practitioner who acquires a patient after January
17 1, 2018, who is currently being prescribed an opioid from
18 another practitioner shall be required to access the
19 Controlled Substances Monitoring Program Database as set
20 forth in §60A-9-1 *et seq.* of this code. Any prescription
21 would not be deemed an initial prescription pursuant to the
22 provisions of this section. The practitioner shall otherwise
23 treat the patient as set forth in this code.

24 (d) This article does not apply to an existing
25 practitioner-patient relationship established before January
26 1, 2018, where there is an established and current opioid

27 treatment plan which is reflected in the patient's medical
28 records.

§16-54-8. Treatment of pain.

1 (a) When patients seek treatment for any of the myriad
2 conditions that cause pain, a health care practitioner shall
3 refer or prescribe to a patient any of the following treatment
4 alternatives, based on the practitioner's clinical judgment
5 and the availability of the treatment, before starting a patient
6 on an opioid: physical therapy, occupational therapy,
7 acupuncture, massage therapy, osteopathic manipulation,
8 chronic pain management program, and chiropractic
9 services, as defined in §30-16-3 of this code.

10 (b) Nothing in this section should be construed to
11 require that all of the treatment alternatives set forth in §16-
12 54-8(a) of this code are required to be exhausted prior to the
13 patient receiving a prescription for an opioid.

14 (c) At a minimum, an insurance provider who offers an
15 insurance product in this state, the Bureau for Medical
16 Services, and the Public Employees Insurance Agency shall
17 provide coverage for 20 visits per event of physical therapy,
18 occupational therapy, osteopathic manipulation, a chronic
19 pain management program, and chiropractic services, as
20 defined in §30-16-3 of this code, when ordered by a health
21 care practitioner to treat conditions that cause chronic pain.

22 (d) A patient may seek treatment for physical therapy,
23 occupational therapy, osteopathic manipulation, a chronic
24 pain management program, and chiropractic services, as
25 defined in §30-16-3 of this code, prior to seeking treatment
26 from a practitioner and a practitioner referral is not required
27 as a condition of coverage by the Bureau for Medical
28 Services, the Public Employees Insurance Agency, and any
29 insurance provider who offers an insurance product in this
30 state. Any deductible, coinsurance, or co-pay required for
31 any of these services may not be greater than the deductible,
32 coinsurance, or co-pay required for a primary care visit.

33 (e) Nothing in this section precludes a practitioner from
34 simultaneously prescribing an opioid and prescribing or
35 recommending any of the procedures set forth in §16-54-
36 8(a) of this code.

§16-54-9. Discipline.

1 A violation of this article is grounds for disciplinary
2 action by the board that regulates the health care practitioner
3 who commits the violation.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§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 podiatrist; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determination; 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, the Board of Pharmacy, and others.

6 The board may initiate investigations as to professional
7 incompetence or other reasons for which a licensed
8 physician or podiatrist may be adjudged unqualified based
9 upon criminal convictions; complaints by citizens,
10 pharmacists, physicians, podiatrists, peer review
11 committees, hospital administrators, professional societies,
12 or others; or unfavorable outcomes arising out of medical
13 professional liability. The board shall initiate an

14 investigation if it receives notice that three or more
15 judgments, or any combination of judgments and
16 settlements resulting in five or more unfavorable outcomes
17 arising from medical professional liability, have been
18 rendered or made against the physician or podiatrist within
19 a five-year period. The board may not consider any
20 judgments or settlements as conclusive evidence of
21 professional incompetence or conclusive lack of
22 qualification to practice.

23 (b) Upon request of the board, any medical peer review
24 committee in this state shall report any information that may
25 relate to the practice or performance of any physician or
26 podiatrist known to that medical peer review committee.
27 Copies of the requests for information from a medical peer
28 review committee may be provided to the subject physician
29 or podiatrist if, in the discretion of the board, the provision
30 of such copies will not jeopardize the board's investigation.
31 In the event that copies are provided, the subject physician
32 or podiatrist is allowed 15 days to comment on the requested
33 information and such comments must be considered by the
34 board.

35 The chief executive officer of every hospital shall,
36 within 60 days after the completion of the hospital's formal
37 disciplinary procedure and also within 60 days after the
38 commencement of and again after the conclusion of any
39 resulting legal action, report in writing to the board the name
40 of any member of the medical staff or any other physician
41 or podiatrist practicing in the hospital whose hospital
42 privileges have been revoked, restricted, reduced, or
43 terminated for any cause, including resignation, together
44 with all pertinent information relating to such action. The
45 chief executive officer shall also report any other formal
46 disciplinary action taken against any physician or podiatrist
47 by the hospital upon the recommendation of its medical staff
48 relating to professional ethics, medical incompetence,
49 medical professional liability, moral turpitude or drug or
50 alcohol abuse. Temporary suspension for failure to maintain

51 records on a timely basis or failure to attend staff or section
52 meetings need not be reported. Voluntary cessation of
53 hospital privileges for reasons unrelated to professional
54 competence or ethics need not be reported.

55 Any managed care organization operating in this state
56 which provides a formal peer review process shall report in
57 writing to the board, within 60 days after the completion of
58 any formal peer review process and also within 60 days after
59 the commencement of and again after the conclusion of any
60 resulting legal action, the name of any physician or
61 podiatrist whose credentialing has been revoked or not
62 renewed by the managed care organization. The managed
63 care organization shall also report in writing to the board
64 any other disciplinary action taken against a physician or
65 podiatrist relating to professional ethics, professional
66 liability, moral turpitude, or drug or alcohol abuse within 60
67 days after completion of a formal peer review process which
68 results in the action taken by the managed care organization.
69 For purposes of this subsection, “managed care
70 organization” means a plan that establishes, operates, or
71 maintains a network of health care providers who have
72 entered into agreements with and been credentialed by the
73 plan to provide health care services to enrollees or insureds
74 to whom the plan has the ultimate obligation to arrange for
75 the provision of or payment for health care services through
76 organizational arrangements for ongoing quality assurance,
77 utilization review programs, or dispute resolutions.

78 Any professional society in this state comprised
79 primarily of physicians or podiatrists which takes formal
80 disciplinary action against a member relating to professional
81 ethics, professional incompetence, medical professional
82 liability, moral turpitude, or drug or alcohol abuse shall
83 report in writing to the board within 60 days of a final
84 decision the name of the member, together with all pertinent
85 information relating to the action.

86 Every person, partnership, corporation, association,
87 insurance company, professional society, or other

88 organization providing professional liability insurance to a
89 physician or podiatrist in this state, including the state Board
90 of Risk and Insurance Management, shall submit to the
91 board the following information within 30 days from any
92 judgment or settlement of a civil or medical professional
93 liability action excepting product liability actions: The name
94 of the insured; the date of any judgment or settlement;
95 whether any appeal has been taken on the judgment and, if
96 so, by which party; the amount of any settlement or
97 judgment against the insured; and other information
98 required by the board.

99 Within 30 days from the entry of an order by a court in
100 a medical professional liability action or other civil action
101 in which a physician or podiatrist licensed by the board is
102 determined to have rendered health care services below the
103 applicable standard of care, the clerk of the court in which
104 the order was entered shall forward a certified copy of the
105 order to the board.

106 Within 30 days after a person known to be a physician
107 or podiatrist licensed or otherwise lawfully practicing
108 medicine and surgery or podiatry in this state or applying to
109 be licensed is convicted of a felony under the laws of this
110 state or of any crime under the laws of this state involving
111 alcohol or drugs in any way, including any controlled
112 substance under state or federal law, the clerk of the court
113 of record in which the conviction was entered shall forward
114 to the board a certified true and correct abstract of record of
115 the convicting court. The abstract shall include the name
116 and address of the physician or podiatrist or applicant, the
117 nature of the offense committed, and the final judgment and
118 sentence of the court.

119 Upon a determination of the board that there is probable
120 cause to believe that any person, partnership, corporation,
121 association, insurance company, professional society, or
122 other organization has failed or refused to make a report
123 required by this subsection, the board shall provide written
124 notice to the alleged violator stating the nature of the alleged

125 violation and the time and place at which the alleged
126 violator shall appear to show good cause why a civil penalty
127 should not be imposed. The hearing shall be conducted in
128 accordance with §29A-5-1 *et seq.* of this code. After
129 reviewing the record of the hearing, if the board determines
130 that a violation of this subsection has occurred, the board
131 shall assess a civil penalty of not less than \$1,000 nor more
132 than \$10,000 against the violator. The board shall notify any
133 person so assessed of the assessment in writing and the
134 notice shall specify the reasons for the assessment. If the
135 violator fails to pay the amount of the assessment to the
136 board within 30 days, the Attorney General may institute a
137 civil action in the Circuit Court of Kanawha County to
138 recover the amount of the assessment. In any civil action,
139 the court's review of the board's action shall be conducted
140 in accordance with §29A-5-4 of this code. Notwithstanding
141 any other provision of this article to the contrary, when there
142 are conflicting views by recognized experts as to whether
143 any alleged conduct breaches an applicable standard of care,
144 the evidence must be clear and convincing before the board
145 may find that the physician or podiatrist has demonstrated a
146 lack of professional competence to practice with a
147 reasonable degree of skill and safety for patients.

148 Any person may report to the board relevant facts about
149 the conduct of any physician or podiatrist in this state which
150 in the opinion of that person amounts to medical
151 professional liability or professional incompetence.

152 The board shall provide forms for filing reports pursuant
153 to this section. Reports submitted in other forms shall be
154 accepted by the board.

155 The filing of a report with the board pursuant to any
156 provision of this article, any investigation by the board, or
157 any disposition of a case by the board does not preclude any
158 action by a hospital, other health care facility, or
159 professional society comprised primarily of physicians or
160 podiatrists to suspend, restrict, or revoke the privileges or
161 membership of the physician or podiatrist.

162 (c) The board may deny an application for license or
163 other authorization to practice medicine and surgery or
164 podiatry in this state and may discipline a physician or
165 podiatrist licensed or otherwise lawfully practicing in this
166 state who, after a hearing, has been adjudged by the board
167 as unqualified due to any of the following reasons:

168 (1) Attempting to obtain, obtaining, renewing, or
169 attempting to renew a license to practice medicine and
170 surgery or podiatry by bribery, fraudulent
171 misrepresentation, or through known error of the board;

172 (2) Being found guilty of a crime in any jurisdiction,
173 which offense is a felony, involves moral turpitude, or
174 directly relates to the practice of medicine. Any plea of nolo
175 contendere is a conviction for the purposes of this
176 subdivision;

177 (3) False or deceptive advertising;

178 (4) Aiding, assisting, procuring, or advising any
179 unauthorized person to practice medicine and surgery or
180 podiatry contrary to law;

181 (5) Making or filing a report that the person knows to be
182 false; intentionally or negligently failing to file a report or
183 record required by state or federal law; willfully impeding
184 or obstructing the filing of a report or record required by
185 state or federal law; or inducing another person to do any of
186 the foregoing. The reports and records covered in this
187 subdivision mean only those that are signed in the capacity
188 as a licensed physician or podiatrist;

189 (6) Requesting, receiving, or paying directly or
190 indirectly a payment, rebate, refund, commission, credit, or
191 other form of profit or valuable consideration for the referral
192 of patients to any person or entity in connection with
193 providing medical or other health care services or clinical
194 laboratory services, supplies of any kind, drugs, medication,

195 or any other medical goods, services, or devices used in
196 connection with medical or other health care services;

197 (7) Unprofessional conduct by any physician or
198 podiatrist in referring a patient to any clinical laboratory or
199 pharmacy in which the physician or podiatrist has a
200 proprietary interest unless the physician or podiatrist
201 discloses in writing such interest to the patient. The written
202 disclosure shall indicate that the patient may choose any
203 clinical laboratory for purposes of having any laboratory
204 work or assignment performed or any pharmacy for
205 purposes of purchasing any prescribed drug or any other
206 medical goods or devices used in connection with medical
207 or other health care services;

208 As used in this subdivision, “proprietary interest” does
209 not include an ownership interest in a building in which
210 space is leased to a clinical laboratory or pharmacy at the
211 prevailing rate under a lease arrangement that is not
212 conditional upon the income or gross receipts of the clinical
213 laboratory or pharmacy;

214 (8) Exercising influence within a patient-physician
215 relationship for the purpose of engaging a patient in sexual
216 activity;

217 (9) Making a deceptive, untrue, or fraudulent
218 representation in the practice of medicine and surgery or
219 podiatry;

220 (10) Soliciting patients, either personally or by an agent,
221 through the use of fraud, intimidation, or undue influence;

222 (11) Failing to keep written records justifying the course
223 of treatment of a patient, including, but not limited to,
224 patient histories, examination and test results, and treatment
225 rendered, if any;

226 (12) Exercising influence on a patient in such a way as
227 to exploit the patient for financial gain of the physician or
228 podiatrist or of a third party. Any influence includes, but is

229 not limited to, the promotion or sale of services, goods,
230 appliances, or drugs;

231 (13) Prescribing, dispensing, administering, mixing, or
232 otherwise preparing a prescription drug, including any
233 controlled substance under state or federal law, other than
234 in good faith and in a therapeutic manner in accordance with
235 accepted medical standards and in the course of the
236 physician's or podiatrist's professional practice. A
237 physician who discharges his or her professional obligation
238 to relieve the pain and suffering and promote the dignity and
239 autonomy of dying patients in his or her care and, in so
240 doing, exceeds the average dosage of a pain relieving
241 controlled substance, as defined in Schedules II and III of
242 the Uniform Controlled Substance Act, does not violate this
243 article;

244 (14) Performing any procedure or prescribing any
245 therapy that, by the accepted standards of medical practice
246 in the community, would constitute experimentation on
247 human subjects without first obtaining full, informed, and
248 written consent;

249 (15) Practicing or offering to practice beyond the scope
250 permitted by law or accepting and performing professional
251 responsibilities that the person knows or has reason to know
252 he or she is not competent to perform;

253 (16) Delegating professional responsibilities to a person
254 when the physician or podiatrist delegating the
255 responsibilities knows or has reason to know that the person
256 is not qualified by training, experience, or licensure to
257 perform them;

258 (17) Violating any provision of this article or a rule or
259 order of the board or failing to comply with a subpoena or
260 subpoena duces tecum issued by the board;

261 (18) Conspiring with any other person to commit an act
262 or committing an act that would tend to coerce, intimidate,

263 or preclude another physician or podiatrist from lawfully
264 advertising his or her services;

265 (19) Gross negligence in the use and control of
266 prescription forms;

267 (20) Professional incompetence;

268 (21) The inability to practice medicine and surgery or
269 podiatry with reasonable skill and safety due to physical or
270 mental impairment, including deterioration through the
271 aging process, loss of motor skill, or abuse of drugs or
272 alcohol. A physician or podiatrist adversely affected under
273 this subdivision shall be afforded an opportunity at
274 reasonable intervals to demonstrate that he or she may
275 resume the competent practice of medicine and surgery or
276 podiatry with reasonable skill and safety to patients. In any
277 proceeding under this subdivision, neither the record of
278 proceedings nor any orders entered by the board shall be
279 used against the physician or podiatrist in any other
280 proceeding; or

281 (22) Knowingly failing to report to the board any act of
282 gross misconduct committed by another licensee of the
283 board.

284 (d) The board shall deny any application for a license or
285 other authorization to practice medicine and surgery or
286 podiatry in this state to any applicant, and shall revoke the
287 license of any physician or podiatrist licensed or otherwise
288 lawfully practicing within this state who, is found guilty by
289 any court of competent jurisdiction of any felony involving
290 prescribing, selling, administering, dispensing, mixing, or
291 otherwise preparing any prescription drug, including any
292 controlled substance under state or federal law, for other
293 than generally accepted therapeutic purposes. Presentation
294 to the board of a certified copy of the guilty verdict or plea
295 rendered in the court is sufficient proof thereof for the
296 purposes of this article. A plea of nolo contendere has the
297 same effect as a verdict or plea of guilt. Upon application of

298 a physician that has had his or her license revoked because
299 of a drug related felony conviction, upon completion of any
300 sentence of confinement, parole, probation, or other court-
301 ordered supervision and full satisfaction of any fines,
302 judgments, or other fees imposed by the sentencing court,
303 the board may issue the applicant a new license upon a
304 finding that the physician is, except for the underlying
305 conviction, otherwise qualified to practice medicine:
306 *Provided*, That the board may place whatever terms,
307 conditions, or limitations it deems appropriate upon a
308 physician licensed pursuant to this subsection.

309 (e) The board may refer any cases coming to its
310 attention to an appropriate committee of an appropriate
311 professional organization for investigation and report.
312 Except for complaints related to obtaining initial licensure
313 to practice medicine and surgery or podiatry in this state by
314 bribery or fraudulent misrepresentation, any complaint filed
315 more than two years after the complainant knew, or in the
316 exercise of reasonable diligence should have known, of the
317 existence of grounds for the complaint shall be dismissed:
318 *Provided*, That in cases of conduct alleged to be part of a
319 pattern of similar misconduct or professional incapacity
320 that, if continued, would pose risks of a serious or
321 substantial nature to the physician's or podiatrist's current
322 patients, the investigating body may conduct a limited
323 investigation related to the physician's or podiatrist's
324 current capacity and qualification to practice and may
325 recommend conditions, restrictions, or limitations on the
326 physician's or podiatrist's license to practice that it
327 considers necessary for the protection of the public. Any
328 report shall contain recommendations for any necessary
329 disciplinary measures and shall be filed with the board
330 within 90 days of any referral. The recommendations shall
331 be considered by the board and the case may be further
332 investigated by the board. The board after full investigation
333 shall take whatever action it considers appropriate, as
334 provided in this section.

335 (f) The investigating body, as provided in §30-3-14(e)
336 of this code, may request and the board under any
337 circumstances may require a physician or podiatrist or
338 person applying for licensure or other authorization to
339 practice medicine and surgery or podiatry in this state to
340 submit to a physical or mental examination by a physician
341 or physicians approved by the board. A physician or
342 podiatrist submitting to an examination has the right, at his
343 or her expense, to designate another physician to be present
344 at the examination and make an independent report to the
345 investigating body or the board. The expense of the
346 examination shall be paid by the board. Any individual who
347 applies for or accepts the privilege of practicing medicine
348 and surgery or podiatry in this state is considered to have
349 given his or her consent to submit to all examinations when
350 requested to do so in writing by the board and to have
351 waived all objections to the admissibility of the testimony
352 or examination report of any examining physician on the
353 ground that the testimony or report is privileged
354 communication. If a person fails or refuses to submit to an
355 examination under circumstances which the board finds are
356 not beyond his or her control, failure or refusal is prima facie
357 evidence of his or her inability to practice medicine and
358 surgery or podiatry competently and in compliance with the
359 standards of acceptable and prevailing medical practice.

360 (g) In addition to any other investigators it employs, the
361 board may appoint one or more licensed physicians to act
362 for it in investigating the conduct or competence of a
363 physician.

364 (h) In every disciplinary or licensure denial action, the
365 board shall furnish the physician or podiatrist or applicant
366 with written notice setting out with particularity the reasons
367 for its action. Disciplinary and licensure denial hearings
368 shall be conducted in accordance with §29A-5-1 *et seq.* of
369 this code. However, hearings shall be heard upon sworn
370 testimony and the rules of evidence for trial courts of record
371 in this state shall apply to all hearings. A transcript of all

372 hearings under this section shall be made, and the
373 respondent may obtain a copy of the transcript at his or her
374 expense. The physician or podiatrist has the right to defend
375 against any charge by the introduction of evidence, the right
376 to be represented by counsel, the right to present and cross
377 examine witnesses and the right to have subpoenas and
378 subpoenas duces tecum issued on his or her behalf for the
379 attendance of witnesses and the production of documents.
380 The board shall make all its final actions public. The order
381 shall contain the terms of all action taken by the board.

382 (i) In disciplinary actions in which probable cause has
383 been found by the board, the board shall, within 20 days of
384 the date of service of the written notice of charges or 60 days
385 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 20 days of the date of service of the written
403 notice of charges, the board shall disclose any exculpatory
404 evidence with a continuing duty to do so throughout the
405 disciplinary process. Within 30 days of receipt of the
406 board's mandatory discovery, the respondent shall provide
407 the board with the complete identity, address, and telephone
408 number of any person known to the respondent with
409 knowledge about the facts of any of the charges; provide a

410 list of proposed witnesses with addresses and telephone
411 numbers, to be called at hearing, with a brief summary of
412 his or her anticipated testimony; provide disclosure of any
413 trial expert pursuant to the requirements of Rule 26(b)(4) of
414 the West Virginia Rules of Civil Procedure; provide
415 inspection and copying of the results of any reports of
416 physical and mental examinations or scientific tests or
417 experiments; and provide a list and copy of any proposed
418 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 §30-3-14(c) of this code, the
421 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 §30-1-8 of this
449 code, if the board determines the evidence in its possession
450 indicates that a physician's or podiatrist's continuation in
451 practice or unrestricted practice constitutes an immediate
452 danger to the public, the board may take any of the actions
453 provided in §30-3-4(j) of this code on a temporary basis and
454 without a hearing if institution of proceedings for a hearing
455 before the board are initiated simultaneously with the
456 temporary action and begin within 15 days of the action.
457 The board shall render its decision within five days of the
458 conclusion of a hearing under this subsection.

459 (l) Any person against whom disciplinary action is taken
460 pursuant to this article has the right to judicial review as
461 provided in §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this
462 code: *Provided*, That a circuit judge may also remand the
463 matter to the board if it appears from competent evidence
464 presented to it in support of a motion for remand that there
465 is newly discovered evidence of such a character as ought
466 to produce an opposite result at a second hearing on the
467 merits before the board and:

468 (1) The evidence appears to have been discovered since
469 the board hearing; and

470 (2) The physician or podiatrist exercised due diligence
471 in asserting his or her evidence and that due diligence would
472 not have secured the newly discovered evidence prior to the
473 appeal.

474 A person may not practice medicine and surgery or
475 podiatry or deliver health care services in violation of any
476 disciplinary order revoking, suspending, or limiting his or

477 her license while any appeal is pending. Within 60 days, the
478 board shall report its final action regarding restriction,
479 limitation, suspension, or revocation of the license of a
480 physician or podiatrist, limitation on practice privileges, or
481 other disciplinary action against any physician or podiatrist
482 to all appropriate state agencies, appropriate licensed health
483 facilities and hospitals, insurance companies or associations
484 writing medical malpractice insurance in this state, the
485 American Medical Association, the American Podiatry
486 Association, professional societies of physicians or
487 podiatrists in the state, and any entity responsible for the
488 fiscal administration of Medicare and Medicaid.

489 (m) Any person against whom disciplinary action has
490 been taken under this article shall, at reasonable intervals,
491 be afforded an opportunity to demonstrate that he or she can
492 resume the practice of medicine and surgery or podiatry on
493 a general or limited basis. At the conclusion of a suspension,
494 limitation, or restriction period the physician or podiatrist
495 may resume practice if the board has so ordered.

496 (n) Any entity, organization or person, including the
497 board, any member of the board, its agents or employees
498 and any entity or organization or its members referred to in
499 this article, any insurer, its agents or employees, a medical
500 peer review committee and a hospital governing board, its
501 members or any committee appointed by it acting without
502 malice and without gross negligence in making any report
503 or other information available to the board or a medical peer
504 review committee pursuant to law and any person acting
505 without malice and without gross negligence who assists in
506 the organization, investigation, or preparation of any such
507 report or information or assists the board or a hospital
508 governing body or any committee in carrying out any of its
509 duties or functions provided by law is immune from civil or
510 criminal liability, except that the unlawful disclosure of
511 confidential information possessed by the board is a
512 misdemeanor as provided in this article.

513 (o) A physician or podiatrist may request in writing to
514 the board a limitation on or the surrendering of his or her
515 license to practice medicine and surgery or podiatry or other
516 appropriate sanction as provided in this section. The board
517 may grant the request and, if it considers it appropriate, may
518 waive the commencement or continuation of other
519 proceedings under this section. A physician or podiatrist
520 whose license is limited or surrendered or against whom
521 other action is taken under this subsection may, at
522 reasonable intervals, petition for removal of any restriction
523 or limitation on or for reinstatement of his or her license to
524 practice medicine and surgery or podiatry.

525 (p) In every case considered by the board under this
526 article regarding discipline or licensure, whether initiated by
527 the board or upon complaint or information from any person
528 or organization, the board shall make a preliminary
529 determination as to whether probable cause exists to
530 substantiate charges of disqualification due to any reason set
531 forth in §30-3-14(c) of this code. If probable cause is found
532 to exist, all proceedings on the charges shall be open to the
533 public who are entitled to all reports, records, and
534 nondeliberative materials introduced at the hearing,
535 including the record of the final action taken: *Provided,*
536 That any medical records, which were introduced at the
537 hearing and which pertain to a person who has not expressly
538 waived his or her right to the confidentiality of the records,
539 may not be open to the public nor is the public entitled to
540 the records.

541 (q) If the board receives notice that a physician or
542 podiatrist has been subjected to disciplinary action or has
543 had his or her credentials suspended or revoked by the
544 board, a hospital or a professional society, as defined in §30-
545 3-14(b) of this code, for three or more incidents during a
546 five-year period, the board shall require the physician or
547 podiatrist to practice under the direction of a physician or
548 podiatrist designated by the board for a specified period of
549 time to be established by the board.

550 (r) Notwithstanding any other provisions of this article,
551 the board may, at any time, on its own motion, or upon
552 motion by the complainant, or upon motion by the physician
553 or podiatrist, or by stipulation of the parties, refer the matter
554 to mediation. The board shall obtain a list from the West
555 Virginia State Bar's mediator referral service of certified
556 mediators with expertise in professional disciplinary
557 matters. The board and the physician or podiatrist may
558 choose a mediator from that list. If the board and the
559 physician or podiatrist are unable to agree on a mediator, the
560 board shall designate a mediator from the list by neutral
561 rotation. The mediation shall not be considered a proceeding
562 open to the public, and any reports and records introduced
563 at the mediation shall not become part of the public record.
564 The mediator and all participants in the mediation shall
565 maintain and preserve the confidentiality of all mediation
566 proceedings and records. The mediator may not be
567 subpoenaed or called to testify or otherwise be subject to
568 process requiring disclosure of confidential information in
569 any proceeding relating to or arising out of the disciplinary
570 or licensure matter mediated: *Provided*, That any
571 confidentiality agreement and any written agreement made
572 and signed by the parties as a result of mediation may be
573 used in any proceedings subsequently instituted to enforce
574 the written agreement. The agreements may be used in other
575 proceedings if the parties agree in writing.

576 (s) A physician licensed under this article may not be
577 disciplined for providing expedited partner therapy in
578 accordance with §16-4F-1 *et seq.* of this code.

579 (t) Whenever the board receives credible information
580 that a licensee of the board is engaging or has engaged in
581 criminal activity or the committing of a crime under state
582 or federal law, the board shall report the information, to the
583 extent that sensitive or confidential information may be
584 publicly disclosed under law, to the appropriate state or
585 federal law-enforcement authority and/or prosecuting
586 authority. This duty exists in addition to and is distinct from

587 the reporting required under federal law for reporting
588 actions relating to health care providers to the United States
589 Department of Health and Human Services.

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.

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

5 “Accepted guideline” is a care or practice guideline for
6 pain management developed by a nationally recognized
7 clinical or professional association or a specialty society or
8 government-sponsored agency that has developed practice
9 or care guidelines based on original research or on review
10 of existing research and expert opinion. An accepted
11 guideline also includes policy or position statements
12 relating to pain management issued by any West Virginia
13 board included in §30-1-1 *et seq.* of this code with
14 jurisdiction over various health care practitioners.
15 Guidelines established primarily for purposes of coverage,
16 payment, or reimbursement do not qualify as accepted
17 practice or care guidelines when offered to limit treatment
18 options otherwise covered by the provisions of this article.

19 “Board” or “licensing board” means the West Virginia
20 Board of Medicine, the West Virginia Board of Osteopathy,
21 the West Virginia Board of Registered Nurses, the West
22 Virginia Board of Pharmacy, the West Virginia Board of
23 Optometry, or the West Virginia Board of Dentistry.

24 “Nurse” means a registered nurse licensed in the State
25 of West Virginia pursuant to the provisions of §30-7-1 *et*
26 *seq.* of this code.

27 “Pain” means an unpleasant sensory and emotional
28 experience associated with actual or potential tissue damage
29 or described in terms of such damage.

30 “Pain-relieving controlled substance” includes, but is
31 not limited to, an opioid or other drug classified as a
32 Schedule II through V controlled substance and recognized
33 as effective for pain relief, and excludes any drug that has
34 no accepted medical use in the United States or lacks
35 accepted safety for use in treatment under medical
36 supervision including, but not limited to, any drug classified
37 as a Schedule I controlled substance.

38 “Pharmacist” means a registered pharmacist licensed in
39 the State of West Virginia pursuant to the provisions of §30-
40 5-1 *et seq.* of this code.

41 “Prescriber” shall mean:

42 (1) A physician licensed pursuant to the provisions of
43 §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code;

44 (2) An advanced practice registered nurse with
45 prescriptive authority as set forth in §30-7-15a of this code;

46 (3) A dentist licensed pursuant to the provisions of §30-
47 4-1 *et seq.* of this code; and

48 (4) An optometrist licensed pursuant to the provisions
49 of §30-8-1 *et seq.* of this code.

**§30-3A-2. Limitation on disciplinary sanctions or criminal
punishment related to management of pain.**

1 (a) A prescriber is not subject to disciplinary sanctions
2 by a licensing board or criminal punishment by the state for
3 prescribing, administering, or dispensing pain-relieving
4 controlled substances for the purpose of alleviating or
5 controlling pain if:

6 (1) In the case of a dying patient experiencing pain, the
7 prescriber practices in accordance with an accepted
8 guideline as defined in §30-3A-1 of this code and discharges
9 his or her professional obligation to relieve the dying

10 patient's pain and promote the dignity and autonomy of the
11 dying patient; or

12 (2) In the case of a patient who is not dying and is
13 experiencing pain, the prescriber discharges his or her
14 professional obligation to relieve the patient's pain, if the
15 prescriber can demonstrate by reference to an accepted
16 guideline that his or her practice substantially complied with
17 that accepted guideline. Evidence of substantial compliance
18 with an accepted guideline may be rebutted only by the
19 testimony of a clinical expert. Evidence of noncompliance
20 with an accepted guideline is not sufficient alone to support
21 disciplinary or criminal action.

22 (b) A health care provider, as defined in §55-7B-2 of
23 this code, with prescriptive authority is not subject to
24 disciplinary sanctions by a licensing board or criminal
25 punishment by the state for declining to prescribe, or
26 declining to continue to prescribe, any controlled substance
27 to a patient which the health care provider with prescriptive
28 authority is treating if the health care provider with
29 prescriptive authority in the exercise of reasonable prudent
30 judgment believes the patient is misusing the controlled
31 substance in an abusive manner or unlawfully diverting a
32 controlled substance legally prescribed for their use.

33 (c) A licensed registered professional nurse is not
34 subject to disciplinary sanctions by a licensing board or
35 criminal punishment by the state for administering pain-
36 relieving controlled substances to alleviate or control pain,
37 if administered in accordance with the orders of a licensed
38 physician.

39 (d) A licensed pharmacist is not subject to disciplinary
40 sanctions by a licensing board or criminal punishment by
41 the state for dispensing a prescription for a pain-relieving
42 controlled substance to alleviate or control pain, if
43 dispensed in accordance with the orders of a licensed
44 physician.

45 (e) For purposes of this section, the term “disciplinary
46 sanctions” includes both remedial and punitive sanctions
47 imposed on a licensee by a licensing board, arising from
48 either formal or informal proceedings.

49 (f) The provisions of this section apply to the treatment
50 of all patients for pain, regardless of the patient’s prior or
51 current chemical dependency or addiction. The board may
52 develop and issue policies or guidelines establishing
53 standards and procedures for the application of this article
54 to the care and treatment of persons who are chemically
55 dependent or addicted.

§30-3A-3. Acts subject to discipline or prosecution.

1 (a) Nothing in this article shall prohibit disciplinary
2 action or criminal prosecution of a prescriber for:

3 (1) Failing to maintain complete, accurate, and current
4 records documenting the physical examination and medical
5 history of the patient, the basis for the clinical diagnosis of
6 the patient, and the treatment plan for the patient;

7 (2) Writing a false or fictitious prescription for a
8 controlled substance scheduled in §60A-2-201 *et seq.* of this
9 code; or

10 (3) Prescribing, administering, or dispensing a
11 controlled substance in violation of the provisions of the
12 federal Comprehensive Drug Abuse Prevention and Control
13 Act of 1970, 21 U.S.C. §§801, *et seq.* or chapter §60A-1-
14 101 *et seq.* of this code;

15 (4) Diverting controlled substances prescribed for a
16 patient to the physician’s own personal use or

17 (5) Abnormal or unusual prescribing or dispensing
18 patterns, or both as identified by the Controlled Substance
19 Monitoring Program set forth in §60A-9-1 *et seq.* of this
20 code. These prescribing and dispensing patterns may be

21 discovered in the report filed with the appropriate board as
22 required by section §60A-9-1 *et seq.* of this code.

23 (b) Nothing in this article shall prohibit disciplinary
24 action or criminal prosecution of a nurse or pharmacist for:

25 (1) Administering or dispensing a controlled substance
26 in violation of the provisions of the federal Comprehensive
27 Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.
28 §§801, *et seq.* or §60A-1-101 of this code; or

29 (2) Diverting controlled substances prescribed for a
30 patient to the nurse's or pharmacist's own personal use.

§30-3A-4. Abnormal or unusual prescribing practices.

1 (a) Upon receipt of the quarterly report set forth in
2 §60A-9-1 *et seq.* of this code, the licensing board shall
3 notify the prescriber that he or she has been identified as a
4 potentially unusual or abnormal prescriber. The board may
5 take appropriate action, including, but not limited to, an
6 investigation or disciplinary action based upon the findings
7 provided in the report.

8 (b) A licensing board may upon receipt of credible and
9 reliable information independent of the quarterly report as
10 set forth in §60A-9-1 *et seq.* of this code initiate an
11 investigation into any alleged abnormal prescribing or
12 dispensing practices of a licensee.

13 (c) The licensing boards and prescribers shall have all
14 rights and responsibilities in their practice acts.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The board may initiate a complaint upon receipt of
2 the quarterly report from the Board of Pharmacy as required
3 by §60A-9-1 *et seq.* of this code or upon receipt of credible
4 information and shall, upon the receipt of a written

5 complaint of any person, cause an investigation to be made
6 to determine whether grounds exist for disciplinary action
7 under this article or the legislative rules promulgated
8 pursuant to this article.

9 (b) After reviewing any information obtained through
10 an investigation, the board shall determine if probable cause
11 exists that the licensee, certificate holder, or permittee has
12 violated §30-4-19(a) of this code or rules promulgated
13 pursuant to this article.

14 (c) Upon a finding of probable cause to go forward with
15 a complaint, the board shall provide a copy of the complaint
16 to the licensee, certificate holder, or permittee.

17 (d) Upon a finding that probable cause exists that the
18 licensee, certificate holder, or permittee has violated §30-4-
19 19(g) of this code or rules promulgated pursuant to this
20 article, the board may enter into a consent decree or hold a
21 hearing for disciplinary action against the licensee,
22 certificate holder, or permittee. Any hearing shall be held in
23 accordance with the provisions of this article and shall
24 require a violation to be proven by a preponderance of the
25 evidence.

26 (e) A member of the complaint committee or the
27 executive director of the board may issue subpoenas and
28 subpoenas duces tecum to obtain testimony and documents
29 to aid in the investigation of allegations against any person
30 regulated by the article.

31 (f) Any member of the board or its executive director
32 may sign a consent decree or other legal document on behalf
33 of the board.

34 (g) The board may, after notice and opportunity for
35 hearing, deny or refuse to renew, suspend, restrict, or revoke
36 the license, certificate, or permit of, or impose probationary
37 conditions upon, or take disciplinary action against, any
38 licensee, certificate holder, or permittee for any of the
39 following reasons:

40 (1) Obtaining a board authorization by fraud,
41 misrepresentation, or concealment of material facts;

42 (2) Being convicted of a felony or a misdemeanor crime
43 of moral turpitude;

44 (3) Being guilty of unprofessional conduct which placed
45 the public at risk, as defined by legislative rule of the board;

46 (4) Intentional violation of a lawful order or legislative
47 rule of the board;

48 (5) Having had a board authorization revoked or
49 suspended, other disciplinary action taken, or an application
50 for a board authorization denied by the proper authorities of
51 another jurisdiction;

52 (6) Aiding or abetting unlicensed practice;

53 (7) Engaging in an act while acting in a professional
54 capacity which has endangered or is likely to endanger the
55 health, welfare, or safety of the public;

56 (8) Having an incapacity that prevents a licensee from
57 engaging in the practice of dentistry or dental hygiene, with
58 reasonable skill, competence, and safety to the public;

59 (9) Committing fraud in connection with the practice of
60 dentistry or dental hygiene;

61 (10) Failing to report to the board one's surrender of a
62 license or authorization to practice dentistry or dental
63 hygiene in another jurisdiction while under disciplinary
64 investigation by any of those authorities or bodies for
65 conduct that would constitute grounds for action as defined
66 in this section;

67 (11) Failing to report to the board any adverse judgment,
68 settlement, or award arising from a malpractice claim
69 arising related to conduct that would constitute grounds for
70 action as defined in this section;

71 (12) Being guilty of unprofessional conduct as
72 contained in the American Dental Association principles of
73 ethics and code of professional conduct. The following acts
74 are conclusively presumed to be unprofessional conduct:

75 (A) Being guilty of any fraud or deception;

76 (B) Committing a criminal operation or being convicted
77 of a crime involving moral turpitude;

78 (C) Abusing alcohol or drugs;

79 (D) Violating any professional confidence or disclosing
80 any professional secret;

81 (E) Being grossly immoral;

82 (F) Harassing, abusing, intimidating, insulting,
83 degrading, or humiliating a patient physically, verbally, or
84 through another form of communication;

85 (G) Obtaining any fee by fraud or misrepresentation;

86 (H) Employing directly or indirectly, or directing or
87 permitting any suspended or unlicensed person so
88 employed, to perform operations of any kind or to treat
89 lesions of the human teeth or jaws, or correct malimposed
90 formations thereof;

91 (I) Practicing or offering or undertaking to practice
92 dentistry under any firm name or trade name not approved
93 by the board;

94 (J) Having a professional connection or association
95 with, or lending his or her name to another, for the illegal
96 practice of dentistry, or professional connection or
97 association with any person, firm, or corporation holding
98 himself or herself, themselves, or itself out in any manner
99 contrary to this article;

100 (K) Making use of any advertising relating to the use of
101 any drug or medicine of unknown formula;

102 (L) Advertising to practice dentistry or perform any
103 operation thereunder without causing pain;

104 (M) Advertising professional superiority or the
105 performance of professional services in a superior manner;

106 (N) Advertising to guarantee any dental service;

107 (O) Advertising in any manner that is false or
108 misleading in any material respect;

109 (P) Soliciting subscriptions from individuals within or
110 without the state for, or advertising or offering to
111 individuals within or without the state, a course or
112 instruction or course materials in any phase, part, or branch
113 of dentistry or dental hygiene in any journal, newspaper,
114 magazine, or dental publication, or by means of radio,
115 television, or United States mail, or in or by any other means
116 of contacting individuals: *Provided*, That the provisions of
117 this paragraph may not be construed so as to prohibit:

118 (i) An individual dentist or dental hygienist from
119 presenting articles pertaining to procedures or technique to
120 state or national journals or accepted dental publications; or

121 (ii) Educational institutions approved by the board from
122 offering courses or instruction or course materials to
123 individual dentists and dental hygienists from within or
124 without the state; or

125 (Q) Engaging in any action or conduct which would
126 have warranted the denial of the license.

127 (13) Knowing or suspecting that a licensee is incapable
128 of engaging in the practice of dentistry or dental hygiene,
129 with reasonable skill, competence, and safety to the public,
130 and failing to report any relevant information to the board;

131 (14) Using or disclosing protected health information in
132 an unauthorized or unlawful manner;

133 (15) Engaging in any conduct that subverts or attempts
134 to subvert any licensing examination or the administration
135 of any licensing examination;

136 (16) Failing to furnish to the board or its representatives
137 any information legally requested by the board or failing to
138 cooperate with or engaging in any conduct which obstructs
139 an investigation being conducted by the board;

140 (17) Announcing or otherwise holding himself or
141 herself out to the public as a specialist or as being specially
142 qualified in any particular branch of dentistry or as giving
143 special attention to any branch of dentistry or as limiting his
144 or her practice to any branch of dentistry without first
145 complying with the requirements established by the board
146 for the specialty and having been issued a certificate of
147 qualification in the specialty by the board;

148 (18) Failing to report to the board within 72 hours of
149 becoming aware of any life threatening occurrence, serious
150 injury, or death of a patient resulting from dental treatment
151 or complications following a dental procedure;

152 (19) Failing to report to the board any driving under the
153 influence and/or driving while intoxicated offense; or

154 (20) Violation of any of the terms or conditions of any
155 order entered in any disciplinary action.

156 (i) For the purposes of §30-4-19(g) of this code,
157 disciplinary action may include:

158 (1) Reprimand;

159 (2) Probation;

160 (3) Restrictions;

161 (4) Suspension;

162 (5) Revocation;

163 (6) Administrative fine, not to exceed \$1,000 per day
164 per violation;

165 (7) Mandatory attendance at continuing education
166 seminars or other training;

167 (8) Practicing under supervision or other restriction; or

168 (9) Requiring the licensee or permittee to report to the
169 board for periodic interviews for a specified period of time.

170 (j) In addition to any other sanction imposed, the board
171 may require a licensee or permittee to pay the costs of the
172 proceeding.

173 (k) The board may defer disciplinary action with regard
174 to an impaired licensee who voluntarily signs an agreement,
175 in a form satisfactory to the board, agreeing not to practice
176 dental care and to enter an approved treatment and
177 monitoring program in accordance with the board's
178 legislative rule: *Provided*, That this subsection does not
179 apply to a licensee who has been convicted of, pleads guilty
180 to, or enters a plea of nolo contendere to an offense relating
181 to a controlled substance in any jurisdiction.

182 (l) A person authorized to practice under this article who
183 reports or otherwise provides evidence of the negligence,
184 impairment, or incompetence of another member of this
185 profession to the board or to any peer review organization
186 is not liable to any person for making the report if the report
187 is made without actual malice and in the reasonable belief
188 that the report is warranted by the facts known to him or her
189 at the time.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS, AND PHARMACIES.

§30-5-6. Powers and duties of the board.

1 (a) (1) The board has all the powers and duties set forth
2 in this article, by rule, in §30-1-1 *et seq.* of this code and
3 elsewhere in law, including the power to:

- 4 (2) Hold meetings;
- 5 (3) Establish additional requirements for a license,
6 permit, and registration;
- 7 (4) Establish procedures for submitting, approving, and
8 rejecting applications for a license, permit, and registration;
- 9 (5) Determine the qualifications of any applicant for a
10 license, permit, and registration;
- 11 (6) Establish a fee schedule;
- 12 (7) Issue, renew, deny, suspend, revoke, or reinstate a
13 license, permit, and registration;
- 14 (8) Prepare, conduct, administer, and grade written,
15 oral, or written and oral examinations for a license and
16 registration and establish what constitutes passage of the
17 examination;
- 18 (9) Contract with third parties to administer the
19 examinations required under the provisions of this article;
- 20 (10) Maintain records of the examinations the board or
21 a third party administers, including the number of persons
22 taking the examination and the pass and fail rate;
- 23 (11) Regulate mail order pharmacies;
- 24 (12) Maintain an office, and hire, discharge, establish
25 the job requirements, and fix the compensation of
26 employees and contract with persons necessary to enforce
27 the provisions of this article. Inspectors shall be licensed
28 pharmacists;
- 29 (13) Investigate alleged violations of the provisions of
30 this article, legislative rules, orders, and final decisions of
31 the board;
- 32 (14) Conduct disciplinary hearings of persons regulated
33 by the board;

34 (15) Determine disciplinary action and issue orders;

35 (16) Institute appropriate legal action for the
36 enforcement of the provisions of this article;

37 (17) Maintain an accurate registry of names and
38 addresses of all persons regulated by the board;

39 (18) Keep accurate and complete records of its
40 proceedings, and certify the same as may be necessary and
41 appropriate;

42 (19) Propose rules in accordance with the provisions of
43 §29A-3-1 *et seq.* of this code to implement the provisions of
44 this article;

45 (20) Sue and be sued in its official name as an agency
46 of this state;

47 (21) Confer with the Attorney General or his or her
48 assistant in connection with legal matters and questions; and

49 (22) Take all other actions necessary and proper to
50 effectuate the purposes of this article.

51 (b) The board is exempt from state purchasing laws,
52 legislative rules, and policies for the purposes of spending
53 grant money if the grant is in relation to substance use and
54 controlled substances.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-11. Denial, revocation, or suspension of license; grounds for discipline.

1 (a) The board shall have the power to deny, revoke, or
2 suspend any license to practice registered professional
3 nursing issued or applied for in accordance with the
4 provisions of this article, or to otherwise discipline a
5 licensee or applicant upon proof that he or she:

6 (1) Is or was guilty of fraud or deceit in procuring or
7 attempting to procure a license to practice registered
8 professional nursing; or

9 (2) Has been convicted of a felony; or

10 (3) Is unfit or incompetent by reason of negligence,
11 habits, or other causes; or

12 (4) Is habitually intemperate or is addicted to the use of
13 habit-forming drugs; or

14 (5) Is mentally incompetent; or

15 (6) Is guilty of conduct derogatory to the morals or
16 standing of the profession of registered nursing; or

17 (7) Is practicing or attempting to practice registered
18 professional nursing without a license or reregistration; or

19 (8) Has demonstrated abnormal prescribing or
20 dispensing practices pursuant to §30-3A-4 of this code; or

21 (9) Has willfully or repeatedly violated any of the
22 provisions of this article.

23 (b) An advanced practice registered nurse licensed
24 under this article may not be disciplined for providing
25 expedited partner therapy in accordance with §16-4F-1 *et*
26 *seq.* of this code.

ARTICLE 8. OPTOMETRISTS.

§30-8-18. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The board may upon its own motion based on
2 credible information or based upon the quarterly report from
3 the Board of Pharmacy as required by §60A-9-1 *et seq.* of
4 this code shall upon the written complaint of any person
5 cause an investigation to be made to determine whether

6 grounds exist for disciplinary action under this article or the
7 legislative rules of the board.

8 (b) Upon initiation or receipt of the complaint, the board
9 shall provide a copy of the complaint to the licensee,
10 certificate holder, or permittee.

11 (c) After reviewing any information obtained through an
12 investigation, the board shall determine if probable cause
13 exists that the licensee or permittee has violated §30-8-18(g)
14 of this code or rules promulgated pursuant to this article.

15 (d) Upon a finding that probable cause exists that the
16 licensee or permittee has violated §30-8-18(g) of this code
17 or rules promulgated pursuant to this article, the board may
18 enter into a consent decree or hold a hearing for the
19 suspension or revocation of the license, certificate, or permit
20 or the imposition of sanctions against the licensee,
21 certificate holder, or permittee. Any hearing shall be held in
22 accordance with the provisions of this article, and the
23 provisions of §29A-5-1 and §29A-6-1 *et seq.* of this code.

24 (e) Any member of the board or the executive secretary
25 of the board may issue subpoenas and subpoenas duces
26 tecum on behalf of the board to obtain testimony and
27 documents to aid in the investigation of allegations against
28 any person regulated by the article.

29 (f) Any member of the board or its executive secretary
30 may sign a consent decree or other legal document on behalf
31 of the board.

32 (g) The board may, after notice and opportunity for
33 hearing, deny or refuse to renew, suspend, or revoke the
34 license, certificate, or permit of, impose probationary
35 conditions upon or take disciplinary action against, any
36 licensee, certificate holder, or permittee for any of the
37 following reasons once a violation has been proven by a
38 preponderance of the evidence:

39 (1) Obtaining a license, certificate, or permit by fraud,
40 misrepresentation or concealment of material facts;

41 (2) Being convicted of a felony or other crime involving
42 moral turpitude;

43 (3) Being guilty of unprofessional conduct which placed
44 the public at risk;

45 (4) Intentional violation of a lawful order;

46 (5) Having had an authorization to practice optometry
47 revoked, suspended, other disciplinary action taken, by the
48 proper authorities of another jurisdiction;

49 (6) Having had an application to practice optometry
50 denied by the proper authorities of another jurisdiction;

51 (7) Exceeded the scope of practice of optometry;

52 (8) Aiding or abetting unlicensed practice;

53 (9) Engaging in an act while acting in a professional
54 capacity which has endangered or is likely to endanger the
55 health, welfare, or safety of the public; or

56 (10) False and deceptive advertising; this includes, but
57 is not limited to, the following:

58 (A) Advertising “free examination of eyes”, or words of
59 similar import and meaning; or

60 (B) Advertising frames or mountings for glasses,
61 contact lenses, or other optical devices which does not
62 accurately describe the same in all its component parts.

63 (h) For the purposes of §30-8-18(g) of this code
64 disciplinary action may include:

65 (1) Reprimand;

66 (2) Probation;

67 (3) Administrative fine, not to exceed \$1,000 per day
68 per violation;

69 (4) Mandatory attendance at continuing education
70 seminars or other training;

71 (5) Practicing under supervision or other restriction;

72 (6) Requiring the licensee or certificate holders to report
73 to the board for periodic interviews for a specified period of
74 time; or

75 (7) Other corrective action considered by the board to
76 be necessary to protect the public, including advising other
77 parties whose legitimate interests may be at risk.

ARTICLE 10. VETERINARIANS.

§30-10-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The board may upon its own motion and shall upon
2 the written complaint of any person or based upon the
3 quarterly report from the Board of Pharmacy as required by
4 §60A-9-1 *et seq.* of this code cause an investigation to be
5 made to determine whether grounds exist for disciplinary
6 action under this article.

7 (b) Upon initiation or receipt of the complaint, the board
8 shall provide a copy of the complaint to the licensee,
9 permittee, registrant, or certificate holder.

10 (c) After reviewing any information obtained through an
11 investigation, the board shall determine if probable cause
12 exists that the licensee, permittee, registrant, or certificate
13 holder has violated any provision of this article.

14 (d) Upon a finding that probable cause exists that the
15 licensee, permittee, registrant, or certificate holder has
16 violated this article, the board may enter into a consent
17 decree or hold a hearing for the suspension or revocation of
18 the license, permit, registration, or certificate or the

19 imposition of sanctions against the licensee, permittee,
20 registrant, or certificate holder. The hearing shall be held in
21 accordance with the provisions of this article.

22 (e) Any member of the board or the executive director
23 of the board may issue subpoenas and subpoenas duces
24 tecum to obtain testimony and documents to aid in the
25 investigation of allegations against any person regulated by
26 this article.

27 (f) Any member of the board or its executive director
28 may sign a consent decree or other legal document on behalf
29 of the board.

30 (g) The board may, after notice and opportunity for
31 hearing, deny, refuse to renew, suspend, or revoke the
32 license, permit, registration, or certificate of, impose
33 probationary conditions upon or take disciplinary action
34 against, any licensee, permittee, registrant, or certificate
35 holder for any of the following reasons:

36 (1) Obtaining a license, permit, registration, or
37 certificate by fraud, misrepresentation, or concealment of
38 material facts;

39 (2) Being convicted of a felony or other crime involving
40 moral turpitude;

41 (3) Being guilty of unprofessional conduct;

42 (4) Intentional violation of this article or lawful order;

43 (5) Having had a license or other authorization to
44 practice revoked or suspended, other disciplinary action
45 taken, or an application for licensure or other authorization
46 refused, revoked, or suspended by the proper authorities of
47 another jurisdiction, irrespective of intervening appeals and
48 stays; or

49 (6) Engaging in any act which has endangered or is
50 likely to endanger the health, welfare, or safety of the
51 public.

52 (h) For the purposes of §30-10-19(g) of this code,
53 disciplinary action may include:

54 (1) Reprimand;

55 (2) Probation;

56 (3) Administrative fine, not to exceed \$1,000 a day per
57 violation;

58 (4) Mandatory attendance at continuing education
59 seminars or other training;

60 (5) Practicing under supervision or other restriction;

61 (6) Requiring the licensee, permittee, registrant, or
62 certificate holder to report to the board for periodic
63 interviews for a specified period of time; or

64 (7) Other corrective action considered by the board to
65 be necessary to protect the public, including advising other
66 parties whose legitimate interests may be at risk.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§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, including but not limited to the Board of
5 Pharmacy as required by §60A-9-1 *et seq.* of this code.

6 The board shall initiate investigations as to professional
7 incompetence or other reasons for which a licensed
8 osteopathic physician and surgeon may be adjudged
9 unqualified if the board receives notice that three or more
10 judgments or any combination of judgments and settlements
11 resulting in five or more unfavorable outcomes arising from
12 medical professional liability have been rendered or made
13 against such osteopathic physician within a five-year
14 period.

15 (b) Upon request of the board, any medical peer review
16 committee in this state shall report any information that may
17 relate to the practice or performance of any osteopathic
18 physician known to that medical peer review committee.
19 Copies of such requests for information from a medical peer
20 review committee may be provided to the subject
21 osteopathic physician if, in the discretion of the board, the
22 provision of such copies will not jeopardize the board's
23 investigation. In the event that copies are provided, the
24 subject osteopathic physician has 15 days to comment on
25 the requested information and such comments must be
26 considered by the board.

27 After the completion of a hospital's formal disciplinary
28 procedure and after any resulting legal action, the chief
29 executive officer of such hospital shall report in writing to
30 the board within 60 days the name of any member of the
31 medical staff or any other osteopathic physician practicing
32 in the hospital whose hospital privileges have been revoked,
33 restricted, reduced, or terminated for any cause, including
34 resignation, together with all pertinent information relating
35 to such action. The chief executive officer shall also report
36 any other formal disciplinary action taken against any
37 osteopathic physician by the hospital upon the
38 recommendation of its medical staff relating to professional
39 ethics, medical incompetence, medical malpractice, moral
40 turpitude, or drug or alcohol abuse. Temporary suspension
41 for failure to maintain records on a timely basis or failure to
42 attend staff or section meetings need not be reported.

43 Any professional society in this state comprised
44 primarily of osteopathic physicians or physicians and
45 surgeons of other schools of medicine which takes formal
46 disciplinary action against a member relating to professional
47 ethics, professional incompetence, professional
48 malpractice, moral turpitude, or drug or alcohol abuse, shall
49 report in writing to the board within 60 days of a final
50 decision the name of such member, together with all
51 pertinent information relating to such action.

52 Every person, partnership, corporation, association,
53 insurance company, professional society, or other
54 organization providing professional liability insurance to an
55 osteopathic physician in this state shall submit to the board
56 the following information within 30 days from any
57 judgment, dismissal, or settlement of a civil action or of any
58 claim involving the insured: The date of any judgment,
59 dismissal, or settlement; whether any appeal has been taken
60 on the judgment, and, if so, by which party; the amount of
61 any settlement or judgment against the insured; and such
62 other information required by the board.

63 Within 30 days after a person known to be an
64 osteopathic physician licensed or otherwise lawfully
65 practicing medicine and surgery in this state or applying to
66 be licensed is convicted of a felony under the laws of this
67 state, or of any crime under the laws of this state involving
68 alcohol or drugs in any way, including any controlled
69 substance under state or federal law, the clerk of the court
70 of record in which the conviction was entered shall forward
71 to the board a certified true and correct abstract of record of
72 the convicting court. The abstract shall include the name
73 and address of such osteopathic physician or applicant, the
74 nature of the offense committed and the final judgment and
75 sentence of the court.

76 Upon a determination of the board that there is probable
77 cause to believe that any person, partnership, corporation,
78 association, insurance company, professional society, or
79 other organization has failed or refused to make a report

80 required by this subsection, the board shall provide written
81 notice to the alleged violator stating the nature of the alleged
82 violation and the time and place at which the alleged
83 violator shall appear to show good cause why a civil penalty
84 should not be imposed. The hearing shall be conducted in
85 accordance with the provisions of §29A-5-1 *et seq.* of this
86 code. After reviewing the record of such hearing, if the
87 board determines that a violation of this subsection has
88 occurred, the board shall assess a civil penalty of not less
89 than \$1,000 nor more than \$10,000 against such violator.
90 The board shall notify anyone assessed of the assessment in
91 writing and the notice shall specify the reasons for the
92 assessment. If the violator fails to pay the amount of the
93 assessment to the board within 30 days, the Attorney
94 General may institute a civil action in the Circuit Court of
95 Kanawha County to recover the amount of the assessment.
96 In any such civil action, the court's review of the board's
97 action shall be conducted in accordance with the provisions
98 of §29A-5-4 of this code.

99 Any person may report to the board relevant facts about
100 the conduct of any osteopathic physician in this state which
101 in the opinion of such person amounts to professional
102 malpractice or professional incompetence.

103 The board shall provide forms for filing reports pursuant
104 to this section. Reports submitted in other forms shall be
105 accepted by the board.

106 The filing of a report with the board pursuant to any
107 provision of this article, any investigation by the board or
108 any disposition of a case by the board does not preclude any
109 action by a hospital, other health care facility or professional
110 society comprised primarily of osteopathic physicians or
111 physicians and surgeons of other schools of medicine to
112 suspend, restrict, or revoke the privileges or membership of
113 such osteopathic physician.

114 (c) In every case considered by the board under this
115 article regarding suspension, revocation, or issuance of a

116 license whether initiated by the board or upon complaint or
117 information from any person or organization, the board shall
118 make a preliminary determination as to whether probable
119 cause exists to substantiate charges of cause to suspend,
120 revoke, or refuse to issue a license as set forth in §30-14-
121 11(a) of this code. If such probable cause is found to exist,
122 all proceedings on such charges shall be open to the public
123 who are entitled to all reports, records, and nondeliberative
124 materials introduced at such hearing, including the record of
125 the final action taken: *Provided*, That any medical records,
126 which were introduced at such hearing and which pertain to
127 a person who has not expressly waived his or her right to the
128 confidentiality of such records, shall not be open to the
129 public nor is the public entitled to such records. If a finding
130 is made that probable cause does not exist, the public has a
131 right of access to the complaint or other document setting
132 forth the charges, the findings of fact and conclusions
133 supporting such finding that probable cause does not exist,
134 if the subject osteopathic physician consents to such access.

135 (d) If the board receives notice that an osteopathic
136 physician has been subjected to disciplinary action or has
137 had his or her credentials suspended or revoked by the
138 board, a medical peer review committee, a hospital or
139 professional society, as defined in §30-14-12(a) of this
140 code, for three or more incidents in a five-year period, the
141 board shall require the osteopathic physician to practice
142 under the direction of another osteopathic physician for a
143 specified period to be established by the board.

144 (e) Whenever the board receives credible information
145 that a licensee of the board is engaging or has engaged in
146 criminal activity or the commitment of a crime under state
147 or federal law, the board shall report the information, to the
148 extent that sensitive or confidential information may be
149 publicly disclosed under law, to the appropriate state or
150 federal law-enforcement authority and/or prosecuting
151 authority. This duty exists in addition to and is distinct from
152 the reporting required under federal law for reporting

153 actions relating to health care providers to the United States
154 Department of Health and Human Services.

ARTICLE 36. ACUPUNCTURISTS.

§30-36-2. Definitions.

1 (a) Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) “Acupuncture” means a form of health care, based
4 on a theory of energetic physiology, that describes the
5 interrelationship of the body organs or functions with an
6 associated point or combination of points.

7 (2) “Board” means the West Virginia Acupuncture
8 Board.

9 (3) “License” means a license issued by the board to
10 practice acupuncture.

11 (4) “Moxibustion” means the burning of mugwort on or
12 near the skin to stimulate the acupuncture point.

13 (5) “Practice acupuncture” means the use of oriental
14 medical therapies for the purpose of normalizing energetic
15 physiological functions including pain control, and for the
16 promotion, maintenance, and restoration of health.

17 (b) (1) “Practice acupuncture” includes:

18 (A) Stimulation of points of the body by the insertion of
19 acupuncture needles;

20 (B) The application of moxibustion; and

21 (C) Manual, mechanical, thermal, or electrical therapies
22 only when performed in accordance with the principles of
23 oriental acupuncture medical theories.

24 (2) The practice of acupuncture does not include the
25 procedure of auricular acupuncture when used in the context

26 of a chemical dependency treatment program when the
27 person is trained and approved by the National Acupuncture
28 Detoxification Association or an equivalent certifying body.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

§60A-5-509. Unlawful retaliation against health care providers.

1 (a) A health care provider has the right to exercise his or
2 her professional judgment to decline to administer,
3 dispense, or prescribe narcotics without being subject to
4 actual or threatened acts of reprisal.

5 (b) It shall be unlawful for any person or entity to
6 engage in any form of threats or reprisal, or to engage in, or
7 hire, or conspire with, others to commit acts or activities of
8 any nature, the purpose of which is to punish, embarrass,
9 deny, or reduce privileges or compensation, or cause
10 economic loss or to aid, abet, incite, compel, or coerce any
11 person to engage in such threats or reprisal, against a health
12 care provider as a result of, or in retaliation for, the refusal
13 of that health care provider to administer, dispense, or
14 prescribe narcotics.

15 (c) Any person or entity who violates the foregoing shall
16 be subject to a private right of action by the affected health
17 care provider and shall be liable in the amount of three times
18 the economic loss sustained as a direct and proximate result
19 of the reprisal.

20 (d) A health care provider that prevails in an action
21 brought pursuant to this section shall be entitled to an award
22 of costs and attorney fees.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

1 (a) The following individuals shall report the required
2 information to the Controlled Substances Monitoring
3 Program Database when:

4 (1) A medical services provider dispenses a controlled
5 substance listed in Schedule II, III, IV, V, or an opioid
6 antagonist;

7 (2) A prescription for the controlled substance or opioid
8 antagonist is filled by:

9 (A) A pharmacist or pharmacy in this state;

10 (B) A hospital, or other health care facility, for
11 outpatient use; or

12 (C) A pharmacy or pharmacist licensed by the Board of
13 Pharmacy, but situated outside this state for delivery to a
14 person residing in this state; and

15 (3) A pharmacist or pharmacy sells an opioid antagonist.

16 (b) The above individuals shall in a manner prescribed
17 by rules promulgated by the Board of Pharmacy pursuant to
18 this article, report the following information, as applicable:

19 (1) The name, address, pharmacy prescription number,
20 and Drug Enforcement Administration controlled substance
21 registration number of the dispensing pharmacy or the
22 dispensing physician or dentist;

23 (2) The full legal name, address, and birth date of the
24 person for whom the prescription is written;

25 (3) The name, address, and Drug Enforcement
26 Administration controlled substances registration number
27 of the practitioner writing the prescription;

28 (4) The name and national drug code number of the
29 Schedule II, III, and IV controlled substance or opioid
30 antagonist dispensed;

31 (5) The quantity and dosage of the Schedule II, III, and
32 IV controlled substance or opioid antagonist dispensed;

33 (6) The date the prescription was written and the date
34 filled;

35 (7) The number of refills, if any, authorized by the
36 prescription;

37 (8) If the prescription being dispensed is being picked
38 up by someone other than the patient on behalf of the
39 patient, information about the person picking up the
40 prescription as set forth on the person's government-issued
41 photo identification card shall be retained in either print or
42 electronic form until such time as otherwise directed by rule
43 promulgated by the Board of Pharmacy; and

44 (9) The source of payment for the controlled substance
45 dispensed.

46 (c) Whenever a medical services provider treats a
47 patient for an overdose that has occurred as a result of illicit
48 or prescribed medication, the medical service provider shall
49 report the full legal name, address, and birth date of the
50 person who is being treated, including any known ancillary
51 evidence of the overdose. The Board of Pharmacy shall
52 coordinate with the Division of Justice and Community
53 Services and the Office of Drug Control Policy regarding
54 the collection of overdose data.

55 (d) The Board of Pharmacy may prescribe by rule
56 promulgated pursuant to this article the form to be used in
57 prescribing a Schedule II, III, and IV substance or opioid
58 antagonist if, in the determination of the Board of
59 Pharmacy, the administration of the requirements of this
60 section would be facilitated.

61 (e) Products regulated by the provisions of §60A-10-1
62 *et seq.* of this code shall be subject to reporting pursuant to
63 the provisions of this article to the extent set forth in said
64 article.

65 (f) Reporting required by this section is not required for
66 a drug administered directly to a patient by a practitioner.
67 Reporting is, however, required by this section for a drug
68 dispensed to a patient by a practitioner. The quantity
69 dispensed by a prescribing practitioner to his or her own
70 patient may not exceed an amount adequate to treat the
71 patient for a maximum of 72 hours with no greater than two
72 72-hour cycles dispensed in any 15-day period of time.

73 (g) The Board of Pharmacy shall notify a physician
74 prescribing buprenorphine or buprenorphine/naloxone
75 within 60 days of the availability of an abuse deterrent or a
76 practitioner-administered form of buprenorphine or
77 buprenorphine/naloxone if approved by the Food and Drug
78 Administration as provided in FDA Guidance to Industry.
79 Upon receipt of the notice, a physician may switch his or
80 her patients using buprenorphine or
81 buprenorphine/naloxone to the abuse deterrent or a
82 practitioner-administered form of the drug.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

1 (a)(1) The information required by this article to be kept
2 by the Board of Pharmacy is confidential and not subject to
3 the provisions of §29B-1-1 *et seq.* of this code or obtainable
4 as discovery in civil matters absent a court order and is open
5 to inspection only by inspectors and agents of the Board of
6 Pharmacy, members of the West Virginia State Police
7 expressly authorized by the Superintendent of the West
8 Virginia State Police to have access to the information,
9 authorized agents of local law-enforcement agencies as
10 members of a federally affiliated drug task force, authorized
11 agents of the federal Drug Enforcement Administration,
12 duly authorized agents of the Bureau for Medical Services,
13 duly authorized agents of the Office of the Chief Medical
14 Examiner for use in post-mortem examinations, duly
15 authorized agents of the Office of Health Facility Licensure
16 and Certification for use in certification, licensure, and
17 regulation of health facilities, duly authorized agents of

18 licensing boards of practitioners in this state and other states
19 authorized to prescribe Schedules II, III, and IV controlled
20 substances, prescribing practitioners and pharmacists, a
21 dean of any medical school or his or her designee located in
22 this state to access prescriber level data to monitor
23 prescribing practices of faculty members, prescribers, and
24 residents enrolled in a degree program at the school where
25 he or she serves as dean, a physician reviewer designated by
26 an employer of medical providers to monitor prescriber
27 level information of prescribing practices of physicians,
28 advance practice registered nurses, or physician assistants
29 in their employ, and a chief medical officer of a hospital or
30 a physician designated by the chief executive officer of a
31 hospital who does not have a chief medical officer, for
32 prescribers who have admitting privileges to the hospital or
33 prescriber level information, and persons with an
34 enforceable court order or regulatory agency administrative
35 subpoena. All law-enforcement personnel who have access
36 to the Controlled Substances Monitoring Program Database
37 shall be granted access in accordance with applicable state
38 laws and the Board of Pharmacy's rules, shall be certified
39 as a West Virginia law-enforcement officer and shall have
40 successfully completed training approved by the Board of
41 Pharmacy. All information released by the Board of
42 Pharmacy must be related to a specific patient or a specific
43 individual or entity under investigation by any of the above
44 parties except that practitioners who prescribe or dispense
45 controlled substances may request specific data related to
46 their Drug Enforcement Administration controlled
47 substance registration number or for the purpose of
48 providing treatment to a patient: *Provided*, That the West
49 Virginia Controlled Substances Monitoring Program
50 Database Review Committee established in §30A-9-5(b) of
51 this code is authorized to query the database to comply with
52 §30A-9-5(b) of this code.

53 (2) Subject to the provisions of §60A-9-5(a)(1) of this
54 code, the Board of Pharmacy shall also review the West
55 Virginia Controlled Substances Monitoring Program

56 Database and issue reports that identify abnormal or unusual
57 practices of patients and practitioners with prescriptive
58 authority who exceed parameters as determined by the
59 advisory committee established in this section. The Board
60 of Pharmacy shall communicate with practitioners and
61 dispensers to more effectively manage the medications of
62 their patients in the manner recommended by the advisory
63 committee. All other reports produced by the Board of
64 Pharmacy shall be kept confidential. The Board of
65 Pharmacy shall maintain the information required by this
66 article for a period of not less than five years.
67 Notwithstanding any other provisions of this code to the
68 contrary, data obtained under the provisions of this article
69 may be used for compilation of educational, scholarly, or
70 statistical purposes, and may be shared with the West
71 Virginia Department of Health and Human Resources for
72 those purposes, as long as the identities of persons or entities
73 and any personally identifiable information, including
74 protected health information, contained therein shall be
75 redacted, scrubbed, or otherwise irreversibly destroyed in a
76 manner that will preserve the confidential nature of the
77 information. No individual or entity required to report under
78 §60A-9-4 of this code may be subject to a claim for civil
79 damages or other civil relief for the reporting of information
80 to the Board of Pharmacy as required under and in
81 accordance with the provisions of this article.

82 (3) The Board of Pharmacy shall establish an advisory
83 committee to develop, implement, and recommend
84 parameters to be used in identifying abnormal or unusual
85 usage patterns of patients and practitioners with prescriptive
86 authority in this state. This advisory committee shall:

87 (A) Consist of the following members: A physician
88 licensed by the West Virginia Board of Medicine; a dentist
89 licensed by the West Virginia Board of Dental Examiners;
90 a physician licensed by the West Virginia Board of
91 Osteopathic Medicine; a licensed physician certified by the
92 American Board of Pain Medicine; a licensed physician

93 board certified in medical oncology recommended by the
94 West Virginia State Medical Association; a licensed
95 physician board certified in palliative care recommended by
96 the West Virginia Center on End of Life Care; a pharmacist
97 licensed by the West Virginia Board of Pharmacy; a
98 licensed physician member of the West Virginia Academy
99 of Family Physicians; an expert in drug diversion; and such
100 other members as determined by the Board of Pharmacy.

101 (B) Recommend parameters to identify abnormal or
102 unusual usage patterns of controlled substances for patients
103 in order to prepare reports as requested in accordance with
104 §60A-9-5(a)(2) of this code.

105 (C) Make recommendations for training, research, and
106 other areas that are determined by the committee to have the
107 potential to reduce inappropriate use of prescription drugs
108 in this state, including, but not limited to, studying issues
109 related to diversion of controlled substances used for the
110 management of opioid addiction.

111 (D) Monitor the ability of medical services providers,
112 health care facilities, pharmacists, and pharmacies to meet
113 the 24-hour reporting requirement for the Controlled
114 Substances Monitoring Program set forth in §60A-9-3 of
115 this code, and report on the feasibility of requiring real-time
116 reporting.

117 (E) Establish outreach programs with local law
118 enforcement to provide education to local law enforcement
119 on the requirements and use of the Controlled Substances
120 Monitoring Program Database established in this article.

121 (b) The Board of Pharmacy shall create a West Virginia
122 Controlled Substances Monitoring Program Database
123 Review Committee of individuals consisting of two
124 prosecuting attorneys from West Virginia counties, two
125 physicians with specialties which require extensive use of
126 controlled substances and a pharmacist who is trained in the
127 use and abuse of controlled substances. The review

128 committee may determine that an additional physician who
129 is an expert in the field under investigation be added to the
130 team when the facts of a case indicate that the additional
131 expertise is required. The review committee, working
132 independently, may query the database based on parameters
133 established by the advisory committee. The review
134 committee may make determinations on a case-by-case
135 basis on specific unusual prescribing or dispensing patterns
136 indicated by outliers in the system or abnormal or unusual
137 usage patterns of controlled substances by patients which
138 the review committee has reasonable cause to believe
139 necessitates further action by law enforcement or the
140 licensing board having jurisdiction over the practitioners or
141 dispensers under consideration. The licensing board having
142 jurisdiction over the practitioner or dispenser under
143 consideration shall report back to the Board of Pharmacy
144 regarding any findings, investigation, or discipline resulting
145 from the findings of the review committee within 30 days
146 of resolution of any action taken by the licensing board
147 resulting from the information provided by the Board of
148 Pharmacy. The review committee shall also review notices
149 provided by the chief medical examiner pursuant to §61-12-
150 10(h) of this code and determine on a case-by-case basis
151 whether a practitioner who prescribed or dispensed a
152 controlled substance resulting in or contributing to the drug
153 overdose may have breached professional or occupational
154 standards or committed a criminal act when prescribing the
155 controlled substance at issue to the decedent. Only in those
156 cases in which there is reasonable cause to believe a breach
157 of professional or occupational standards or a criminal act
158 may have occurred, the review committee shall notify the
159 appropriate professional licensing agency having
160 jurisdiction over the applicable practitioner or dispenser and
161 appropriate law-enforcement agencies and provide pertinent
162 information from the database for their consideration. The
163 number of cases identified shall be determined by the
164 review committee based on a number that can be adequately
165 reviewed by the review committee. The information
166 obtained and developed may not be shared except as

167 provided in this article and is not subject to the provisions
168 of §29B-1-1 *et seq.* of this code or obtainable as discovering
169 in civil matters absent a court order.

170 (c) The Board of Pharmacy is responsible for
171 establishing and providing administrative support for the
172 advisory committee and the West Virginia Controlled
173 Substances Monitoring Program Database Review
174 Committee. The advisory committee and the review
175 committee shall elect a chair by majority vote. Members of
176 the advisory committee and the review committee may not
177 be compensated in their capacity as members but shall be
178 reimbursed for reasonable expenses incurred in the
179 performance of their duties.

180 (d) The Board of Pharmacy shall promulgate rules with
181 advice and consent of the advisory committee, after
182 consultation with the licensing boards set forth in §60A-9-
183 5(d)(4) of this code and in accordance with the provisions
184 of §29A-3-1 *et seq.* of this code. The Legislature finds that
185 the changes made to this section during the course of the
186 2018 regular session of the Legislature constitutes an
187 emergency and the Board of Pharmacy shall promulgate
188 emergency rules pursuant to the provisions of §29A-3-15 of
189 this code to incorporate these modifications. The legislative
190 rules must include, but shall not be limited to, the following
191 matters:

192 (1) Identifying parameters used in identifying abnormal
193 or unusual prescribing or dispensing patterns;

194 (2) Processing parameters and developing reports of
195 abnormal or unusual prescribing or dispensing patterns for
196 patients, practitioners, and dispensers;

197 (3) Establishing the information to be contained in
198 reports and the process by which the reports will be
199 generated and disseminated;

200 (4) Dissemination of these reports at least quarterly to:

201 (A) The West Virginia Board of Medicine codified in
202 §30-3-1 *et seq.* of this code;

203 (B) The West Virginia Board of Osteopathic Medicine
204 codified in §30-14-1 *et seq.* of this code;

205 (C) The West Virginia Board of Examiners for
206 Registered Professional Nurses codified in §30-7-1 *et seq.*
207 of this code;

208 (D) The West Virginia Board of Dentistry codified in
209 §30-4-1 *et seq.* of this code;

210 (E) The West Virginia Board of Optometry codified in
211 §30-8-1 *et seq.* of this code; and

212 (F) The West Virginia Board of Veterinary Medicine
213 codified in §30-10-1 *et seq.* of this code; and

214 (5) Setting up processes and procedures to ensure that
215 the privacy, confidentiality, and security of information
216 collected, recorded, transmitted, and maintained by the
217 review committee is not disclosed except as provided in this
218 section.

219 (e) Persons or entities with access to the West Virginia
220 Controlled Substances Monitoring Program Database
221 pursuant to this section may, pursuant to rules promulgated
222 by the Board of Pharmacy, delegate appropriate personnel
223 to have access to said database.

224 (f) Good faith reliance by a practitioner on information
225 contained in the West Virginia Controlled Substances
226 Monitoring Program Database in prescribing or dispensing
227 or refusing or declining to prescribe or dispense a Schedule
228 II, III, or IV controlled substance shall constitute an absolute
229 defense in any civil or criminal action brought due to
230 prescribing or dispensing or refusing or declining to
231 prescribe or dispense.

232 (g) A prescribing or dispensing practitioner may notify
233 law enforcement of a patient who, in the prescribing or
234 dispensing practitioner's judgment, may be in violation of
235 §60A-4-410 of this code, based on information obtained and
236 reviewed from the Controlled Substances Monitoring
237 Program Database. A prescribing or dispensing practitioner
238 who makes a notification pursuant to this subsection is
239 immune from any civil, administrative, or criminal liability
240 that otherwise might be incurred or imposed because of the
241 notification if the notification is made in good faith.

242 (h) Nothing in the article may be construed to require a
243 practitioner to access the West Virginia Controlled
244 Substances Monitoring Program Database except as
245 provided in §60A-9-5 of this code.

246 (i) The Board of Pharmacy shall provide an annual
247 report on the West Virginia Controlled Substances
248 Monitoring Program to the Legislative Oversight
249 Commission on Health and Human Resources
250 Accountability with recommendations for needed
251 legislation no later than January 1 of each year.

**§60A-9-5a. Practitioner requirements to access database and
conduct annual search of the database; required
rulemaking.**

1 (a) All practitioners, as that term is defined in §60A-2-
2 101 of this code who prescribe or dispense Schedule II, III,
3 or IV controlled substances shall register with the West
4 Virginia Controlled Substances Monitoring Program and
5 obtain and maintain online or other electronic access to the
6 program database: *Provided*, That compliance with the
7 provisions of this subsection must be accomplished within
8 30 days of the practitioner obtaining a new license:
9 *Provided, however*, That the Board of Pharmacy may renew
10 a practitioner's license without proof that the practitioner
11 meet the requirements of this subsection.

12 (b) All persons with prescriptive or dispensing authority
13 and in possession of a valid Drug Enforcement
14 Administration registration identification number and who
15 are licensed by the Board of Medicine as set forth in §30-3-
16 1 *et seq.* of this code, the Board of Registered Professional
17 Nurses as set forth in §30-7-1 *et seq.* of this code, the Board
18 of Dental Examiners as set forth in §30-7-1 *et seq.* of this
19 code, the Board of Osteopathic Medicine as set forth in §30-
20 14-1 *et seq.* of this code, the West Virginia Board of
21 Veterinary Medicine as set forth in §30-10-1 *et seq.* of this
22 code, and the West Virginia Board of Optometrists as set
23 forth in §30-8-1 *et seq.* of this code, upon initially
24 prescribing or dispensing any Schedule II controlled
25 substance, any opioid or any benzodiazepine to a patient
26 who is not suffering from a terminal illness, and at least
27 annually thereafter should the practitioner or dispenser
28 continue to treat the patient with a controlled substance,
29 shall access the West Virginia Controlled Substances
30 Monitoring Program Database for information regarding
31 specific patients. The information obtained from accessing
32 the West Virginia Controlled Substances Monitoring
33 Program Database for the patient shall be documented in the
34 patient's medical record maintained by a private prescriber
35 or any inpatient facility licensed pursuant to the provisions
36 of chapter 16 of this code. A pain-relieving controlled
37 substance shall be defined as set forth in §30-3A-1 of this
38 code.

39 (c) The various boards mentioned in §60A-9-5(b) of this
40 code shall promulgate both emergency and legislative rules
41 pursuant to the provisions of §29A-3-1 *et seq.* of this code
42 to effectuate the provisions of this article.

●

CHAPTER 47

**(Com. Sub. for H. B. 4336 - By Delegates Ellington,
Summers, Rohrbach, Householder, Atkinson, Criss,
Hollen, Hill, Rowan, Dean and Cooper)**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §60A-2-204, §60A-2-206, §60A-2-210, and §60A-2-212 of the Code of West Virginia, 1931, as amended, all relating to updating schedules of controlled substances; reorganizing each schedule by removing numbering and lettering for subparts; by providing that the drugs listed in each schedule include not just the drug's chemical substance but also any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the such compounds are possible within the chemical designation; and by adding specific chemical compounds to three of the schedules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

1 (a) Schedule I shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section including their isomers, esters, ethers, salts and
5 salts of isomers, esters and ethers, whenever the existence
6 of such isomers, esters, ethers and salts is possible within
7 the specific chemical designation.

8 (b) Opiates.

- 9 Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
10 phenethyl)-4-piperidinyl]—phenylacetamide);
- 11 Acetylmethadol;
- 12 Allylprodine;
- 13 Alphacetylmethadol (except levoalphacetylmethadol
14 also known as levo-alpha-acetylmethadol, levomethadyl
15 acetate, or LAAM);
- 16 Alphameprodine;
- 17 Alphamethadol;
- 18 Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-
19 phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-
20 phenylethyl)-4-((propanilido) piperidine);
- 21 Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)
22 ethyl-4-piperidinyl]—phenylpropanamide);
- 23 Benzethidine;
- 24 Betacetylmethadol;
- 25 Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl) -
26 4-piperidinyl]-N-phenylpropanamide);
- 27 Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-
28 hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-
29 phenylpropanamide);
- 30 Betameprodine;
- 31 Betamethadol;
- 32 Betaprodine;
- 33 Clonitazene;
- 34 Dextromoramide;

- 35 Diampromide;
- 36 Diethylthiambutene;
- 37 Difenoxin;
- 38 Dimenoxadol;
- 39 Dimepheptanol;
- 40 Dimethylthiambutene;
- 41 Dioxaphetyl butyrate;
- 42 Dipipanone;
- 43 Ethylmethylthiambutene;
- 44 Etonitazene;
- 45 Etoxidine;
- 46 Furethidine;
- 47 Hydroxypethidine;
- 48 Ketobemidone;
- 49 Levomoramide;
- 50 Levophenacymorphan;
- 51 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
52 piperidyl]-N-phenylpropanamide);
- 53 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-
54 4-piperidinyl]—phenylpropanamide);
- 55 Morpheridine;
- 56 MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 57 Noracymethadol;

- 58 Norlevorphanol;
- 59 Normethadone;
- 60 Norpipanone;
- 61 Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-
62 phenethyl)-4-piperidinyl] propanamide);
- 63 PEPAP(1-(-2-phenethyl)-4-phenyl-4-
64 acetoxypiperidine);
- 65 Phenadoxone;
- 66 Phenampromide;
- 67 Phenomorphan;
- 68 Phenoperidine;
- 69 Piritramide;
- 70 Proheptazine;
- 71 Properidine;
- 72 Propiram;
- 73 Racemoramide;
- 74 Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-
75 piperidinyl]-propanamide);
- 76 Tilidine;
- 77 Trimeperidine.
- 78 (c) *Opium derivatives:*
- 79 Acetorphine;
- 80 Acetyldihydrocodeine;
- 81 Benzylmorphine;

- 82 Codeine methylbromide;
- 83 Codeine-N-Oxide;
- 84 Cyprenorphine;
- 85 Desomorphine;
- 86 Dihydromorphine;
- 87 Drotebanol;
- 88 Etorphine (except HCl Salt);
- 89 Heroin;
- 90 Hydromorphinol;
- 91 Methyldesorphine;
- 92 Methyldihydromorphine;
- 93 Morphine methylbromide;
- 94 Morphine methylsulfonate;
- 95 Morphine-N-Oxide;
- 96 Myrophine;
- 97 Nicocodeine;
- 98 Nicomorphine;
- 99 Normorphine;
- 100 Pholcodine;
- 101 Thebacon.
- 102 (d) *Hallucinogenic substances.*

103 Alpha-ethyltryptamine; some trade or other names:
104 etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine;
105 3-(2-aminobutyl) indole; alpha-ET; and AET;

106 4-bromo-2, 5-dimethoxy-amphetamine; some trade or
107 other names: 4-bromo-2,5-dimethoxy-alpha-
108 methylphenethylamine; 4-bromo- 2,5-DMA;

109 4-Bromo-2,5-dimethoxyphenethylamine; some trade or
110 other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-
111 aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

112 N-(2-Methoxybenzyl)-4-bromo-2, 5-
113 dimethoxyphenethylamine. The substance has the acronym
114 25B-NBOMe.

115 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-
116 methoxybenzyl) ethanamine (25C-NBOMe)

117 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)
118 ethanamine (25I-NBOMe)

119 2,5-dimethoxyamphetamine; some trade or other
120 names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-
121 DMA;

122 2,5-dimethoxy-4-ethylamphet-amine; some trade or
123 other names: DOET;

124 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other
125 name: 2C-T-7);

126 4-methoxyamphetamine; some trade or other names: 4-
127 methoxy-alpha-methylphenethylamine;
128 paramethoxyamphetamine; PMA;

129 5-methoxy-3, 4-methylenedioxy-amphetamine;

130 4-methyl-2,5-dimethoxy-amphetamine; some trade and
131 other names: 4-methyl-2,5-dimethoxy-alpha-
132 methylphenethylamine; "DOM"; and "STP";

- 133 3,4-methylenedioxy amphetamine;
- 134 3,4-methylenedioxymethamphetamine (MDMA);
- 135 3,4-methylenedioxy-N-ethylamphetamine (also known
136 as (ethyl-alpha-methyl-3,4 (methylenedioxy)
137 phenethylamine, N-ethyl MDA, MDE, MDEA);
- 138 N-hydroxy-3,4-methylenedioxyamphetamine (also
139 known as (hydroxy-alpha-methyl-3,4 (methylenedioxy)
140 phenethylamine, and (hydroxy MDA);
- 141 3,4,5-trimethoxy amphetamine;
- 142 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);
- 143 Alpha-methyltryptamine (other name: AMT);
- 144 Bufotenine; some trade and other names: 3-(beta-
145 Dimethylaminoethyl)-5-hydroxyindole;3-(2-
146 dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin;
147 5-hydroxy-N,N- dimethyltryptamine; mappine;
- 148 Diethyltryptamine; some trade and other names: N, N-
149 Diethyltryptamine; DET;
- 150 Dimethyltryptamine; some trade or other names: DMT;
- 151 5-Methoxy-N,N-diisopropyltryptamine (5-MeO-
152 DIPT);
- 153 Ibogaine; some trade and other names: 7-Ethyl-6, 6
154 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-
155 methano-5H- pyrido [1', 2': 1, 2] azepero [5,4-b] indole;
156 Tabernanthe iboga;
- 157 Lysergic acid diethylamide;
- 158 Marihuana;
- 159 Mescaline;

160 Parahexyl-7374; some trade or other names: 3-Hexyl -
161 1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-
162 dibenzo [b,d] pyran; Synhexyl;

163 Peyote; meaning all parts of the plant presently
164 classified botanically as *Lophophora williamsii* Lemaire,
165 whether growing or not, the seeds thereof, any extract from
166 any part of such plant, and every compound, manufacture,
167 salts, immediate derivative, mixture or preparation of such
168 plant, its seeds or extracts;

169 N-ethyl-3-piperidyl benzilate;

170 N-methyl-3-piperidyl benzilate;

171 Psilocybin;

172 Psilocyn;

173 Tetrahydrocannabinols; synthetic equivalents of the
174 substances contained in the plant, or in the resinous
175 extractives of *Cannabis*, sp. and/or synthetic substances,
176 immediate derivatives and their isomers with similar
177 chemical structure and pharmacological activity such as the
178 following:

179 delta-1 Cis or trans tetrahydrocannabinol, and their
180 optical isomers;

181 delta-6 Cis or trans tetrahydrocannabinol, and their
182 optical isomers;

183 delta-3,4 Cis or trans tetrahydrocannabinol, and its
184 optical isomers;

185 (Since nomenclature of these substances is not
186 internationally standardized, compounds of these structures,
187 regardless of numerical designation of atomic positions
188 covered.)

189 Ethylamine analog of phencyclidine; some trade or
190 other names: N-ethyl-1-phenylcyclohexylamine, (1-

- 191 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
192 ethylamine, cyclohexamine, PCE;
- 193 Pyrrolidine analog of phencyclidine; some trade or other
194 names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
- 195 Thiophene analog of phencyclidine; some trade or other
196 names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-
197 thienylanalog of phencyclidine; TPCP, TCP;
- 198 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other
199 names: TCPy.
- 200 4-methylmethcathinone (Mephedrone);
- 201 3,4-methylenedioxyprovalerone (MDPV);
- 202 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);
- 203 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)
- 204 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)
- 205 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)
- 206 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine
207 (2C-T-2)
- 208 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine
209 (2C-T-4)
- 210 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)
- 211 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)
- 212 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine
213 (2C-P)
- 214 3,4-Methylenedioxy-N-methylcathinone (Methylone)
- 215 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-
216 T-7, its optical isomers, salts and salts of isomers

- 217 5-methoxy-N,N-dimethyltryptamine some trade or
218 other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole;
219 5-MeO-DMT(5-MeO-DMT)
- 220 Alpha-methyltryptamine (other name: AMT)
- 221 5-methoxy-N,N-diisopropyltryptamine (other name: 5-
222 MeO-DIPT)
- 223 Synthetic Cannabinoids as follows:
- 224 2-[(1R,3S)-3-hydroxycyclohexyl]-5- (2-methyloctan-2-
225 yl)phenol {also known as CP 47,497 and homologues};
- 226 rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-
227 methylnonan-2-yl)phenol {also known as CP 47,497-C8
228 homolog};
- 229 [(6aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-
230 methyloctan-2-yl)-6a, 7,10,10a-
231 tetrahydrobenzo[c]chromen-1-ol)] {also known as HU-
232 210};
- 233 (dexanabinol);
- 234 (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
235 methyloctan-2-yl)-6a,7,10,10a-
236 tetrahydrobenzol[c]chromen-1-ol) {also known as HU-
237 211};
- 238 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-
239 018};
- 240 1-Butyl-3-(1-naphthoyl)indole {also known as JWH-
241 073};
- 242 (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-
243 methanone {also known as JWH-015};
- 244 (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone
245 {also known as JWH-019};

- 246 [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-
247 naphthalenyl-methanone {also known as JWH-200};
- 248 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-
249 ethanone {also known as JWH-250};
- 250 2-((1S,2S,5S)-5-hydroxy-2- (3-
251 hydroxypropyl)cyclohexyl) -5-(2-methyloctan-2-yl)phenol
252 {also known as CP 55,940};
- 253 (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -
254 methanone {also known as JWH-122};
- 255 (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -
256 methanone {also known as JWH-398};
- 257 (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone
258 {also known as RCS-4};
- 259 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-
260 methoxyphenyl) ethanone {also known as RCS-8};
- 261 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-
262 081);
- 263 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);
264 and
- 265 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).
- 266 Synthetic cannabinoids:
- 267 CP 47,497 AND homologues, 2-[(1R,3S)-3-
268 Hydroxycyclohexyl]-5-(2-methyloctan-2-
269 YL)phenol);
- 270 HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-
271 dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-
272 tetrahydrobenzo[C] chromen-1-OL)];

- 273 HU-211, (dexanabinol, (6AS,10AS)-9-
274 (hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-yl)-
275 6A,7,10,10atetrahydrobenzo[C]chromen-1-OL);
- 276 JWH-018, 1-pentyl-3-(1-naphthoyl)indole;
- 277 JWH-019, 1-hexyl-3-(1-naphthoyl)indole;
- 278 JWH-073, 1-butyl-3-(1-naphthoyl)indole;
- 279 JWH-200, (1-(2-morpholin-4-ylethyl)indol-3-yl)-
280 Naphthalen-1-ylmethanone;
- 281 JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)indole.]
- 282 Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-
283 carboxamido)-3,3-dimethylbutanoate (5F-ADB);
- 284 Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-
285 carboxamido)-3-methylbutanoate (5F-AMB);
- 286 Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-
287 carboxamido)-3-methylbutanoate (FUB-AMB);
- 288 N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-
289 carboxamide (5F-APINACA);
- 290 N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-
291 fluorobenzyl)-1H-indazole-3-carboxamide (ADB-
292 FUBINACA);
- 293 Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-
294 carboxamido)-3,3-dimethylbutanoate (MDMB-CHMICA);
- 295 Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-
296 carboxamido)-3,3-dimethylbutanoate (MDMB-
297 FUBINACA);
- 298 Tetrahydrocannabinols:
- 299 DELTA-1 CIS OR trans tetrahydrocannabinol and their
300 Optical isomers.

- 301 DELTA-6 CIS OR trans tetrahydrocannabinol and their
302 optical isomers.
- 303 DELTA-3,4 CIS or their trans tetrahydrocannabinol and
304 their optical isomers.
- 305 Synthetic Phenethylamines
- 306 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-
307 methoxybenzyl)ethanamine (25I-NBOMe/ 2C-I-NBOMe);
- 308 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-
309 methoxybenzyl)ethanamine (25C-NBOMe/2C-C-
310 NBOMe);
- 311 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-
312 methoxybenzyl)ethanamine (25B-NBOMe/ 2C-B-
313 NBOMe);
- 314 Synthetic Opioids (including their isomers, esters, ethers,
315 salts and salts of isomers, esters and ethers):
- 316 N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide
317 (acetyl fentanyl);
- 318 furanyl fentanyl;
- 319 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-
320 methylbenzamide (also known as U-47700);
- 321 N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide,
322 also known as N-(1-phenethylpiperidin-4-yl)-N-
323 phenylbutanamide, (butyryl fentanyl);
- 324 N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-
325 yl]-N-phenylpropionamide, also known as N-[1-[2-
326 hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-
327 phenylpropanamide, (beta-hydroxythiofentanyl).
- 328 N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide
329 (acryl fentanyl)

330 N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide
331 (isobutyryl fentanyl)

332 N-(1-phenethylpiperidin-4-yl)-N-
333 phenylcyclopentanecarboxamide (cyclopropyl fentanyl)

334 2-(2,4-dichlorophenyl)-N-((1S,2S)-2-
335 (dimethylamino)cyclohexyl)-N-methylacetamide (also
336 known as U-48800)

337 Trans-3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-
338 methyl-benzamide (also known as U-49900)

339 Trans-3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-
340 N-methyl-benzeneacetamide (also known as U-51754)

341 Opioid Receptor Agonist

342 AH-7921 (3,4-dichloro-N-
343 (1dimethylamino)cyclohexylmethyl]benzamide).

344 Naphthoylindoles or any compound containing a 3-(1-
345 Naphthoyl) indole structure with substitution at the nitrogen
346 atom of the indole ring whether or not further substituted in
347 the indole ring to any extent and whether or not substituted
348 in the naphthyl ring to any extent. This shall include the
349 following:

350 JWH 015;

351 JWH 018;

352 JWH 019;

353 JWH 073;

354 JWH 081;

355 JWH 122;

356 JWH 200;

357 JWH 210;

358 JWH 398;

359 AM 2201;

360 WIN 55,212.

361 Naphthylmethylindeles or any compound containing a
362 1-indol-3-yl-(1-naphthyl) methane structure with a
363 substitution at the nitrogen atom of the indole ring whether
364 or not further substituted in the indole ring to any extent and
365 whether or not substituted in the naphthyl ring to any extent.
366 This shall include, but not be limited to, JWH 175 and JWH
367 184.

368 Naphthoylpyrroles or any compound containing a 3-(1-
369 Naphthoyl) pyrrole structure with substitution at the
370 nitrogen atom of the pyrrole ring whether or not further
371 substituted in the pyrrole ring to any extent and whether or
372 not substituted in the naphthyl ring to any extent. This shall
373 include, but not be limited to, JWH 147 and JWH 307.

374 Naphthylmethylindenes or any compound containing a
375 Naphthylideneindene structure with substitution at the 3-
376 Position of the indene ring whether or not further substituted
377 in the indene ring to any extent and whether or not
378 substituted in the naphthyl ring to any extent. This shall
379 include, but not be limited to, JWH 176.

380 Phenylacetylindeles or any compound containing a 3-
381 Phenylacetylindole structure with substitution at the
382 nitrogen atom of the indole ring whether or not further
383 substituted in the indole ring to any extent and whether or
384 not substituted in the phenyl ring to any extent. This shall
385 include the following:

386 RCS-8, SR-18 OR BTM-8;

387 JWH 250;

388 JWH 203;

389 JWH 251;

390 JWH 302.

391 Cyclohexylphenols or any compound containing a 2-(3-
392 hydroxycyclohexyl) phenol structure with a substitution at
393 the 5-position of the phenolic ring whether or not substituted
394 in the cyclohexyl ring to any extent. This shall include the
395 following:

396 CP 47,497 and its homologues and analogs;

397 Cannabicyclohexanol;

398 CP 55,940.

399 Benzoylindoles or any compound containing a 3-
400 (benzoyl) indole structure with substitution at the nitrogen
401 atom of the indole ring whether or not further substituted in
402 the indole ring to any extent and whether or not substituted
403 in the phenyl ring to any extent. This shall include the
404 following:

405 AM 694;

406 Pravadoline WIN 48,098;

407 RCS 4;

408 AM 679.

409 [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo
410 [1,2,3-DE]-1, 4-benzoxazin-6-YL]-1-
411 naphthalenymethanone. This shall include WIN 55,212-2.

412 Dibenzopyrans or any compound containing a 11-
413 hydroxydelta 8-tetrahydrocannabinol structure with
414 substitution on the 3-pentyl group. This shall include HU-
415 210, HU-211, JWH 051 and JWH 133.

416 Adamantoylindoles or any compound containing a 3-(
417 1- Adamantoyl) indole structure with substitution at the

418 nitrogen atom of the indole ring whether or not further
419 substituted in the adamantoyl ring system to any extent.
420 This shall include AM1248.

421 Tetramethylcyclopropylindoles or any compound
422 containing A 3-tetramethylcyclopropylindole structure with
423 substitution at the nitrogen atom of the indole ring whether
424 or not further substituted in the indole ring to any extent and
425 whether or not substituted in the tetramethylcyclopropyl
426 ring to any extent. This shall include UR-144 and XLR-11.

427 N-(1-Adamantyl)-1-pentyl-1h-indazole-3-
428 carboxamide. This shall include AKB48.

429 Any other synthetic chemical compound that is a
430 Cannabinoid receptor type 1 agonist as demonstrated by
431 binding studies and functional assays that is not listed in
432 Schedules II, III, IV and V, not federal Food and Drug
433 Administration approved drug or used within legitimate,
434 approved medical research. Since nomenclature of these
435 substances is not internationally standardized, any
436 immediate precursor or immediate derivative of these
437 substances shall be covered.

438 Tryptamines:

439 5- methoxy- N- methyl-N-isopropyltryptamine (5-
440 MeO-MiPT)

441 4-hydroxy-N,N-diisopropyltryptamine (4-HO-DiPT)

442 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-
443 MiPT)

444 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

445 4-acetoxy-N,N-diisopropyltryptamine (4-AcO-DiPT)

446 5-methoxy- α -methyltryptamine (5-MeO-AMT)

447 4-methoxy-N,N-Dimethyltryptamine (4-MeO-DMT)

- 448 4-hydroxy Diethyltryptamine (4-HO-DET)
- 449 5- methoxy- N,N- diallyltryptamine (5-MeO-DALT)
- 450 4-acetoxy-N,N-Dimethyltryptamine (4-AcO DMT)
- 451 4-hydroxy Diethyltryptamine (4-HO-DET)
- 452 (e) *Depressants*.
- 453 Mecloqualone;
- 454 Methaqualone.
- 455 (f) *Stimulants*.
- 456 Aminorex; some other names: aminoxaphen; 2-amino-
457 5- phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-
458 oxazolamine;
- 459 Cathinone; some trade or other names: 2-amino-1-
460 phenyl-1- propanone, alpha-aminopropiophenone, 2-
461 aminopropiophenone and norephedrone;
- 462 Fenethylline;
- 463 Methcathinone, its immediate precursors and immediate
464 derivatives, its salts, optical isomers and salts of optical
465 isomers; some other names: (2-(methylamino)-
466 propiophenone; alpha-
- 467 (methylamino)propiophenone; 2-(methylamino)-1-
468 phenylpropan-1- one; alpha—
469 methylaminopropiophenone; monomethylpropion; 3,4-
470 methylenedioxyprovalerone and/or mephedrone; 3,4-
471 methylenedioxyprovalerone (MPVD); ephedrone; N-
472 methylcathinone; methylcathinone; AL-464; AL-422; AL-
473 463 and UR1432;
- 474 (+-) cis-4-methylaminorex; ((+)-cis-4,5-dihydro-4-
475 methyl- 5-phenyl-2-oxazolamine);

- 476 N-ethylamphetamine;
- 477 N,N-dimethylamphetemine; also known as N,N-alpha-
478 trimethyl-benzeneethanamine; N,N-alpha-
479 trimethylphenethylamine.
- 480 Alpha-pyrrolidinopentiophenone, also known as alpha-
481 PVP, optical isomers, salts and salts of isomers.
- 482 Substituted amphetamines:
- 483 2-Fluoroamphetamine
- 484 3-Fluoroamphetamine
- 485 4-Fluoroamphetamine
- 486 2-chloroamphetamine
- 487 3-chloroamphetamine
- 488 4-chloroamphetamine
- 489 2-Fluoromethamphetamine
- 490 3-Fluoromethamphetamine
- 491 4-Fluoromethamphetamine
- 492 4-chloromethamphetamine
- 493 (g) Temporary listing of substances subject to
494 emergency scheduling. Any material, compound, mixture or
495 preparation which contains any quantity of the following
496 substances:
- 497 N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
498 (benzylfentanyl), its optical isomers, salts, and salts of
499 isomers.
- 500 N-[1-(2-thienyl)methyl-4-piperidyl]-N-
501 phenylpropanamide (thenylfentanyl), its optical isomers,
502 salts and salts of isomers.

- 503 N-benzylpiperazine, also known as BZP.
- 504 Cyclopentyl fentanyl (N-(1-phenethylpiperidin-4-yl)-
505 N-phenylcyclopentanecarboxamide);
- 506 4-fluorobutyryl fentanyl (N-(4-fluorophenyl)-N-[1-(2-
507 phenylethyl)piperidin-4-yl]-butyramide);
- 508 Isobutyryl fentanyl (2-methyl-N-phenyl-N-[1-(2-
509 phenylethyl)piperidin-4-yl]-propanamide);
- 510 Methoxyacetyl fentanyl (2-methoxy-N-phenyl-N-[1-(2-
511 phenylethyl)piperidin-4-yl]-acetamide);
- 512 3-methylbutyryl fentanyl (N-[3-methyl-1-(2-
513 phenylethyl)piperidin-4-yl]-N-phenylbutyramide);
- 514 4-methoxybutyryl fentanyl (N-(4-methoxyphenyl)-N-
515 (1-phenethylpiperidin-4-yl)butyramide);
- 516 Ocfentanil (N-(2-fluorophenyl)-2-methoxy-N-[1-(2-
517 phenylethyl)piperidin-4-yl]-acetamide);
- 518 Tetrahydrofuran fentanyl (N-(1-phenethylpiperidin-4-
519 yl)-N-phenyltetrahydrofuran-2-carboxamide);
- 520 Valeryl fentanyl (N-phenyl-N-[1-(2-
521 phenylethyl)piperidin-4-yl]pentanamide).
- 522 (h) The following controlled substances are included in
523 Schedule I:
- 524 Synthetic Cathinones or any compound, except
525 bupropion or compounds listed under a different schedule,
526 or compounds used within legitimate and approved medical
527 research, structurally derived from 2- Aminopropan-1-one
528 by substitution at the 1-position with Monocyclic or fused
529 polycyclic ring systems, whether or not the compound is
530 further modified in any of the following ways:
- 531 By substitution in the ring system to any extent with
532 Alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide

533 Substituents whether or not further substituted in the ring
534 system by one or more other univalent substituents.

535 By substitution at the 3-position with an acyclic alkyl
536 substituent.

537 By substitution at the 2-amino nitrogen atom with alkyl,
538 dialkyl, benzyl or methoxybenzyl groups.

539 By inclusion of the 2-amino nitrogen atom in a cyclic
540 structure.

541 Any other synthetic chemical compound that is a
542 Cannabinoid receptor type 1 agonist as demonstrated by
543 binding studies and functional assays that is not listed in
544 Schedules II, III, IV and V, not federal Food and Drug
545 Administration approved drug or used within legitimate,
546 approved medical research.

§60A-2-206. Schedule II.

1 (a) Schedule II consists of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name or brand name designated, listed in
4 this section. Unless specifically excepted or unless listed in
5 another schedule, any material, compound, mixture or
6 preparation which contains any quantity of the following
7 substances, including their isomers, esters, ethers, salts and
8 salts of isomers, esters and ethers, whenever the existence
9 of such isomers, esters, ethers and salts is possible within
10 the specific chemical designation.

11 (b) *Substances, vegetable origin or chemical synthesis.* —
12 Unless specifically excepted or unless listed in another
13 schedule, any of the following substances whether produced
14 directly or indirectly by extraction from substances of
15 vegetable origin, or independently by means of chemical
16 synthesis, or by a combination of extraction and chemical
17 synthesis:

18 Opium and opiate, and any salt, compound, derivative
19 or preparation of opium or opiate excluding apomorphine,
20 thebaine-derived butorphanol, dextrorphan, nalbuphine,
21 nalmefene, naloxone and naltrexone, and their respective
22 salts, but including the following:

- 23 Raw opium;
- 24 Opium extracts;
- 25 Opium fluid;
- 26 Powdered opium;
- 27 Granulated opium;
- 28 Tincture of opium;
- 29 Codeine;
- 30 Dihydroetorphine;
- 31 Ethylmorphine;
- 32 Etorphine hydrochloride;
- 33 Hydrocodone;
- 34 Hydromorphone;
- 35 Metopon;
- 36 Morphine;
- 37 Oripavine;
- 38 Oxycodone;
- 39 Oxymorphone; and
- 40 Thebaine;

41 Any salt, compound, derivative or preparation thereof
42 which is chemically equivalent or identical with any of the

43 substances referred to in subdivision (1) of this subsection,
44 except that these substances shall not include the
45 isoquinoline alkaloids of opium;

46 Opium poppy and poppy straw;

47 Coca leaves and any salt, compound, derivative or
48 preparation of coca leaves (including cocaine and ecgonine
49 and their salts, isomers, derivatives and salts of isomers and
50 derivatives), and any salt, compound, derivative or
51 preparation thereof which is chemically equivalent or
52 identical with any of these substances, except that the
53 substances shall not include decocainized coca leaves or
54 extractions of coca leaves, which extractions do not contain
55 cocaine or ecgonine;

56 Concentrate of poppy straw (the crude extract of poppy
57 straw in either liquid, solid or powder form which contains
58 the phenanthrene alkaloids of the opium poppy).

59 (c) *Opiates*. —

60 Alfentanil;

61 Alphaprodine;

62 Anileridine;

63 Bezitramide;

64 Bulk dextropropoxyphene (nondosage forms);

65 Carfentanil;

66 Dihydrocodeine;

67 Diphenoxylate;

68 Fentanyl;

69 Isomethadone;

- 70 Levo-alpha-acetylmethadol; some other names: levo-
71 alpha-acetylmethadol, levomethadyl acetate, LAAM;
- 72 Levomethorphan;
- 73 Levorphanol;
- 74 Metazocine;
- 75 Methadone;
- 76 Methadone-Intermediate, 4-cyano-2-dimethylamino-4,
77 4-diphenyl butane;
- 78 Moramide-Intermediate, 2-methyl-3-morpholino-1,
79 1-diphenylpropane-carboxylic acid;
- 80 Pethidine; (meperidine);
- 81 Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
82 phenylpiperidine;
- 83 Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-
84 carboxylate;
- 85 Pethidine-Intermediate-C, 1-methyl-4-
86 phenylpiperidine-4-carboxylic acid;
- 87 Phenazocine;
- 88 Piminodine;
- 89 Racemethorphan;
- 90 Racemorphan;
- 91 Remifentanil;
- 92 Sufentanil;
- 93 Tapentadol

- 94 Thiafentanil (4-(methoxycarbonyl)-4-(N-
95 phenmethoxyacetamido)-1-2-(thienyl)ethylpiperidine),
96 including its isomers, esters, ethers, salts and salts of
97 isomers, esters and ethers.
- 98 (d) *Stimulants*. —
- 99 Amphetamine, its salts, optical isomers and salts of its
100 optical isomers;
- 101 Methamphetamine, its salts, isomers and salts of its
102 isomers;
- 103 Methylphenidate;
- 104 Phenmetrazine and its salts; and
- 105 Lisdexamfetamine.
- 106 (e) *Depressants*. —
- 107 Amobarbital;
- 108 Glutethimide;
- 109 Pentobarbital;
- 110 Phencyclidine;
- 111 Secobarbital.
- 112 (f) *Hallucinogenic substances*:
- 113 Dronabinol [(-)-delta-9-trans tetrahydrocannabinol] if
114 in an FDA approved oral solution
- 115 Nabilone: [Another name for nabilone: (+-)-trans-3-(1,
116 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-
117 hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].
- 118 (g) *Immediate precursors*. — Unless specifically
119 excepted or unless listed in another schedule, any material,

120 compound, mixture, or preparation which contains any
121 quantity of the following substances:

122 Immediate precursor to amphetamine and
123 methamphetamine:

124 Phenylacetone;

125 Some trade or other names: phenyl-2-propanone; P2P;
126 benzyl methyl ketone; methyl benzyl ketone;

127 Immediate precursors to phencyclidine (PCP):

128 1-phenylcyclohexylamine; and

129 1-piperidinocyclohexanecarbonitrile (PCC).

130 Immediate precursor to fentanyl:

131 4-anilino-N-phenethyl-4-piperidine (ANPP).

§60A-2-210. Schedule IV.

1 (a) Schedule IV shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section. Unless specifically excepted or unless listed in
5 another schedule, any material, compound, mixture or
6 preparation which contains any quantity of the following
7 substances, including their isomers, esters, ethers, salts and
8 salts of isomers, esters and ethers, whenever the existence
9 of such isomers, esters, ethers and salts is possible within
10 the specific chemical designation.

11 (b) *Narcotic drugs*. — Unless specifically excepted or
12 unless listed in another schedule, any material, compound,
13 mixture or preparation containing any of the following
14 narcotic drugs, or their salts calculated as the free anhydrous
15 base or alkaloid, in limited quantities as set forth below:

16 Not more than 1 milligram of difenoxin and not less
17 than 25 micrograms of atropine sulfate per dosage unit;

- 18 Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-
19 diphenyl-3-methyl-2-propionoxybutane).
- 20 (c) *Depressants.*
- 21 Alprazolam;
- 22 Barbital;
- 23 Bromazepam;
- 24 Camazepam;
- 25 Carisoprodol;
- 26 Chloral betaine;
- 27 Chloral hydrate;
- 28 Chlordiazepoxide;
- 29 Clobazam;
- 30 Clonazepam;
- 31 Clorazepate;
- 32 Clotiazepam;
- 33 Cloxazolam;
- 34 Delorazepam;
- 35 Diazepam;
- 36 Dichloralphenazone;
- 37 Estazolam;
- 38 Ethchlorvynol;
- 39 Ethinamate;
- 40 Ethyl loflazepate;

- 41 Fludiazepam;
- 42 Flunitrazepam;
- 43 Flurazepam;
- 44 Fospropofol;
- 45 Halazepam;
- 46 Haloxazolam;
- 47 Ketazolam;
- 48 Loprazolam;
- 49 Lorazepam;
- 50 Lormetazepam;
- 51 Mebutamate;
- 52 Medazepam;
- 53 Meprobamate;
- 54 Methohexital;
- 55 Methylphenobarbital (mephobarbital);
- 56 Midazolam;
- 57 Nimetazepam;
- 58 Nitrazepam;
- 59 Nordiazepam;
- 60 Oxazepam;
- 61 Oxazolam;
- 62 Paraldehyde;

- 63 Petrichloral;
- 64 Phenobarbital;
- 65 Pinazepam;
- 66 Prazepam;
- 67 Quazepam;
- 68 Temazepam;
- 69 Tetrazepam;
- 70 Triazolam;
- 71 Zaleplon;
- 72 Zolpidem;
- 73 Zopiclone'
- 74 Suvorexant ([[(7R)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-
75 methyl-1,4-diazepan-1-yl] [5-methyl-2-(2H-1,2,3-triazol-
76 2-yl)phenyl]methanone).
- 77 (d) Any material, compound, mixture or preparation
78 which contains any quantity of Fenfluramine and
79 Dexfenfluramine.
- 80 (e) *Stimulants.*
- 81 Cathine ((+)-norpseudoephedrine);
- 82 Diethylpropion;
- 83 Fencamfamin;
- 84 Fenproporex;
- 85 Mazindol;
- 86 Mefenorex;

- 87 Modafinil;
- 88 Pemoline (including organometallic complexes and
89 chelates thereof);
- 90 Phentermine;
- 91 Pipradrol;
- 92 Sibutramine;
- 93 SPA ((-)-1-dimethylamino-1,2-diphenylethane);
- 94 Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-
95 2,6-dimethylphenyl]-1-oxopropyl [(1S)-1-(4-phenyl-1H-
96 imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic
97 acid);
- 98 (f) *Other substances.* —
- 99 Pentazocine;
- 100 Butorphanol.
- 101 Tramadol (2-[(dimethylamino)methyl]-1-(3-
102 methoxyphenyl) cyclohexanol);
- 103 Amyl nitrite, butyl nitrite, isobutyl nitrite and the other
104 organic nitrites are controlled substances and no product
105 containing these compounds as a significant component shall
106 be possessed, bought or sold other than pursuant to a bona fide
107 prescription or for industrial or manufacturing purposes.

§60A-2-212. Schedule V.

- 1 (a) Schedule V shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section. Unless specifically excepted or unless listed in
5 another schedule, any material, compound, mixture or
6 preparation which contains any quantity of the following
7 substances, including their isomers, esters, ethers, salts and
8 salts of isomers, esters and ethers, whenever the existence

9 of such isomers, esters, ethers and salts is possible within
10 the specific chemical designation.

11 (b) Narcotic drugs containing nonnarcotic active
12 medicinal ingredients. Any compound, mixture or
13 preparation containing any of the following narcotic drugs or
14 their salts calculated as the free anhydrous base or alkaloid in
15 limited quantities as set forth below, which shall include one
16 or more nonnarcotic active medicinal ingredients in sufficient
17 proportion to confer upon the compound, mixture or
18 preparation valuable medicinal qualities other than those
19 possessed by the narcotic drug alone.

20 Not more than 200 milligrams of codeine per 100
21 milliliters or per 100 grams;

22 Not more than 100 milligrams of dihydrocodeine per
23 100 milliliters or per 100 grams;

24 Not more than 100 milligrams of ethylmorphine per 100
25 milliliters or per 100 grams;

26 Not more than 2.5 milligrams of diphenoxylate and not
27 less than 25 micrograms of atropine sulfate per dosage unit;

28 Not more than 100 milligrams of opium per 100
29 milliliters or per 100 grams;

30 Not more than 0.5 milligrams of difenoxin and not less
31 than 25 micrograms of atropine sulfate per dosage unit.

32 (c) *Stimulants*: —

33 Pyrovalerone.

34 (d) Any compound, mixture or preparation containing
35 as its single active ingredient ephedrine, pseudoephedrine or
36 phenylpropanolamine, their salts or optical isomers, or salts
37 of optical isomers except products which are for pediatric
38 use primarily intended for administration to children under
39 the age of 12: *Provided*, That neither the offenses set forth
40 in section four hundred one, article four of this chapter, nor
41 the penalties therein, shall be applicable to ephedrine,

42 pseudoephedrine or phenylpropanolamine which shall be
43 subject to the provisions of article ten of this chapter.

44 (e) *Depressants*: —

45 Ezogabine [N-[2-amino-4-94-fluorobenzylamino)-
46 phenyl]-carbamic acid ethyl ester];

47 Lacosamide [(R)-2-acetoamido- N -benzyl-3-methoxy-
48 propionamide];

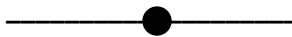
49 Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic
50 acid]; and

51 Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-
52 1-yl] butanamide) (also referred to as BRV; UCB-34714;
53 Briviact).

54 (f) *Other substances*:

55 Gabapentin

56 Pregabalin



CHAPTER 48

**(H. B. 4624 - By Delegates Howell, Hamrick, Pack,
Brewer, Jennings, Iaquina, Ferro, Hill, Diserio,
Marcum and Maynard)**

[Passed March 5, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §1-1-5 of the Code of West Virginia, 1931, as amended, relating to West Virginia coordinate systems; defining terms; updating plane coordinate values; establishing conversation factor for conversion from meters to United States Survey feet; directing use of certain

data published by the National Geodetic Survey; setting requirements for survey establishing coordinates that is relied on by governmental entities or the public; setting requirements for certain maps, plats, reports, descriptions or geospatial products to be relied on by governmental entities or the public; setting legal requirements for describing location of land boundary corners; requiring certification of compliance be filed for certain documents recorded in public records or deed records; setting requirements for certain plats and descriptions of surveys; requiring official geodetic data to be referenced in the State be defined for National Spatial Reference System; requiring compliance with accuracy and reporting requirements for certain maps, plats, reports, descriptions or geospatial products; clarifying that other coordinate systems, data and geodetic reference networks may be used where appropriate; eliminating obsolete language; and updating references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. LIMITS AND JURISDICTION.

§1-1-5. West Virginia coordinate systems; definitions; plane coordinates, limitations of use; conversion factor for meters to feet; official geodetic datum.

1 (a) The following acronyms used throughout this
2 section shall have the following meanings:

3 (1) “FGDC” means the Federal Geographic Data
4 Committee or its successors;

5 (2) “NSRS” means “The National Spatial Reference
6 System” or its successors;

7 (3) “NGS” means “The National Geodetic Survey” or
8 its successors;

9 (4) “SPCS” means “State Plane Coordinate System” or
10 its successors; and

11 (5) “WVCS” means “The West Virginia Coordinate
12 System”.

13 (b) The most recent system of plane coordinates which
14 has been established by the NGS, based on the NSRS, and
15 known as the SPCS, for defining and stating the positions or
16 locations of points within West Virginia shall be known and
17 designated as the West Virginia Coordinate System.

18 (c) The plane coordinate values used to express the
19 position or location of a point in this system shall consist of
20 two distances, expressed in U.S. Survey feet and decimals
21 of a foot or in meters and decimals of a meter. One of these
22 distances, to be known as the x-coordinate, shall give the
23 position in an east-and-west direction. The other, to be
24 known as the y-coordinate, shall give the position in a north-
25 and-south direction.

26 (d) The associated factor of one meter equals 39.37/12
27 United States Survey feet shall be used in any conversion
28 necessitated by changing values from meters to United
29 States Survey feet.

30 (e) For the purpose of the use of this system the state is
31 divided into a North Zone and a South Zone.

32 The area now included in the following counties is the
33 North Zone: Barbour, Berkeley, Brooke, Doddridge, Grant,
34 Hampshire, Hancock, Hardy, Harrison, Jefferson, Marion,
35 Marshall, Mineral, Monongalia, Morgan, Ohio, Pleasants,
36 Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt and
37 Wood.

38 The area now included in the following counties is the
39 South Zone: Boone, Braxton, Cabell, Calhoun, Clay,
40 Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lewis,
41 Lincoln, Logan, McDowell, Mason, Mercer, Mingo,
42 Monroe, Nicholas, Pendleton, Pocahontas, Putnam,
43 Raleigh, Randolph, Roane, Summers, Upshur, Wayne,
44 Webster and Wyoming.

45 (f) As established for use in the North Zone, the WVCS
46 shall be named and in any land description, map, survey or
47 geospatial product in which it is used it shall be designated
48 the WVCS North Zone.

49 As established for use in the South Zone, WVCS shall
50 be named and in any land description, map, survey or
51 geospatial product in which it is used it shall be designated
52 the WVCS South Zone.

53 (g) Information and mathematical data for defining the
54 WVCS, and previous versions thereof, including but not
55 limited to, the West Virginia Coordinate System of 1927
56 and the West Virginia Coordinate System of 1983, and
57 information and mathematical data for translating or
58 converting coordinates between the WVCS and the previous
59 versions thereof, shall be the information and data published
60 by the NGS for such purposes.

61 (h) For purposes of describing the location of any survey
62 station in the State of West Virginia, it shall be considered
63 a complete, legal and satisfactory description of the location
64 to give the position of the survey station on the WVCS as
65 defined in this section.

66 (i) Any survey that establishes WVCS coordinates to
67 express definite positions, which is to be used or relied upon
68 by any federal, state or local government entity, or by the
69 public generally, shall be performed:

70 (1) By a professional surveyor licensed to practice
71 surveying in the State of West Virginia pursuant to §30-
72 13A-1 *et seq.* of this code; and

73 (2) In compliance with all other laws, rules or
74 regulations governing surveying in the State of West
75 Virginia;

76 (3) In compliance with the Geospatial Positioning
77 Accuracy Standards established and published by the
78 FGDC, and in effect at the time the survey is performed.

79 (j) In addition to any other requirements imposed by
80 law, rule or regulation, any map, plat, report, description or
81 geospatial product that claims to report WVCS coordinates
82 to express definite positions, to be used or relied upon by
83 any federal, state or local government entity, or by the
84 public generally, shall show, or have attached thereto,
85 metadata that meets the requirements established by the
86 FGDC in effect at the time the map, plat, report, description
87 or geospatial product was produced, including a description
88 of the methodology used to establish the WVCS coordinate
89 values reported that is adequate for users to evaluate the
90 accuracy of the coordinates.

91 (k) For purposes of describing the location of any land
92 boundary corner in the State of West Virginia, it shall be
93 considered a complete, legal and satisfactory description of
94 the location to give the position of the land boundary corner
95 on the WVCS as required in this section, in addition to other
96 location information as may otherwise be required by law,
97 rule or regulation: *Provided*, That nothing contained in this
98 section requires a purchaser or mortgagee of real property
99 to rely wholly on a land description, any part of which
100 depends exclusively upon the WVCS.

101 (l) When any tract of land to be defined by a single
102 description extends from one into the other of the coordinate
103 zones specified in this section, the position of all points on
104 its boundaries may refer to either of the two zones. The zone
105 which is being used shall be specifically named in the
106 description.

107 (m) No coordinates based on the WVCS, purporting to
108 define the position of a point on a land boundary, may be
109 presented to be recorded in any public records or deed
110 records unless a certification is attached thereto and,
111 recorded simultaneously therewith, certifying the
112 coordinates were established in compliance with the laws,
113 rules and regulations governing surveying in West Virginia
114 by a professional surveyor licensed to practice surveying in
115 West Virginia pursuant to §30-13A-1 *et seq.* of this code.

116 (n) A plat and a description of survey purporting to
117 define the position of a point on a land boundary by the use
118 of the WVCS must show the following:

119 (1) The accuracy of the coordinates stated at the 95
120 percent confidence level and in compliance with the
121 Geospatial Positioning Accuracy Standards established and
122 published by the FGDC in effect at the time of the survey.
123 The coordinate accuracies reported by the surveyor shall
124 take into account the network accuracy of existing control,
125 as well as additional systematic effects:

126 (2) The applicable datum, datum tag, epoch date in a
127 decimal year format, and the zone that are the basis of the
128 coordinates. The datum, datum tag, epoch date and zone
129 shall be as published by the NGS and shall be shown by an
130 appropriate note, or by suffix such as “NAD83 (2011) epoch
131 2010.00, WVCS, South Zone”; and

132 (3) The signature and seal of the professional surveyor
133 licensed to practice surveying in West Virginia pursuant to
134 §30-13A-1 *et seq.* of this code.

135 (o) The use of the term “West Virginia Coordinate
136 System North or South Zone” on any map, report or survey
137 or other document shall be limited to coordinates based on
138 the WVCS as defined in this section.

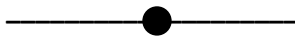
139 (p) Nothing in this section prevents the recording in any
140 public record of any deed, map, plat, survey, description or
141 of any other document or writing of whatever nature which
142 would otherwise constitute a recordable instrument or
143 document even though the same is not based upon or done
144 in conformity with the WVCS established by this section,
145 nor does nonconformity with the WVCS invalidate any
146 deed, map, plat, survey, description or other document
147 which is otherwise proper.

148 (q) The official geodetic datums to which geodetic
149 coordinates (including, but not limited to, latitude,

150 longitude, ellipsoid height, orthometric height or dynamic
151 height) are referenced within the State of West Virginia
152 shall be as defined for the NSRS.

153 (r) Any map, plat, report, description or geospatial
154 product that establishes or reports geodetic positions
155 referenced to the NSRS for the purpose of expressing
156 definite positions that is to be used by or relied on by any
157 federal, state or local government entity or by the public
158 generally shall comply with the accuracy and reporting
159 requirements set forth above for the WVCS.

160 (s) The provisions of this chapter shall not be construed
161 to prohibit the appropriate use of other coordinate systems,
162 datums and other geodetic reference networks.



CHAPTER 49

**(Com. Sub. for H. B. 2483 - By Delegates Eldridge,
Butler, Rohrbach, R. Miller, Sobonya and Iaquinta)**

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, all relating to requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any person in its custody that has been transferred to adult jurisdiction of the circuit court and who turns 18 years of age; requiring transfer of juvenile under adult jurisdiction from a juvenile facility upon reaching 18 years of age if he or she has either been convicted or is in a pretrial status; directing the Division of Juvenile Services to notify the circuit court 180 days or as soon as practicable prior to a juvenile reaching 18 years of age; requiring the circuit court to set and conduct a hearing prior to

the transfer to an adult correctional facility; making provisions of law related to victims applicable to proceedings held pursuant to the section; prohibiting persons 18 or older that commit an adult offense while under the custody of the Division of Juvenile Services from being returned to the placement in a juvenile facility; requiring the court to conduct a hearing prior to the completion of the adult sentence; and prohibiting a court from remanding a person who has reached 18 years of age and completed serving an adult sentence to a juvenile facility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-720. Prohibition on committing juveniles to adult facilities.

1 (a) A juvenile, including one who has been transferred
2 to criminal jurisdiction of the court, may not be detained or
3 confined in any institution in which he or she has contact
4 with or comes within sight or sound of any adult persons
5 incarcerated because he or she has have been convicted of a
6 crime or are awaiting trial on criminal charges or with the
7 security staff (including management) or direct-care staff of
8 a jail or locked facility for adults.

9 (b) A child who has been convicted or is awaiting trial
10 of an offense under the adult jurisdiction of the circuit
11 court may not be held in custody in an adult correctional
12 facility of this state while under the age of 18 years. The
13 Division of Juvenile Services shall notify the sentencing
14 court and copy the county prosecuting attorney of the
15 sentencing court within 180 days, or as soon as practicable,
16 that the child will be turning 18 years of age. The court
17 shall, upon receipt of the notice, set the matter for a
18 hearing. Before the child reaches 18 years of age, the court
19 shall hold a hearing and enter an order transferring the
20 offender to an adult correctional facility, a facility for
21 youthful offenders, if applicable: or any other disposition

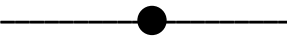
22 the court considers appropriate, which does not violate the
23 provisions of subsection (a) of this section: *Provided*, That
24 the court may not remand a person who reached the age of
25 18 years to a juvenile facility or place the person with other
26 juveniles.

27 (c) The provisions of §61-11A-1 *et seq.* of this code, are
28 applicable to proceedings under this section.

§49-4-722. Conviction for offense while in custody.

1 (a) Notwithstanding any other provision of law to the
2 contrary, any person who is 18 years of age or older who is
3 convicted as an adult of an offense that he or she committed
4 while in the custody of the Division of Juvenile Services and
5 who is therefor sentenced to a regional jail or state
6 correctional facility for the offense may not be returned to
7 the custody of the division upon the completion of his or her
8 adult sentence.

9 (b) Prior to completion of the adult sentence specified
10 in §49-4-722(a) of this code, the circuit court having
11 jurisdiction over the underlying juvenile matter shall
12 conduct a hearing to determine whether the person who has
13 turned 18 years of age shall remain in the regional jail
14 during pendency of the underlying juvenile matter or if
15 another disposition or pretrial placement is appropriate and
16 available: *Provided*, That the court may not remand a child
17 who reached the age of 18 years to a juvenile facility or
18 placement during the pendency of the underlying juvenile
19 matter.



CHAPTER 50

**(H. B. 4621 - By Delegates C. Miller, Anderson, Frich,
Hamilton, Storch, Walters, Westfall, Boggs,
Longstreth, Sponaugle and Maynard)**

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §17-15-4 of the Code of West Virginia, 1931, as amended, relating to removing reference to certain entities with respect to work performed by prisoners; and relating to incarceration sentence reduction for the performance of certain approved work.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. COUNTY CONVICT ROAD FORCE.

§17-15-4. Work by prisoners; relief of sheriffs and others from liability for injuries, etc.

1 Any person convicted of a criminal offense and
2 sentenced to confinement in a county or regional jail may,
3 as incident to such sentence of confinement, be required to
4 perform labor within the jail, as a trustee or otherwise, or in
5 and upon the buildings, grounds, institutions, roads, bridges,
6 streams or other public works of the county or the area
7 within which the regional jail is located if he or she meets
8 the following criteria:

9 (1) Such person is at least eighteen years of age;

10 (2) Such person is physically and mentally sound and
11 has not been exempted for medical reasons from such work
12 by a licensed physician or other medical professional; and

13 (3) Such person is considered by the sheriff or the
14 executive director of the West Virginia Regional Jail
15 Authority or designee not to pose a threat to the community
16 if released for work purposes.

17 (b) The work described in subsection (a) of this section
18 shall be performed under the supervision, care and custody
19 of the executive director of the West Virginia Regional Jail
20 Authority or designee, the sheriff, his or her deputies,
21 correctional officers or other persons charged with inmate
22 supervision to perform maintenance or control litter in this
23 state.

24 (c) In order to effectuate the provisions of this section,
25 the sheriff or the executive director of the West Virginia
26 Regional Jail and Correctional Facility Authority or
27 designee shall promulgate rules for the safe and useful
28 employment of inmate labor.

29 (d) Notwithstanding any provision of this code to the
30 contrary, the executive director of the West Virginia
31 Regional Jail Authority or its designee, members and
32 agents, the sheriff, his or her deputies, correctional officers
33 and agents shall be immune from liability of any kind for
34 accidents, injuries or death to such inmate except for
35 accident, injury or death resulting directly from gross
36 negligence or malfeasance.

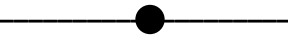
37 (e) The sheriff of the county in which the work is to be
38 performed, with the approval of the executive director of the
39 West Virginia Regional Jail Authority or designee, may hire
40 or appoint any personnel necessary for the supervision of
41 inmate labor.

42 (f) Nothing in this section shall be construed to allow
43 the use of inmate labor for private projects or as contract
44 employees of for-profit businesses.

45 (g) Any inmate who performs work pursuant to the
46 provisions of this section shall receive, as sole and full

47 compensation therefor, a reduction in his or her term of
48 incarceration by one day for every eight hours of approved
49 work: *Provided*, That any reduction of sentence earned
50 pursuant to the provisions of this section shall be in addition
51 to any other reduction of sentence the inmate may
52 accumulate.

53 (h) Any person being held as a detainee or for contempt
54 may voluntarily participate in such labor as provided for in
55 this section under the terms and conditions hereinbefore set
56 forth.



CHAPTER 51

(Com. Sub. for S. B. 412 - By Senator Trump)

[Passed March 6, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-29-1 of said code, all relating to providing that any litter control officer who is trained and certified as a law-enforcement officer and whose certification is active has the same authority as any other law-enforcement officer to enforce all litter laws; and including litter control officers in the definition of the term “law-enforcement officer”.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to regulate unsafe or unsanitary structures and refuse on private land; authority to establish an enforcement agency; county litter control

officers; procedure for complaints; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

1 (a) Plenary power and authority are hereby conferred
2 upon every county commission to adopt ordinances
3 regulating the repair, alteration, or improvement, or the
4 vacating and closing or removal or demolition, or any
5 combination thereof, of any dwellings or other buildings,
6 except for buildings used for farm purposes on land actually
7 being used for farming, unfit for human habitation due to
8 dilapidation, defects increasing the hazard of fire, accidents,
9 or other calamities, lack of ventilation, light or sanitary
10 facilities, or any other conditions prevailing in any dwelling
11 or building, whether used for human habitation or not,
12 which would cause the dwellings or other buildings to be
13 unsafe, unsanitary, dangerous, or detrimental to the public
14 safety or welfare, whether the result of natural or manmade
15 force or effect.

16 (b) Plenary power and authority are hereby conferred
17 upon every county commission to adopt ordinances
18 regulating the removal and clean up of any accumulation of
19 refuse or debris, overgrown vegetation or toxic spillage or
20 toxic seepage located on private lands which is determined
21 to be unsafe, unsanitary, dangerous, or detrimental to the
22 public safety or welfare, whether the result of natural or
23 manmade force or effect.

24 (c) The county commission, in formally adopting
25 ordinances, shall designate an enforcement agency which
26 shall consist of the county engineer (or other technically
27 qualified county employee or consulting engineer), county
28 health officer or his or her designee, a fire chief from a
29 county fire company, the county litter control officer, if the
30 commission chooses to hire one, and two members-at-large
31 selected by the county commission to serve two-year terms.
32 The county sheriff shall serve as an ex officio member of
33 the enforcement agency and the county officer charged with

34 enforcing the orders of the county commission under this
35 section.

36 (d) In addition to the powers and duties imposed by this
37 section, county litter control officers shall have authority to
38 issue citations for open dumps, as prohibited by §22-15-
39 10(a) of this code, unlawful disposal of litter, as prohibited
40 by §22-15A-4 of this code, and failure to provide proof of
41 proper disposal of solid waste, as prohibited by §22C-4-
42 10(a) of this code, after completing a training course offered
43 by the West Virginia Department of Environmental
44 Protection: *Provided*, That any litter control officer who is
45 trained and certified as a law-enforcement officer and
46 whose certification is active has the same authority as any
47 other law-enforcement officer to enforce all litter laws in
48 this code. Nothing in this subsection supersedes the
49 authority or duty of the Department of Environmental
50 Protection or other law-enforcement officers to preserve law
51 and order and enforce the litter control program.

52 (e) Any ordinance adopted pursuant to the provisions of
53 this section shall provide fair and equitable rules of
54 procedure and any other standards considered necessary to
55 guide the enforcement agency, or its agents, in the
56 investigation of dwelling or building conditions,
57 accumulation of refuse or debris, overgrown vegetation, or
58 toxic spillage or toxic seepage and shall provide for fair and
59 equitable rules of procedure for instituting and conducting
60 hearings in the matters before the county commission. Any
61 entrance upon premises for the purpose of making
62 examinations shall be made in a manner that causes the least
63 possible inconvenience to the persons in possession.

64 (f) (1) Complaints authorized by this section shall be
65 brought before the county commission. Complaints shall be
66 initiated by citation issued by the county litter control
67 officer or petition of the county engineer (or other
68 technically qualified county employee or consulting
69 engineer) on behalf of and at the direction of the
70 enforcement agency, but only after that agency has

71 investigated and determined that any dwelling, building,
72 accumulation of refuse or debris, overgrown vegetation, or
73 toxic spillage or toxic seepage is unsafe, unsanitary,
74 dangerous, or detrimental to the public safety or welfare and
75 should be repaired, altered, improved, vacated, removed,
76 closed, cleaned, or demolished.

77 (2) The county commission shall cause the owner or
78 owners of the private land in question to be served with a
79 copy of the complaint. Service shall be accomplished in the
80 manner provided in rule four of the West Virginia Rules of
81 Civil Procedure.

82 (3) The complaint shall state the findings and
83 recommendations of the enforcement agency and that unless
84 the owner or owners of the property file with the clerk of the
85 county commission a written request for a hearing within 10
86 days of receipt of the complaint, an order will be issued by
87 the county commission implementing the recommendations
88 of the enforcement agency.

89 (4) If the owner or owners of the property file a request
90 for a hearing, the county commission shall issue an order
91 setting this matter down for hearing within 20 days.
92 Hearings shall be recorded by electronic device or by court
93 reporter. The West Virginia Rules of Evidence do not apply
94 to the proceedings, but each party has the right to present
95 evidence and examine and cross-examine all witnesses.

96 (5) The enforcement agency has the burden of proving
97 its allegation by a preponderance of the evidence and has
98 the duty to go forward with the evidence.

99 (6) At the conclusion of the hearing, the county
100 commission shall make findings of fact, determinations, and
101 conclusions of law as to whether the dwelling or building:
102 Is unfit for human habitation due to dilapidation; has defects
103 that increase the hazard of fire, accidents, or other
104 calamities; lacks ventilation, light, or sanitary facilities; or
105 any other conditions prevailing in the dwelling or building,

106 whether used for human habitation or not and whether the
107 result of natural or manmade force or effect, which would
108 cause the dwelling or other building to be unsafe,
109 unsanitary, dangerous, or detrimental to the public safety or
110 welfare; or whether there is an accumulation of refuse or
111 debris, overgrown vegetation, toxic spillage or toxic
112 seepage on private lands which is determined to be unsafe,
113 unsanitary, dangerous, or detrimental to the public safety or
114 welfare, whether the result of natural or manmade force or
115 effect.

116 (7) The county commission has authority to order the
117 owner or owners thereof to repair, alter, improve, vacate,
118 remove, close, clean up, or demolish the dwelling or
119 building in question or to remove or clean up any
120 accumulation of refuse or debris, overgrown vegetation, or
121 toxic spillage or toxic seepage within a reasonable time and
122 to impose daily civil monetary penalties on the owner or
123 owners who fail to obey an order.

124 (8) Appeals from the county commission to the circuit
125 court shall be in accordance with the provisions of §58-3-1
126 *et seq.* of this code.

127 (g) Upon the failure of the owner or owners of the
128 private land to perform the ordered duties and obligations as
129 set forth in the order of the county commission, the county
130 commission may advertise for and seek contractors to make
131 the ordered repairs, alterations, or improvements or the
132 ordered demolition, removal, or clean up. The county
133 commission may enter into any contract with any contractor
134 to accomplish the ordered repairs, alterations, or
135 improvements or the ordered demolition, removal, or clean
136 up.

137 (h) A civil proceeding may be brought in circuit court
138 by the county commission against the owner or owners of
139 the private land or other responsible party that the subject
140 matter of the order of the county commission to subject the
141 private land in question: (1) To a lien for the amount of the

142 contractor's costs in making these ordered repairs,
143 alterations, or improvements or ordered demolition,
144 removal, or clean up, together with any daily civil monetary
145 penalty imposed; (2) to order and decree the sale of the
146 private land in question to satisfy the lien; (3) to order and
147 decree that the contractor may enter upon the private land in
148 question at any and all times necessary to make ordered
149 repairs, alterations, or improvements, or ordered
150 demolition, removal, or clean up; and (4) to order the
151 payment of all costs incurred by the county with respect to
152 the property and for reasonable attorney fees and court costs
153 incurred in the prosecution of the action.

154 (i) County commissions may receive and accept grants,
155 subsidies, donations, and services in kind consistent with
156 the objectives of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

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

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

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

14 (3) “County” means the 55 major political subdivisions
15 of the state;

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

18 (5) “Governor’s Committee on Crime, Delinquency,
19 and Correction” or “Governor’s committee” means the
20 Governor’s Committee on Crime, Delinquency, and
21 Correction established as a state planning agency pursuant
22 to §15-9-1 of this code;

23 (6) “Law-enforcement officer” means any duly
24 authorized member of a law-enforcement agency who is
25 authorized to maintain public peace and order, prevent and
26 detect crime, make arrests, and enforce the laws of the state
27 or any county or municipality thereof, other than parking
28 ordinances, and includes those persons employed as campus
29 police officers at state institutions of higher education in
30 accordance with the provisions of §18B-4-5 of this code,
31 and persons employed by the Public Service Commission as
32 motor carrier inspectors and weight-enforcement officers
33 charged with enforcing commercial motor vehicle safety
34 and weight restriction laws, although those institutions and
35 agencies may not be considered law-enforcement agencies.
36 The term also includes those persons employed as county
37 litter control officers charged with enforcing litter laws:
38 *Provided*, That those persons have been trained and certified
39 as law-enforcement officers and that certification is
40 currently active. The term also includes those persons
41 employed as rangers by resort area districts in accordance
42 with the provisions of §7-25-23 of this code, although no
43 resort area district may be considered a law-enforcement
44 agency: *Provided, however*, That the subject rangers shall
45 pay the tuition and costs of training. As used in this article,
46 the term “law-enforcement officer” does not apply to the
47 chief executive of any West Virginia law-enforcement
48 agency or any watchman or special natural resources police
49 officer;

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

53 (8) “Municipality” means any incorporated town or city
54 whose boundaries lie within the geographic boundaries of
55 the state;

56 (9) “Subcommittee” or “law-enforcement professional
57 standards subcommittee” means the subcommittee of the
58 Governor’s Committee on Crime, Delinquency, and
59 Correction created by §30-29-2 of this code; and

60 (10) “West Virginia law-enforcement agency” means
61 any duly authorized state, county, or municipal organization
62 employing one or more persons whose responsibility is the
63 enforcement of laws of the state or any county or
64 municipality thereof: *Provided*, That neither the Public
65 Service Commission nor any state institution of higher
66 education nor any resort area district is a law-enforcement
67 agency.



CHAPTER 52

**(Com. Sub. for S. B. 501 - By Senators Drennan,
Cline, Jeffries, Karnes, Maroney, Maynard, Rucker,
Smith, Swope, Weld, Woelfel, Boso and Plymale)**

[Passed March 10, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §7-14D-2 of the Code of West Virginia, 1931, as amended, relating to the accrued benefit of retirees in the Deputy Sheriff Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.**§7-14D-2. Definitions.**

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

3 (a) “Accrued benefit” means on behalf of any member
4 two and one-quarter percent of the member’s final average
5 salary multiplied by the member’s years of credited service:
6 *Provided*, That members who are retired on or retire after
7 July 1, 2018, shall have an accrued benefit of two and one-
8 half percent of the member’s final average salary multiplied
9 by the member’s years of credited service. A member’s
10 accrued benefit may not exceed the limits of Section 415 of
11 the Internal Revenue Code and is subject to the provisions
12 of §7-14D-9(a) of this code.

13 (b) “Accumulated contributions” means the sum of all
14 amounts deducted from the compensation of a member, or
15 paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this
16 code, either pursuant to §7-14D-7 of this code or §5-10-29
17 of this code as a result of covered employment together with
18 regular interest on the deducted amounts.

19 (c) “Active member” means a member who is active and
20 contributing to the plan.

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

28 (e) “Actuarial equivalent” means a benefit of equal
29 value computed upon the basis of the mortality table and
30 interest rates as set and adopted by the retirement board in
31 accordance with the provisions of this article: *Provided*,

32 That when used in the context of compliance with the
33 federal maximum benefit requirements of Section 415 of the
34 Internal Revenue Code, “actuarial equivalent” shall be
35 computed using the mortality tables and interest rates
36 required to comply with those requirements.

37 (f) “Annual compensation” means the wages paid to the
38 member during covered employment within the meaning of
39 Section 3401(a) of the Internal Revenue Code, but
40 determined without regard to any rules that limit the
41 remuneration included in wages based upon the nature or
42 location of employment or services performed during the
43 plan year plus amounts excluded under Section 414(h)(2) of
44 the Internal Revenue Code and less reimbursements or other
45 expense allowances, cash, or noncash fringe benefits or
46 both, deferred compensation, and welfare benefits. Annual
47 compensation for determining benefits during any
48 determination period may not exceed the maximum
49 compensation allowed as adjusted for cost of living in
50 accordance with §5-10D-7 of this code and Section
51 401(a)(17) of the Internal Revenue Code.

52 (g) “Annual leave service” means accrued annual leave.

53 (h) “Annuity starting date” means the first day of the
54 first calendar month following receipt of the retirement
55 application by the board or the required beginning date, if
56 earlier: *Provided*, That the member has ceased covered
57 employment and reached early or normal retirement age.

58 (i) “Base salary” means a member’s cash compensation
59 exclusive of overtime from covered employment during the
60 last 12 months of employment. Until a member has worked
61 12 months, annualized base salary is used as base salary.

62 (j) “Board” means the Consolidated Public Retirement
63 Board created pursuant to §5-10D-1 *et seq.* of this code.

64 (k) “County commission” has the meaning ascribed to
65 it in §7-1-1 of this code.

66 (l) “Covered employment” means either: (1)
67 Employment as a deputy sheriff and the active performance
68 of the duties required of a deputy sheriff; (2) the period of
69 time which active duties are not performed but disability
70 benefits are received under §7-14D-14 or §7-14D-15 of this
71 code; or (3) concurrent employment by a deputy sheriff in a
72 job or jobs in addition to his or her employment as a deputy
73 sheriff where the secondary employment requires the
74 deputy sheriff to be a member of another retirement system
75 which is administered by the Consolidated Public
76 Retirement Board pursuant to §5-10D-1 *et seq.* of this code:
77 *Provided*, That the deputy sheriff contributes to the fund
78 created in §7-14D-6 of this code the amount specified as the
79 deputy sheriff’s contribution in §7-14D-7 of this code.

80 (m) “Credited service” means the sum of a member’s
81 years of service, active military duty, disability service, and
82 annual leave service.

83 (n) “Deputy sheriff” means an individual employed as a
84 county law-enforcement deputy sheriff in this state and as
85 defined by §7-14-2 of this code.

86 (o) “Dependent child” means either:

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

88 (A) A natural child of the member;

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

90 (C) A child who at the time of the member’s death was
91 living with the member while the member was an adopting
92 parent during any period of probation; or

93 (D) A stepchild of the member residing in the member’s
94 household at the time of the member’s death; or

95 (2) Any unmarried child under age 23:

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

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

101 (C) Whose relationship with the member is described in
102 subparagraph (A), (B), or (C), paragraph (1) of this
103 subdivision.

104 (p) "Dependent parent" means the father or mother of
105 the member who was claimed as a dependent by the member
106 for federal income tax purposes at the time of the member's
107 death.

108 (q) "Disability service" means service credit received by
109 a member, expressed in whole years, fractions thereof or
110 both, equal to one half of the whole years, fractions thereof,
111 or both, during which time a member receives disability
112 benefits under §7-14D-14 or §7-14D-15 of this code.

113 (r) "Early retirement age" means age 40 or over and
114 completion of 20 years of service.

115 (s) "Employer error" means an omission,
116 misrepresentation, or violation of relevant provisions of the
117 West Virginia Code or of the West Virginia Code of State
118 Rules or the relevant provisions of both the West Virginia
119 Code and of the West Virginia Code of State Rules by the
120 participating public employer that has resulted in an
121 underpayment or overpayment of contributions required. A
122 deliberate act contrary to the provisions of this section by a
123 participating public employer does not constitute employer
124 error.

125 (t) "Effective date" means July 1, 1998.

126 (u) "Final average salary" means the average of the
127 highest annual compensation received for covered
128 employment by the member during any five consecutive

129 plan years within the member's last 10 years of service. If
130 the member did not have annual compensation for the five
131 full plan years preceding the member's attainment of
132 normal retirement age and during that period the member
133 received disability benefits under §7-14D-14 or §7-14D-15
134 of this code then "final average salary" means the average
135 of the monthly salary determined paid to the member during
136 that period as determined under §7-14D-17 of this code
137 multiplied by 12.

138 (v) "Fund" means the West Virginia Deputy Sheriff
139 Retirement Fund created pursuant to §7-14D-6 of this code.

140 (w) "Hour of service" means:

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

146 (2) Each hour for which a member is paid or entitled to
147 payment for covered employment during a plan year but
148 where no duties are performed due to vacation, holiday,
149 illness, incapacity including disability, layoff, jury duty,
150 military duty, leave of absence, or any combination thereof
151 and without regard to whether the employment relationship
152 has terminated. Hours under this paragraph shall be
153 calculated and credited pursuant to West Virginia Division
154 of Labor rules. A member will not be credited with any
155 hours of service for any period of time he or she is receiving
156 benefits under §7-14D-14 or §7-14D-15 of this code; and

157 (3) Each hour for which back pay is either awarded or
158 agreed to be paid by the employing county commission,
159 irrespective of mitigation of damages. The same hours of
160 service shall not be credited both under this paragraph and
161 paragraph (1) or (2) of this subdivision. Hours under this
162 paragraph shall be credited to the member for the plan year
163 or years to which the award or agreement pertains rather

164 than the plan year in which the award, agreement, or
165 payment is made.

166 (x) “Member” means a person first hired as a deputy
167 sheriff after the effective date of this article, as defined in
168 subdivision (t) of this section, or a deputy sheriff first hired
169 prior to the effective date and who elects to become a
170 member pursuant to §7-14D-5 or §7-14D-17 of this code.
171 A member shall remain a member until the benefits to which
172 he or she is entitled under this article are paid or forfeited or
173 until cessation of membership pursuant to §7-14D-5 of this
174 code.

175 (y) “Monthly salary” means the portion of a member’s
176 annual compensation which is paid to him or her per month.

177 (z) “Normal form” means a monthly annuity which is
178 one twelfth of the amount of the member’s accrued benefit
179 which is payable for the member’s life. If the member dies
180 before the sum of the payments he or she receives equals his
181 or her accumulated contributions on the annuity starting
182 date, the named beneficiary shall receive in one lump sum
183 the difference between the accumulated contributions at the
184 annuity starting date and the total of the retirement income
185 payments made to the member.

186 (aa) “Normal retirement age” means the first to occur of
187 the following: (1) Attainment of age 50 years and the
188 completion of 20 or more years of service; (2) while still in
189 covered employment, attainment of at least age 50 years,
190 and when the sum of current age plus years of service equals
191 or exceeds 70 years; (3) while still in covered employment,
192 attainment of at least age 60 years, and completion of five
193 years of service; or (4) attainment of age 62 years and
194 completion of five or more years of service.

195 (bb) “Partially disabled” means a member’s inability to
196 engage in the duties of deputy sheriff by reason of any
197 medically determinable physical or mental impairment that
198 can be expected to result in death or that has lasted or can

199 be expected to last for a continuous period of not less than
200 12 months. A member may be determined partially disabled
201 for the purposes of this article and maintain the ability to
202 engage in other gainful employment which exists within the
203 state but which ability would not enable him or her to earn
204 an amount at least equal to two thirds of the average annual
205 compensation earned by all active members of this plan
206 during the plan year ending as of the most recent June 30,
207 as of which plan data has been assembled and used for the
208 actuarial valuation of the plan.

209 (cc) “Public Employees Retirement System” means the
210 West Virginia Public Employees Retirement System
211 created by §5-10-1 *et seq.* of this code.

212 (dd) “Plan” means the West Virginia Deputy Sheriff
213 Death, Disability, and Retirement Plan established by this
214 article.

215 (ee) “Plan year” means the 12-month period
216 commencing on July 1 of any designated year and ending
217 the following June 30.

218 (ff) “Qualified public safety employee” means any
219 employee of a participating state or political subdivision
220 who provides police protection, fire-fighting services, or
221 emergency medical services for any area within the
222 jurisdiction of the state or political subdivision, or such
223 other meaning given to the term by Section 72(t)(10)(B) of
224 the Internal Revenue Code or by Treasury Regulation
225 §1.401(a)-1(b)(2)(v) as they may be amended from time to
226 time.

227 (gg) “Regular interest” means the rate or rates of interest
228 per annum, compounded annually, as the board adopts in
229 accordance with the provisions of this article.

230 (hh) “Required beginning date” means April 1 of the
231 calendar year following the later of: (i) The calendar year in
232 which the member attains age 70 and one half; or (ii) the

233 calendar year in which he or she retires or otherwise
234 separates from covered employment.

235 (ii) “Retire” or “retirement” means a member’s
236 withdrawal from the employ of a participating public
237 employer and the commencement of an annuity by the plan.

238 (jj) “Retirement income payments” means the annual
239 retirement income payments payable under the plan.

240 (kk) “Spouse” means the person to whom the member
241 is legally married on the annuity starting date.

242 (ll) “Surviving spouse” means the person to whom the
243 member was legally married at the time of the member’s
244 death and who survived the member.

245 (mm) “Totally disabled” means a member’s inability to
246 engage in substantial gainful activity by reason of any
247 medically determined physical or mental impairment that
248 can be expected to result in death or that has lasted or can
249 be expected to last for a continuous period of not less than
250 12 months. For purposes of this subdivision:

251 (1) A member is totally disabled only if his or her
252 physical or mental impairment or impairments are so severe
253 that he or she is not only unable to perform his or her
254 previous work as a deputy sheriff but also cannot,
255 considering his or her age, education and work experience,
256 engage in any other kind of substantial gainful employment
257 which exists in the state regardless of whether: (A) The
258 work exists in the immediate area in which the member
259 lives; (B) a specific job vacancy exists; or (C) the member
260 would be hired if he or she applied for work.

261 (2) “Physical or mental impairment” is an impairment
262 that results from an anatomical, physiological, or
263 psychological abnormality that is demonstrated by
264 medically accepted clinical and laboratory diagnostic
265 techniques. A member’s receipt of Social Security

266 disability benefits creates a rebuttable presumption that the
 267 member is totally disabled for purposes of this plan.
 268 Substantial gainful employment rebuts the presumption of
 269 total disability.

270 (nn) "Year of service". — A member shall, except in his
 271 or her first and last years of covered employment, be
 272 credited with year of service credit based upon the hours of
 273 service performed as covered employment and credited to
 274 the member during the plan year based upon the following
 275 schedule:

| 276 | Hours of Service | Years of Service Credited |
|-----|------------------|---------------------------|
| 277 | Less than 500 | 0 |
| 278 | 500 to 999 | 1/3 |
| 279 | 1,000 to 1,499 | 2/3 |
| 280 | 1,500 or more | 1 |

281 During a member's first and last years of covered
 282 employment, the member shall be credited with one twelfth
 283 of a year of service for each month during the plan year in
 284 which the member is credited with an hour of service. A
 285 member is not entitled to credit for years of service for any
 286 time period during which he or she received disability
 287 payments under §7-14D-14 or §7-14D-15 of this code.
 288 Except as specifically excluded, years of service include
 289 covered employment prior to the effective date. Years of
 290 service which are credited to a member prior to his or her
 291 receipt of accumulated contributions upon termination of
 292 employment pursuant to §7-14D-13 or §5-10-30 of this
 293 code, shall be disregarded for all purposes under this plan
 294 unless the member repays the accumulated contributions
 295 with interest pursuant to §7-14D-13 of this code or had prior
 296 to the effective date made the repayment pursuant to §5-10-
 297 18 of this code.



CHAPTER 53

**(Com. Sub. for H. B. 2654 - By Delegates Statler,
Miley, E. Evans, Pethel, Williams, Upson and Frich)**

[Passed March 3, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding county commissions' ability to dispose of county or district property; adding the ability of county commissions to dispose of such property to an authority, commission, instrumentality, or agency established by act of the State of West Virginia or any of its political subdivisions; noting that such sales are not required to be made considering the property's present commercial or market value; setting a minimum value for such sales; revising the requirement that property conveyed to volunteer fire department or volunteer ambulance service, or to an authority, commission, instrumentality, or agency, reverts back to county commission following termination of use; and, to provide that such reversionary right may be disclaimed in a deed by the county commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. COUNTY PROPERTY.

§7-3-3. Sale of county or district property.

- 1 (a) Except as may be prohibited by law or otherwise, the
- 2 county commission of a county is authorized by law to sell
- 3 or dispose of any property, either real or personal, belonging
- 4 to the county or held by it for the use of any district thereof.
- 5 The property shall be sold either at an on-site public auction
- 6 or by utilizing an Internet-based public auction service, and

7 such sale shall be conducted by the president of the county
8 commission, but before making any such sale, notice of the
9 time, terms, manner and either the location of the sale or
10 the Internet-based public auction service to be utilized,
11 together with a brief description of the property to be sold,
12 shall be published as a Class II legal advertisement in
13 compliance with the provisions of article three, chapter
14 fifty-nine of this code, and the publication area for such
15 publication shall be the county: *Provided*, That this section
16 shall not apply to the sale of any one item of property of less
17 value than \$1,000.

18 (b) The provisions of subsection (a) of this section
19 concerning sale at public auction shall not apply to a county
20 commission selling or disposing of its property for a public
21 use to:

22 (1) The United States of America, its instrumentalities,
23 agencies or political subdivisions;

24 (2) The State of West Virginia, or its political
25 subdivisions, including county boards of education,
26 volunteer fire departments, and volunteer ambulance
27 services; or

28 (3) Any authority, commission, instrumentality, or
29 agency established by act of the State of West Virginia or
30 any of its political subdivisions.

31 (4) For all sales made pursuant to this subsection,
32 county commissions are not required to exclusively
33 consider the present commercial or market value of the
34 property; and

35 (5) A sale under the provisions of this subsection shall
36 not be for less than \$1.

37 (c) For all real property conveyed or sold by a county
38 commission to a volunteer fire department, volunteer
39 ambulance service, or any other authority, commission,
40 instrumentality, or agency, under the provisions of

41 subsection (b) of this section, such real property shall revert
42 back to the county commission if the volunteer fire
43 department, volunteer ambulance service, authority,
44 commission, instrumentality, or agency proposes to dispose
45 of the property, unless the county commission explicitly
46 disclaims this reversionary right in writing in the deed of
47 conveyance.



CHAPTER 54

(Com. Sub. for S. B. 528 - By Senator Trump)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended, relating to providing for an additional circuit court judge for the nineteenth judicial circuit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following judicial
2 circuits with the following number of judges:

3 (1) The counties of Brooke, Hancock, and Ohio shall
4 constitute the first circuit and shall have four judges;

5 (2) The counties of Marshall, Tyler, and Wetzel shall
6 constitute the second circuit and shall have two judges;

7 (3) The counties of Doddridge, Pleasants, and Ritchie
8 shall constitute the third circuit and shall have one judge;

9 (4) The counties of Wood and Wirt shall constitute the
10 fourth circuit and shall have three judges;

11 (5) The counties of Calhoun, Jackson, Mason, and
12 Roane shall constitute the fifth circuit and shall have two
13 judges: *Provided*, That effective January 1, 2017, said
14 circuit court shall have three judges; said additional circuit
15 judge to be elected at the regularly scheduled election(s) to
16 be held in the year 2016 and every eighth year thereafter;

17 (6) The county of Cabell shall constitute the sixth circuit
18 and shall have four judges;

19 (7) The county of Logan shall constitute the seventh
20 circuit and shall have two judges;

21 (8) The county of McDowell shall constitute the eighth
22 circuit and shall have two judges;

23 (9) The county of Mercer shall constitute the ninth
24 circuit and shall have three judges;

25 (10) The county of Raleigh shall constitute the tenth
26 circuit and shall have three judges: *Provided*, That effective
27 January 1, 2017, said circuit court shall have four judges;
28 said additional circuit judge to be elected at the regularly
29 scheduled election(s) to be held in the year 2016 and every
30 eighth year thereafter;

31 (11) The counties of Greenbrier and Pocahontas shall
32 constitute the eleventh circuit and shall have two judges;

33 (12) The county of Fayette shall constitute the twelfth
34 circuit and shall have two judges;

35 (13) The county of Kanawha shall constitute the
36 thirteenth circuit and shall have seven judges;

37 (14) The counties of Braxton, Clay, Gilmer, and
38 Webster shall constitute the fourteenth circuit and shall have
39 two judges;

40 (15) The county of Harrison shall constitute the fifteenth
41 circuit and shall have three judges;

42 (16) The county of Marion shall constitute the sixteenth
43 circuit and shall have two judges;

44 (17) The county of Monongalia shall constitute the
45 seventeenth circuit and shall have three judges;

46 (18) The county of Preston shall constitute the
47 eighteenth circuit and shall have one judge;

48 (19) The counties of Barbour and Taylor shall constitute
49 the nineteenth circuit and shall have one judge: *Provided*,
50 That effective January 1, 2019, said circuit court shall have
51 two judges; said additional circuit judge to be appointed by
52 the Governor and subsequently elected at the next scheduled
53 primary election to be held in 2020 for the unexpired term
54 pursuant to §3-10-3 of this code: *Provided, however*, That
55 said additional circuit judge shall thereafter be elected at the
56 regularly scheduled election(s) to be held in the year 2024
57 and every eighth year thereafter;

58 (20) The county of Randolph shall constitute the
59 twentieth circuit and shall have one judge;

60 (21) The counties of Grant, Mineral, and Tucker shall
61 constitute the twenty-first circuit and shall have two judges;

62 (22) The counties of Hampshire, Hardy, and Pendleton
63 shall constitute the twenty-second circuit and shall have two
64 judges;

65 (23) The counties of Berkeley, Jefferson, and Morgan
66 shall constitute the twenty-third circuit and shall have five
67 judges: *Provided*, That effective January 1, 2017, said
68 circuit court shall have six judges; said additional circuit

69 judge to be elected at the regularly scheduled election(s) to
70 be held in the year 2016 and every eighth year thereafter;

71 (24) The county of Wayne shall constitute the twenty-
72 fourth circuit and shall have two judges;

73 (25) The counties of Lincoln and Boone shall constitute
74 the twenty-fifth circuit and shall have two judges;

75 (26) The counties of Lewis and Upshur shall constitute
76 the twenty-sixth circuit and shall have one judge: *Provided*,
77 That effective January 1, 2017, said circuit court shall have
78 two judges; said additional circuit judge to be elected at the
79 regularly scheduled election(s) to be held in the year 2016
80 and every eighth year thereafter;

81 (27) The county of Wyoming shall constitute the
82 twenty-seventh circuit and shall have one judge;

83 (28) The county of Nicholas shall constitute the twenty-
84 eighth circuit and shall have one judge;

85 (29) The county of Putnam shall constitute the twenty-
86 ninth circuit and shall have two judges;

87 (30) The county of Mingo shall constitute the thirtieth
88 circuit and shall have one judge; and

89 (31) The counties of Monroe and Summers shall
90 constitute the thirty-first circuit and shall have one judge.

91 (b) The Kanawha County circuit court shall be a court
92 of concurrent jurisdiction with each single judge circuit
93 where the sitting judge in the single judge circuit is
94 unavailable by reason of sickness, vacation, or other reason.

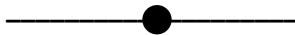
95 (c) Any judge in office on the effective date of the
96 reenactment of this section shall continue as a judge of the
97 circuit as constituted under prior enactments of this section,
98 unless sooner removed or retired as provided by law, until
99 December 31, 2016.

100 (d) The term of office of all circuit court judges shall be
101 for eight years. The term of office for all circuit court judges
102 elected during an election conducted in the year 2016 shall
103 commence on January 1, 2017, and end on December 31,
104 2024.

105 (e) For election purposes, in every judicial circuit having
106 two or more judges there shall be numbered divisions
107 corresponding to the number of circuit judges in each circuit.
108 Each judge shall be elected at large from the entire circuit. In
109 each numbered division of a judicial circuit, the candidates for
110 nomination or election shall be voted upon, and the votes cast
111 for the candidates in each division shall be tallied separately
112 from the votes cast for candidates in other numbered divisions
113 within the circuit. The candidate receiving the highest number
114 of the votes cast within a numbered division shall be
115 nominated or elected, as the case may be.

116 (f) Judges serving a judicial circuit comprised of four or
117 more counties with two or more judges shall not be residents
118 of the same county.

119 (g) The Supreme Court of Appeals shall, by rule,
120 establish the terms of court of circuit judges.



CHAPTER 55

(Com. Sub. for H. B. 4036 - By Delegate Cowles)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §51-2A-6 of the Code of West Virginia, 1931, relating generally to salaries of family court employees; and increasing the maximum salaries of family case coordinators and secretary-clerks.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. FAMILY COURTS.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

1 (a) A family court judge is entitled to receive as
2 compensation for his or her services an annual salary of
3 \$62,500: *Provided*, That beginning July 1, 2005, a family
4 court judge is entitled to receive as compensation for his or
5 her services an annual salary of \$82,500: *Provided*,
6 *however*, That beginning July 1, 2011, the annual salary of
7 a family court judge shall be \$94,500.

8 (b) The secretary-clerk of the family court judge is
9 appointed by the family court judge and serves at his or her
10 will and pleasure. The secretary-clerk of the family court
11 judge is entitled to receive an annual salary of \$27,036:
12 *Provided*, That on and after July 1, 2006, the annual salary
13 of the secretary-clerk shall be established by the
14 administrative director of the Supreme Court of Appeals,
15 but may not exceed \$39,000. In addition, any person
16 employed as a secretary-clerk to a family court judge on the
17 effective date of the enactment of this section during the
18 sixth extraordinary session of the Legislature in the year
19 2001 who is receiving an additional \$500 per year up to ten
20 years of a certain period of prior employment under the
21 provisions of the prior enactment of §51-2A-8 of this during
22 the second extraordinary session of the Legislature in the
23 year 1999 shall continue to receive such additional amount.
24 Further, the secretary-clerk will receive such percentage or
25 proportional salary increases as may be provided by general
26 law for other public employees and is entitled to receive the
27 annual incremental salary increase as provided in §5-5-1 *et*
28 *seq.* of this code.

29 (c) The family court judge may employ not more than
30 one family case coordinator who serves at his or her will and
31 pleasure. The annual salary of the family case coordinator

32 of the family court judge shall be established by the
33 Administrative Director of the Supreme Court of Appeals
34 but may not exceed \$36,000: *Provided*, That on and after
35 July 1, 2006, the annual salary of the family case
36 coordinator of the family court judge may not exceed
37 \$51,000. The family case coordinator will receive such
38 percentage or proportional salary increases as may be
39 provided by general law for other public employees and is
40 entitled to receive the annual incremental salary increase as
41 provided in §5-5-1 *et seq.* of this code.

42 (d) The sheriff or his or her designated deputy shall
43 serve as a bailiff for a family court judge. The sheriff of each
44 county shall serve or designate persons to serve so as to
45 assure that a bailiff is available when a family court judge
46 determines the same is necessary for the orderly and
47 efficient conduct of the business of the family court.

48 (e) Disbursement of salaries for family court judges and
49 members of their staffs are made by or pursuant to the order
50 of the Director of the Administrative Office of the Supreme
51 Court of Appeals.

52 (f) Family court judges and members of their staffs are
53 allowed their actual and necessary expenses incurred in the
54 performance of their duties. The expenses and
55 compensation will be determined and paid by the Director
56 of the Administrative Office of the Supreme Court of
57 Appeals under such guidelines as he or she may prescribe,
58 as approved by the Supreme Court of Appeals.

59 (g) Notwithstanding any other provision of law, family
60 court judges are not eligible to participate in the retirement
61 system for judges under the provisions of §51-9-1 *et seq.* of
62 this code.

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CHAPTER 56

(Com. Sub. for S. B. 37 - By Senators Woelfel, Trump and Ojeda)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §61-3-11 of the Code of West Virginia, 1931, as amended, relating to the crime of burglary; eliminating the offense of daytime burglary; making breaking and entering or entering without breaking into a dwelling or outbuilding thereof a felony regardless of time of day; and establishing the criminal penalty for burglary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-11. Burglary; entry of dwelling or outhouse; penalties.

1 (a) Any person who breaks and enters, or enters without
2 breaking, a dwelling house or outbuilding adjoining a
3 dwelling with the intent to commit a violation of the
4 criminal laws of this state is guilty of a felony and, upon
5 conviction thereof, shall be imprisoned in a state
6 correctional facility for not less than one nor more than 15
7 years.

8 (b) The term “dwelling house”, as used in §61-3-11(a)
9 of this code, includes, but is not limited to, a mobile home,
10 house trailer, modular home, factory-built home, or self-
11 propelled motor home, used as a dwelling regularly or only
12 from time to time, or any other nonmotorized vehicle
13 primarily designed for human habitation and occupancy and
14 used as a dwelling regularly or only from time to time.



CHAPTER 57

**(Com. Sub. for S. B. 327 - By Senators Weld, Boso,
Gaunch, Cline and Drennan)**

[Passed March 5, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §61-2-13 of the Code of West Virginia, 1931, as amended, relating to the crime of extortion; providing that extorting anything of value, including sexual contact, sexual intercourse, or an image of an intimate body part qualifies as extortion and subjects a person to a criminal penalty; defining terms; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-13. Extortion or attempted extortion by threats; penalties.

1 (a) A person who threatens injury to the character,
2 person, or property of another person, or to the character,
3 person, or property of his or her spouse or child, or accuses
4 him or her or them of a criminal offense, and thereby obtains
5 anything of value, or other consideration, he or she is guilty
6 of a felony and, upon conviction, shall be confined in a
7 correctional facility not less than one nor more than five
8 years. A person who makes such threat of injury or
9 accusation of an offense as set forth in this section, but fails
10 to obtain anything of value or other consideration, is guilty
11 of a misdemeanor and, upon conviction, shall be confined
12 in jail not less than two nor more than 12 months and fined
13 not less than \$50 nor more than \$500.

14 (b) For purposes of this article, “consideration” includes
15 sexual acts as defined in §61-8B-1 of this code, and images
16 of intimate parts defined in §61-8-28a of this code.

CHAPTER 58

**(Com. Sub. for S. B. 397 - By Senators Sypolt,
Facemire, Romano and Cline)**

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-15-9, relating to making it a misdemeanor to impersonate a person who is blind or disabled; making it a misdemeanor for a person to fraudulently represent himself or herself to be the owner or trainer of a service animal; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. WHITE CANE LAW.

§5-15-9. Fraudulent representation; penalties.

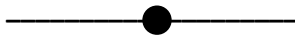
1 (a) Any person who falsely represents to another that he
2 or she is a person who is blind or a person with a disability
3 with the intent to obtain any right or privilege protected by
4 the provisions of §5-15-4 of this code is guilty of a
5 misdemeanor and upon conviction thereof shall be fined not
6 more than \$200 or confined in jail for not more than 10 days,
7 or both fined and confined.

8 (b) Any person who falsely represents that an animal is
9 a service animal in order to obtain any right or privilege
10 protected by the provisions of §5-15-4 of this code is guilty
11 of a misdemeanor and, upon conviction, shall be fined not

12 more than \$200 or confined in jail for not more than 10 days,
 13 or both fined and confined.

14 (c) Notwithstanding the penalty provisions of §5-15-
 15 9(a) or §5-15-9(b) of this code, any person convicted of a
 16 second or subsequent violation of §5-15-9(a) or §5-15-9(b)
 17 of this code shall be fined not more than \$1,000 or confined
 18 in jail for not more than 30 days, or both fined and confined.

19 (d) A right or privilege protected by the provisions of
 20 §5-15-4 of this code includes but is not limited to use of a
 21 service animal for assistance purposes.



CHAPTER 59

**(Com. Sub. for S. B. 574 - By Senators Weld and
 Cline)**

[Passed March 7, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
 by adding thereto a new section, designated §61-3-59, relating
 to creating the offense of misrepresentation of military status
 or honors with the intent to obtain money, property, or
 anything of value; and providing criminal penalties based
 upon value.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-59. Misrepresentation of past or present military status or military awards to obtain anything of value; penalties.

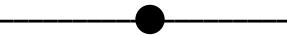
1 (a) Any person who misrepresents himself or herself to:

2 (1) Be a member or veteran of the armed forces of the
3 United States; or

4 (2) Be a recipient of any military commendation,
5 decoration, or medal awarded to members of the armed
6 forces of the United States or the several states who does so
7 with the intent to obtain money, property, or a thing of value
8 is guilty of the offense of misrepresentation of military
9 status.

10 (b)(1) Any person violating the provisions of §61-3-
11 59(a) of this code where the value of the money, property,
12 or thing of value is \$1,000 or more shall be guilty of a felony
13 and, upon conviction thereof, be fined not more than \$5,000,
14 or imprisoned in a state correctional facility for not less than
15 one nor more than 10 years, or both fined and imprisoned.

16 (2) Any person violating the provisions of §61-3-59(a)
17 of this code where the value of the money, property, or thing
18 of value is \$999 or less, shall be guilty of a misdemeanor
19 and, upon conviction thereof, shall be fined not more than
20 \$2,500, or confined in jail for not more than one year, or
21 both fined and confined.



CHAPTER 60

**(Com. Sub. for H. B. 2655 - By Delegates Upson,
Blair, Espinosa, Householder, Longstreth, Robinson,
Sobonya, Phillips, Hill and Higginbotham)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §61-3C-14c,
relating to creating the offense of cyberbullying of minors;

setting forth the essential elements of the offense; defining terms; providing exceptions; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-14c. Cyberbullying or specific acts of electronic harassment of minors; definitions; penalties; exceptions.

1 (a) It is unlawful for a person to knowingly and
2 intentionally use a computer or computer network, as
3 defined in §61-3C-3, to engage in conduct with the intent to
4 harass, intimidate, or bully a minor, including, but not
5 limited to:

6 (1) Posting, disseminating or encouraging others to post
7 or disseminate private, personal, or sexual information
8 pertaining to a minor on the Internet; or

9 (2) Posting obscene material, as defined in §61-3C-14a
10 of this code, in a real or doctored image of a minor on the
11 Internet;

12 (b) For the purposes of this section:

13 (1) “Harass, intimidate or bully” means any intentional
14 gesture, or any intentional electronic, written, verbal, or
15 physical act, communication, transmission or threat that:

16 (A) A reasonable person under the circumstances should
17 know the act will have the effect of any one or more of the
18 following:

19 (i) Physically harming a minor;

20 (ii) Damaging a minor’s property;

21 (iii) Placing a minor in reasonable fear of harm to his or
22 her person; or

23 (iv) Placing a minor in reasonable fear of damage to his
24 or her property; or

25 (B) Is sufficiently severe, persistent, or pervasive that it
26 creates an intimidating, threatening, or emotionally abusive
27 environment for a minor.

28 (2) "Minor" means an individual under the age of 18
29 years old.

30 (c) This section does not apply to a peaceful activity
31 intended to:

32 (i) Express a political view; or

33 (ii) Provide information to others with no intent to
34 harass, intimidate, or bully.

35 (d) Any person who violates this section is guilty of a
36 misdemeanor and, upon conviction thereof, shall be fined
37 not more than \$500 or confined in jail for a period not to
38 exceed one year, or both confined and fined.



CHAPTER 61

**(Com. Sub. for H. B. 3005 - By Delegates Fast,
Hanshaw, Overington, Kessinger and Gearheart)**

[Passed March 7, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §61-16-1 and §61-
16-2, all relating to regulation of unmanned aircraft systems;
defining terms; creating misdemeanor criminal offense for
certain conduct using an unmanned aircraft system and setting
penalties therefor; creating felony criminal offense for

operating an unmanned aircraft system equipped with a lethal weapon, creating an exception thereto for military purposes in an official capacity; and setting penalties therefor; creating felony criminal offense for operating an unmanned aircraft system with the intent to cause damage or disrupt in any way the flight of a manned aircraft and setting penalties therefor; and creating an exception for operating an unmanned aircraft system for commercial purposes that is authorized by the Federal Aviation Administration in a manner that is consistent with federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. USE OF UNMANNED AIRCRAFT SYSTEMS.

§61-16-1. Definitions.

1 As used in this article:

2 (1) “Aircraft” means any device now known or
3 subsequently invented, used, or designed for flight in the air,
4 including, but not limited to, unmanned aircraft vehicles or
5 systems;

6 (2) “Unmanned aircraft system” or “system” means an
7 aircraft that is operated without direct human intervention
8 from inside or on the aircraft and includes the crewmember,
9 the associated support equipment, the control station, data
10 links, telemetry, communications, and navigation
11 equipment necessary to operate the unmanned aircraft,
12 including, but not limited to, drones;

13 (3) “Unmanned aircraft system operator” or “operator”
14 means a person exercising control over an unmanned
15 aircraft system during flight.

§61-16-2. Prohibited use of an unmanned aircraft system; criminal penalties.

1 (a) Except as authorized by the provisions of this article,
2 a person may not operate an unmanned aircraft system:

3 (1) To knowingly and intentionally capture or take
4 photographs, images, video, or audio of another person or
5 the private property of another, without the other person's
6 permission, in a manner that would invade the individual's
7 reasonable expectation of privacy, including, but not limited
8 to, capturing, or recording through a window;

9 (2) To knowingly and intentionally view, follow, or
10 contact another person or the private property of another
11 without the other person's permission in a manner that
12 would invade the individual's reasonable expectation of
13 privacy, including, but not limited to, viewing, following, or
14 contacting through a window;

15 (3) To knowingly and intentionally harass another
16 person;

17 (4) To violate a restraining order or similar judicial
18 order;

19 (5) To act with a willful wanton disregard for the safety
20 of persons or property; or

21 (6) To knowingly and intentionally operate an
22 unmanned aircraft system in a manner that interferes with
23 the official duties of law enforcement personnel or
24 emergency medical personnel.

25 (b) Any person violating the provisions of subsection (a)
26 of this section is guilty of a misdemeanor and, upon
27 conviction thereof, shall be fined not less than \$100 nor
28 more than \$1,000 or confined in jail for not more than one
29 year, or both fined and confined.

30 (c) Any person who equips an unmanned aircraft system
31 with any deadly weapon or operates any unmanned aircraft
32 system equipped with any deadly weapon, other than for
33 military in an official capacity, is guilty of a felony and,
34 upon conviction thereof, shall be fined not less than \$1,000
35 nor more than \$5,000 or imprisoned in a state correctional
36 facility for not less than one nor more than five years, or
37 both fined and imprisoned.

38 (d) Any person who operates an unmanned aircraft
39 system with the intent to cause damage to or disrupt in any
40 way the flight of a manned aircraft is guilty of a felony and,
41 upon conviction thereof, shall be fined not less than \$1,000
42 nor more than \$5,000 imprisoned for not less than one nor
43 more than five years, or both fined and imprisoned.

44 (e) A person that is authorized by the Federal Aviation
45 Administration to operate unmanned aircraft systems for
46 commercial purposes may operate an unmanned aircraft
47 system in this state for such purposes if the unmanned
48 aircraft system is operated in a manner consistent with
49 federal law.

CHAPTER 62

**(Com. Sub. for S. B. 469 - By Senators Weld, Boso,
Unger, Ferns, Maroney, Clements and Cline)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §62-15A-1, §62-15A-2, and §62-15A-3 of the Code of West Virginia, 1931, as amended, all relating to converting the Addiction Treatment Pilot Program into a permanent program; placing the program under the control of the Department of Military Affairs and Public Safety; permitting certain funding to come from a combination of sources; and requiring reports to be submitted annually.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. ADDICTION TREATMENT PROGRAM.

§62-15A-1. Definitions.

1 As used in this article:

2 “Addiction service provider” means a person licensed
3 by this state to provide addiction and substance abuse
4 services to persons addicted to opioids.

5 “Adult drug court judge” means a circuit court judge
6 operating a drug court as defined in §62-15-2 of this code.

7 “Adult Drug Court Program” means an adult treatment
8 court established by the Supreme Court of Appeals of West
9 Virginia pursuant to this article and §62-15-1 *et seq.* of this
10 code.

11 “Authority” means the Regional Jail and Correctional
12 Facility Authority.

13 “Circuit court” means those courts set forth in §51-2-1
14 *et seq.* of this code.

15 “Court” means the Supreme Court of Appeals of West
16 Virginia.

17 “Department” means the Department of Military Affairs
18 and Public Safety.

19 “Division” means the Division of Corrections.

20 “LS/CMI assessment criteria” means the level of
21 service/case management inventory which is an assessment
22 tool that measures the risk and need factors of adult
23 offenders.

24 “Medication-assisted treatment” means the use of
25 medications, in combination with counseling and behavioral
26 therapies, to provide a whole-patient approach to the
27 treatment of substance use disorders.

28 “Prescriber” means an individual currently licensed and
29 authorized by this state to prescribe and administer
30 prescription drugs in the course of their professional
31 practice.

§62-15A-2. The Department of Military Affairs and Public Safety Drug Addiction Treatment Program.

1 (a) *The Department of Military Affairs and Public*
2 *Safety Program.* –

3 (1) The secretary of the department shall establish a
4 program to provide addiction treatment, including
5 medication-assisted treatment, to persons who are offenders
6 within the criminal justice system, eligible to participate in
7 a program, and selected under this section to be participants
8 in the program because of their dependence on opioids.

9 (2) In the case of the medication-assisted treatment
10 provided under the program, a drug may be used only if it
11 has been approved by the United States Food and Drug
12 Administration for use in the prevention of relapse to opioid
13 dependence and in conjunction with psychosocial support,
14 provided as part of the program, appropriate to patient
15 needs.

16 (3) The department may limit the number of
17 participants.

18 (b) *Court program.* –

19 (1) If the court's adult drug court program participates
20 in a drug addiction program, the court shall select persons
21 who are participants in the Adult Drug Court program, who
22 have been clinically assessed and diagnosed with opioid
23 addiction. Participants must either be eligible for Medicaid
24 or eligible for a state, federal, or private grant or other
25 funding source or combination of sources that provides for
26 the full or partial payment of the treatment necessary to
27 participate in the program. After being enrolled in the
28 program, participants shall comply with all requirements of
29 the adult drug court program.

30 (2) Treatment may be provided under this subsection
31 only by a treatment provider who is approved by the court
32 or adult drug court program consistent with the policies and

33 procedures for adult drug courts developed by the court. In
34 serving as a treatment provider, a treatment services
35 provider shall do all of the following:

36 (A) Provide treatment based on an integrated service
37 delivery model that consists of the coordination of care
38 between a prescriber and the addiction services provider;

39 (B) Conduct any necessary additional professional,
40 comprehensive substance abuse and mental health
41 diagnostic assessments of persons under consideration for
42 selection as pilot program participants to determine whether
43 they would benefit from substance abuse treatment and
44 monitoring;

45 (C) Determine, based on the assessments described in
46 §62-15A-2(b)(2)(B) of this code the treatment needs of the
47 participants served by the treatment provider;

48 (D) Develop, for the participants served by the treatment
49 provider, individualized goals and objectives;

50 (E) Provide access to the non-narcotic, long-acting
51 antagonist therapy included in the pilot program's
52 medication-assisted treatment; and

53 (F) Provide other types of therapies, including
54 psychosocial therapies, for both substance abuse and any
55 disorders that are considered by the treatment provider to be
56 co-occurring disorders.

57 (c) (1) The Division of Corrections shall select persons,
58 within the custody of the Division of Corrections, who are
59 determined to be at high risk using the LS/CMI assessment
60 criteria to participate in the program. Participants must
61 either be eligible for Medicaid or eligible for a state, federal,
62 or private grant or other funding source or combination of
63 sources that provide for the full or partial payment of the
64 treatment necessary to participate in the program. After
65 being enrolled in the program, a participant shall comply
66 with all requirements of the treatment program.

67 (2) A participant shall:

68 (A) Receive treatment based on an integrated service
69 delivery model that consists of the coordination of care
70 between a prescriber and the addiction services provider;

71 (B) Submit to professional, comprehensive substance
72 abuse and mental health diagnostic assessments to
73 determine whether the participant would benefit from
74 substance abuse treatment and monitoring;

75 (C) Receive, based on the assessments described in §62-
76 15A-2(b)(2)(B) of this code, the treatment needs of the
77 participants served by the treatment provider;

78 (D) Submit to the treatment provider individualized
79 goals and objectives;

80 (E) Receive the non-narcotic, long-acting antagonist
81 therapy included in the program's medication-assisted
82 treatment; and

83 (F) Participate in other types of therapies, including
84 psychosocial therapies, for both substance abuse and any
85 disorders that are considered by the treatment provider to be
86 co-occurring disorders.

87 (d) (1) The Regional Jail and Correctional Facility
88 Authority shall select only persons who are serving a
89 sentence for a felony or misdemeanor who are determined
90 to be at high risk using the LS/CMI assessment criteria for
91 the pilot program. Participants must either be eligible for
92 Medicaid or eligible for a state, federal, or private grant or
93 other funding source or combination of sources that
94 provides for the full or partial payment of the treatment
95 necessary to participate in the program. After being
96 enrolled in the program, a participant shall comply with all
97 requirements of the treatment program.

98 (2) A participant shall:

99 (A) Receive treatment based on an integrated service
100 delivery model that consists of the coordination of care
101 between a prescriber and the addiction services provider;

102 (B) Submit to professional, comprehensive substance
103 abuse and mental health diagnostic assessments to
104 determine whether the person would benefit from substance
105 abuse treatment and monitoring;

106 (C) Receive, based on the assessments described in §62-
107 15A-2(b)(2)(B) of this code, the treatment needs of the
108 participants served by the treatment provider;

109 (D) Submit to the treatment provider individualized
110 goals and objectives;

111 (E) Receive the non-narcotic, long-acting antagonist
112 therapy included in the program's medication-assisted
113 treatment; and

114 (F) Participate in other types of therapies, including
115 psychosocial therapies, for both substance abuse and any
116 disorders that are considered by the treatment provider to be
117 co-occurring disorders.

118 (3) If a participant begins participation in the treatment
119 pilot program while in the custody of the Commissioner of
120 Corrections, but is confined in a regional jail and transferred
121 to a Division of Corrections facility before completing the
122 treatment program, the Division of Corrections shall ensure
123 that the participant's treatment under the program will
124 continue and that upon successful completion the
125 participant shall receive credit off his or her sentence as
126 would have occurred had he or she remained in the authority
127 facility until successful completion.

§62-15A-3. Annual reports.

1 (a) The department and the court shall prepare a report
2 annually.

3 (b) The report shall include:

4 (1) Number of participants;

5 (2) Number of participants successfully completing the
6 program;

7 (3) Offenses committed or offense convicted of;

8 (4) Recidivism rate;

9 (5) Potential cost saving or expenditures;

10 (6) A statistical analysis which determines the
11 effectiveness of the program; and

12 (7) Any other information the reporting entity finds
13 pertinent.

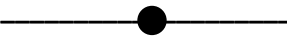
14 (c) The department shall submit the report to:

15 (1) The Governor;

16 (2) The Chief Justice of the Supreme Court of Appeals
17 of West Virginia; and

18 (3) The Joint Committee on Government and Finance.

19 (d) The report shall be submitted by July 1, 2019, and
20 annually thereafter.



CHAPTER 63

**(Com. Sub. for H. B. 4276 - By Delegates Canestraro,
Hanshaw, Shott, Isner, R. Miller, Robinson and
Frich)**

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §62-11A-1 of the Code of West Virginia, 1931, as amended, relating to allowing magistrates to grant work release privileges.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1. Release for work and other purposes by courts of record with criminal jurisdiction.

1 (a) When a defendant is sentenced or committed for a
2 term of one year or less by a court of record having criminal
3 jurisdiction, the court may in its order grant to the defendant
4 the privilege of leaving the jail during necessary and
5 reasonable hours for any of the following purposes:

6 (1) To work at his or her employment;

7 (2) To seek employment;

8 (3) To conduct his or her own business or to engage in
9 other self-employment, including housekeeping and
10 attending to the needs of his or her family;

11 (4) To attend an educational institution;

12 (5) To obtain medical treatment;

13 (6) To devote time to any other purpose approved of or
14 ordered by the court, including participation in the litter
15 control program of the county unless the court specifically
16 finds that this alternative service would be inappropriate.

17 (b) When a defendant is sentenced or committed for a
18 term of one year or less by a magistrate of the state of West
19 Virginia having criminal jurisdiction, the court may in its
20 order grant to the defendant the privilege of leaving the jail
21 during necessary and reasonable hours to work at his or her
22 employment.

23 (c) Whenever an inmate who has been granted the
24 privilege of leaving the jail under this section is not engaged
25 in the activity for which the leave is granted, he or she shall
26 be confined in jail.

27 (d) An inmate sentenced to ordinary confinement may
28 petition the court at any time after sentence for the privilege
29 of leaving jail under this section and may renew his or her
30 petition in the discretion of the court. The court may
31 withdraw the privilege at any time by order entered with or
32 without notice.

33 (e) If the inmate has been granted permission to leave
34 the jail to seek or take employment, the court's probation
35 officers or, if none, the jail shall assist him or her in
36 obtaining suitable employment and in making certain that
37 employment already obtained is suitable. Employment shall
38 not be deemed suitable if the wages or working conditions
39 or other circumstances present a danger of exploitation or of
40 interference in a labor dispute in the establishment in which
41 the inmate would be employed.

42 (f) An inmate who is serving his or her sentence
43 pursuant to this section shall be eligible for a reduction of
44 his or her term for good behavior and faithful performance
45 of duties in the same manner as if he or she had served his
46 or her term in ordinary confinement.

47 (g) The court shall not make an order granting the
48 privilege of leaving the institution under this section unless
49 it is satisfied that there are adequate facilities for the
50 administration of such privilege in the jail or other
51 institution in which the defendant will be confined.

52 (h) In every case wherein the defendant has been
53 convicted of an offense, defined in section twelve, article
54 eight, chapter sixty-one of this code or in article eight-b or
55 eight-d of said chapter against a child, the defendant shall
56 not live in the same residence as any minor child, nor
57 exercise visitation with any minor child and shall have no
58 contact with the victim of the offense: *Provided*, That the
59 defendant may petition the court of the circuit wherein he or
60 she was so convicted for a modification of this term and
61 condition of this probation and the burden shall rest upon
62 the defendant to demonstrate that a modification is in the
63 best interest of the child.



CHAPTER 64

**(Com. Sub. for H. B. 4502 - By Delegates Barrett,
Kessinger, Moore, Sobonya, R. Miller, Lovejoy,
Canestraro and Harshbarger)**

[Passed March 7, 2018; in effect ninety days from passage.]

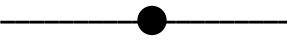
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §62-1D-8 of the Code of West Virginia, 1931, as amended, relating to including treason, murder, certain degrees of robbery, certain felony sexual offenses, and organized criminal activity to the list of offenses for which a prosecutor may apply for an order authorizing interception of communications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.**§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.**

1 The prosecuting attorney of any county or duly
2 appointed special prosecutor may apply to one of the
3 designated circuit judges referred to in §62-1D-7 of this
4 code and the judge, in accordance with the provisions of this
5 article, may grant an order authorizing the interception of
6 wire, oral, or electronic communications by an officer of the
7 investigative or law-enforcement agency when the
8 prosecuting attorney or special prosecutor has shown
9 reasonable cause to believe the interception would provide
10 evidence of the commission of: (1) Kidnapping or abduction
11 as defined and prohibited by the provisions of §61-2-14 and
12 §61-2-14a of this code and including threats to kidnap or
13 demand ransom as defined and prohibited by the provisions
14 of §61-2-14c of this code; (2) any offense included and
15 prohibited by §25-4-11 of said code, §61-5-8, §61-5-9 and
16 §61-5-10 or §62-8-1 of this code to the extent that any of
17 said sections provide for offenses punishable as a felony; (3)
18 felony violations of §60A-1-101 *et seq.* of this code; (4)
19 violations of §61-14-1 *et seq.* of this code; (5) violations of
20 §61-2-1 of this code; (6) violations of §61-2-12 of this code;
21 (7) felony violations of §61-8B-1 *et seq.* of this code; (8)
22 violations of §61-1-1 of this code; (9) violations of §61-13-
23 3 of this code; or (10) any aider or abettor to any of the
24 offenses referenced in this section or any conspiracy to
25 commit any of the offenses referenced in this section if any
26 aider, abettor, or conspirator is a party to the communication
27 to be intercepted.



CHAPTER 65

(Com. Sub. for S. B. 51 - By Senators Gaunch and Cline)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §48-6-301 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-9-205 and §48-9-206 of said code, all relating to domestic relations; removing language related to child support from code section governing the awarding of spousal support and separate maintenance; directing court to consider certain factors to decide amount and duration of spousal support and separate maintenance; removing the 24-month time frame for a description of the allocation of caretaking and other parenting responsibilities performed from the matters contained in permanent parenting plan; clarifying that the court may accommodate the preferences of a child 14 years of age and older if the court determines it is in the best interests of the child; directing court to allocate custodial responsibility so that custodial time spent with each parent achieves certain objectives; directing courts to consider which parent will encourage and accept a positive relationship between child and other parent and which parent is more likely to keep other parent involved in child's life and activities; and allowing court to consider allocation of custodial responsibility arising from temporary agreements in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. PROPERTY SETTLEMENT OR SEPARATION AGREEMENTS.

PART III. RELIEF IN ABSENCE OF AGREEMENT.

§48-6-301. Factors considered in awarding spousal support and separate maintenance.

1 (a) In cases where the parties to an action commenced
2 under the provisions of this article have not executed a
3 separation agreement, or have executed an agreement which
4 is incomplete or insufficient to resolve the outstanding
5 issues between the parties, or where the court finds the
6 separation agreement of the parties not to be fair and
7 reasonable or clear and unambiguous, the court shall
8 proceed to resolve the issues outstanding between the
9 parties.

10 (b) The court shall consider the following factors in
11 determining the amount and duration of spousal support and
12 separate maintenance, if any, to be ordered under the
13 provisions of parts V and VI, §48-5-1 *et seq.* of this code as
14 a supplement to or in lieu of the separation agreement:

15 (1) The length of time the parties were married;

16 (2) The period of time during the marriage when the
17 parties actually lived together as husband and wife;

18 (3) The present employment income and other recurring
19 earnings of each party from any source;

20 (4) The income-earning abilities of each of the parties,
21 based upon such factors as educational background,
22 training, employment skills, work experience, length of
23 absence from the job market, and custodial responsibilities
24 for children;

25 (5) The distribution of marital property to be made
26 under the terms of a separation agreement or by the court
27 under the provisions of §48-7-6 *et seq.* of this code, insofar
28 as the distribution affects or will affect the earnings of the
29 parties and their ability to pay or their need to receive
30 spousal support and separate maintenance: *Provided*, That
31 for the purposes of determining a spouse's ability to pay
32 spousal support, the court may not consider the income

33 generated by property allocated to the payor spouse in
34 connection with the division of marital property unless the
35 court makes specific findings that a failure to consider
36 income from the allocated property would result in
37 substantial inequity;

38 (6) The ages and the physical, mental, and emotional
39 condition of each party;

40 (7) The educational qualifications of each party;

41 (8) Whether either party has foregone or postponed
42 economic, education, or employment opportunities during
43 the course of the marriage;

44 (9) The standard of living established during the
45 marriage;

46 (10) The likelihood that the party seeking spousal
47 support and separate maintenance can substantially increase
48 his or her income-earning abilities within a reasonable time
49 by acquiring additional education or training;

50 (11) Any financial or other contribution made by either
51 party to the education, training, vocational skills, career, or
52 earning capacity of the other party;

53 (12) The anticipated expense of obtaining the education
54 and training described in §48-6-301(b)(10) of this code;

55 (13) The costs of educating minor children;

56 (14) The costs of providing health care for each of the
57 parties and their minor children;

58 (15) The tax consequences to each party;

59 (16) The extent to which it would be inappropriate for a
60 party, because that party will be the custodian of a minor
61 child or children, to seek employment outside the home;

62 (17) The financial need of each party;

63 (18) The legal obligations of each party to support
64 himself or herself and to support any other person;

65 (19) Costs and care associated with a minor or adult
66 child's physical or mental disabilities; and

67 (20) Any other factors as the court determines necessary
68 or appropriate to consider in order to arrive at a fair and
69 equitable grant of spousal support and separate
70 maintenance.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

***§48-9-205. Permanent parenting plan.**

1 (a) A party seeking a judicial allocation of custodial
2 responsibility or decision-making responsibility under this
3 article shall file a proposed parenting plan with the court.
4 Parties may file a joint plan. A proposed plan shall be
5 verified and shall state, to the extent known or reasonably
6 discoverable by the filing party or parties:

7 (1) The name, address, and length of residence of any
8 adults with whom the child has lived for one year or more,
9 or in the case of a child less than one year of age, any adults
10 with whom the child has lived since the child's birth;

11 (2) The name and address of each of the child's parents
12 and any other individuals with standing to participate in the
13 action under §48-9-103 of this code;

14 (3) A description of the allocation of caretaking and
15 other parenting responsibilities performed by each person
16 named in §48-9-205(a)(1) and §48-9-205(a)(2) of this code;

17 (4) A description of the work and child-care schedules
18 of any person seeking an allocation of custodial
19 responsibility and any expected changes to these schedules
20 in the near future;

*NOTE: This section was also amended by H. B. 4020 (Chapter 37),
which passed prior to this act.

21 (5) A description of the child's school and
22 extracurricular activities;

23 (6) A description of any of the limiting factors as
24 described in §48-9-209 of this code that are present,
25 including any restraining orders against either parent to
26 prevent domestic or family violence, by case number and
27 jurisdiction;

28 (7) Required financial information; and

29 (8) A description of the known areas of agreement and
30 disagreement with any other parenting plan submitted in the
31 case.

32 The court shall maintain the confidentiality of any
33 information required to be filed under this section when the
34 person giving that information has a reasonable fear of
35 domestic abuse, and disclosure of the information would
36 increase that fear.

37 (b) The court shall develop a process to identify cases in
38 which there is credible information that child abuse or
39 neglect as defined in §49-1-201 of this code or domestic
40 violence as defined in §48-27-202 of this code has occurred.
41 The process shall include assistance for possible victims of
42 domestic abuse in complying with §48-9-205(a)(6) of this
43 code and referral to appropriate resources for safe shelter,
44 counseling, safety planning, information regarding the
45 potential impact of domestic abuse on children, and
46 information regarding civil and criminal remedies for
47 domestic abuse. The process shall also include a system for
48 ensuring that jointly submitted parenting plans that are filed
49 in cases in which there is credible information that child
50 abuse or domestic abuse has occurred receive the court
51 review that is mandated by §48-9-202(b) of this code.

52 (c) Upon motion of a party and after consideration of the
53 evidence, the court shall order a parenting plan consistent

54 with the provisions of §48-9-206 through §48-9-209 of this
55 code, containing:

56 (1) A provision for the child's living arrangements and
57 each parent's custodial responsibility, which shall include
58 either:

59 (A) A custodial schedule that designates in which
60 parent's home each minor child will reside on given days of
61 the year; or

62 (B) A formula or method for determining a schedule in
63 sufficient detail that, if necessary, the schedule can be
64 enforced in subsequent proceedings by the court;

65 (2) An allocation of decision-making responsibility as
66 to significant matters reasonably likely to arise with respect
67 to the child;

68 (3) A provision consistent with §48-9-202 of this code
69 for resolution of disputes that arise under the plan and
70 remedies for violations of the plan; and

71 (4) A plan for the custody of the child should one or both
72 of the parents as a member of the National Guard, a reserve
73 component, or an active duty component be mobilized,
74 deployed, or called to active duty.

75 (d) A parenting plan may, at the court's discretion,
76 contain provisions that address matters that are expected to
77 arise in the event of a party's relocation, or provide for
78 future modifications in the parenting plan if specified
79 contingencies occur.

§48-9-206. Allocation of custodial responsibility.

1 (a) Unless otherwise resolved by agreement of the
2 parents under §48-9-201 of this code or unless harmful to
3 the child, the court shall allocate custodial responsibility so
4 that, except to the extent required under §48-9-209 of this

5 code, the custodial time the child spends with each parent
6 may be expected to achieve any of the following objectives:

7 (1) To permit the child to have a meaningful relationship
8 with each parent who has performed a reasonable share of
9 parenting functions;

10 (2) To accommodate, if the court determines it is in the
11 best interests of the child, the firm and reasonable
12 preferences of a child who is 14 years of age or older, and
13 with regard to a child under 14 years of age, but sufficiently
14 matured that he or she can intelligently express a voluntary
15 preference for one parent, to give that preference the weight
16 warranted by the circumstances;

17 (3) To keep siblings together when the court finds that
18 doing so is necessary to their welfare;

19 (4) To protect the child's welfare when, under an
20 otherwise appropriate allocation, the child would be harmed
21 because of a gross disparity in the quality of the emotional
22 attachments between each parent and the child, or in each
23 parent's demonstrated ability or availability to meet a
24 child's needs;

25 (5) To take into account any prior agreement of the
26 parents that, under the circumstances as a whole, including
27 the reasonable expectations of the parents in the interest of
28 the child, would be appropriate to consider;

29 (6) To avoid an allocation of custodial responsibility
30 that would be extremely impractical or that would interfere
31 substantially with the child's need for stability in light of
32 economic, physical, or other circumstances, including the
33 distance between the parents' residences, the cost and
34 difficulty of transporting the child, the parents' and child's
35 daily schedules, and the ability of the parents to cooperate
36 in the arrangement;

37 (7) To apply the principles set forth in §48-9-403(d) of
38 this code if one parent relocates or proposes to relocate at a

39 distance that will impair the ability of a parent to exercise
40 the amount of custodial responsibility that would otherwise
41 be ordered under this section;

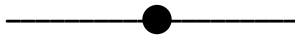
42 (8) To consider the stage of a child's development; and

43 (9) To consider which parent will encourage and accept
44 a positive relationship between the child and the other
45 parent, including which parent is more likely to keep the
46 other parent involved in the child's life and activities.

47 (b) The court may consider the allocation of custodial
48 responsibility arising from temporary agreements made by
49 the parties after separation if the court finds, by a
50 preponderance of the evidence, that such agreements were
51 consensual. The court shall afford those temporary
52 consensual agreements the weight the court believes the
53 agreements are entitled to receive, based upon the
54 evidence. The court may not consider the temporary
55 allocation of custodial responsibility imposed by a court
56 order on the parties.

57 (c) If the court is unable to allocate custodial
58 responsibility under §48-9-206(a) of this code because the
59 allocation under §48-9-206(a) of this code would be
60 harmful to the child, or because there is no history of past
61 performance of caretaking functions, as in the case of a
62 newborn, or because the history does not establish a pattern
63 of caretaking sufficiently dispositive of the issues of the
64 case, the court shall allocate custodial responsibility based
65 on the child's best interest, taking into account the factors
66 in considerations that are set forth in this section and in §48-
67 9-209 and §48-9-403(d) of this code and preserving to the
68 extent possible this section's priority on the share of past
69 caretaking functions each parent performed.

70 (d) In determining how to schedule the custodial time
71 allocated to each parent, the court shall take account of the
72 economic, physical, and other practical circumstances such
73 as those listed in §48-9-206(a)(6) of this code.



CHAPTER 66

**(Com. Sub. for H. B. 4546 - By Delegates Sobonya,
Frich, C. Romine, C. Miller, Rohrbach, Butler,
Summers, Pack, Hanshaw and Lovejoy)**

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §48-2-102 of the Code of West Virginia, 1931, as amended, relating to where marriage license applicants may apply for a marriage license in this state.

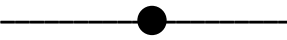
Be it enacted by the Legislature of West Virginia:

ARTICLE 2. MARRIAGES.

§48-2-102. Where an application for a marriage license may be made; when an application may be received and a license issued; application by mail.

1 (a) Applicants, regardless of their state or county
2 residency, may apply for a license to be issued by the clerk
3 of the county commission in any county in this state.

4 (b) Applications for licenses may be received and
5 licenses may be issued by the clerk of the county
6 commission when the office of the clerk is officially open
7 for the conduct of business.



CHAPTER 67

(Com. Sub. for H. B. 4558 - By Delegates Capito, Nelson and Frich)

[Passed March 9, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-16, relating to establishing the Entrepreneurship and Innovation Investment Fund in the West Virginia Development Office; and setting forth general structure of fund and distribution of funds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-16. Entrepreneurship and Innovation Investment Fund.

1 (a) The Entrepreneurship and Innovation Investment
2 Fund is hereby created. The fund shall be administered by
3 the West Virginia Development Office and shall consist of
4 all moneys made available for the purposes and from the
5 sources set forth in this section of the code.

6 (b) The fund consists of moneys received from the
7 following sources:

8 (1) All appropriations provided by the Legislature;

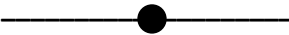
9 (2) Any moneys available from external sources; and

10 (3) All interest and other income earned from
11 investment of moneys in the fund.

12 (c) The West Virginia Development Office shall use
13 moneys in the fund to support entrepreneurship, creation of
14 business startups, improvements in workforce participation,
15 and attracting individuals to relocate to West Virginia.

16 (d) Any balance, including accrued interest and any
17 other returns, in the Entrepreneurship and Innovation
18 Investment Fund at the end of each fiscal year shall not
19 expire to the General Revenue Fund but remain in the fund
20 and be expended for the purposes provided by this section.

21 (e) Fund balances may be invested with the state's
22 Consolidated Investment Fund. Earnings on the investments
23 shall be used solely for the purposes defined in §5B-2-16(c)
24 of this code.



CHAPTER 68

(S. B. 62 - By Senator Prezioso)

[Passed February 14, 2018; in effect ninety days from passage.]

[Approved by the Governor on February 21, 2018.]

AN ACT to amend and reenact §18-8-3 of the Code of West Virginia, 1931, as amended, relating to school attendance directors; and adjusting requirements for hiring an attendance director.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

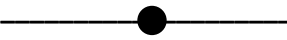
§18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.

1 (a) The county board of education of every county, no
2 later than August 1 of each year, shall employ the
3 equivalent of a full-time county director of school
4 attendance if such county has a net enrollment of more
5 than 4,000 pupils, at least a half-time director of school
6 attendance if such county has a net enrollment equal to or
7 less than 4,000 pupils and such assistant attendance
8 directors as deemed necessary. All persons to be
9 employed as attendance directors shall have the written
10 recommendation of the county superintendent.

11 (b) The county board of education may establish special
12 and professional qualifications for attendance directors and
13 assistants as are deemed expedient and proper and are
14 consistent with regulations of the State Board of Education
15 relating thereto: *Provided*, That if the position of attendance
16 director has been posted, the county may employ a person
17 who holds full attendance certification or a person who
18 holds a professional administrative certificate.

19 (c) The attendance director or assistant director shall be
20 paid a monthly salary as fixed by the county board. The
21 attendance director or assistant director shall prepare
22 attendance reports and such other reports as the county
23 superintendent may request.

24 (d) The county board of education shall reimburse the
25 attendance directors or assistant directors for their necessary
26 traveling expenses upon presentation of a monthly,
27 itemized, sworn statement approved by the county
28 superintendent.



CHAPTER 69

(Com. Sub. for S. B. 244 - By Senators Azinger and Rucker)

[Passed March 10, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to providing that it is unlawful to possess a firearm or other deadly weapon on a school bus, in or on the grounds of any primary or secondary educational facility of any type, or at certain school-sponsored functions; providing exception for in or on the grounds of any private primary or secondary school if the institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds thereof; setting forth the conditions under which a retired law-enforcement officer may possess a firearm or other deadly weapon on a school bus, in or on the grounds of any primary or secondary educational facility of any type, or at certain school-sponsored functions; excluding certain students from the exception that applies to a person specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes; and revising conditions for which certain persons holding a valid concealed handgun permit can possess a concealed handgun in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.

1 (a) The Legislature finds that the safety and welfare of
2 the citizens of this state are inextricably dependent upon
3 assurances of safety for children attending and persons
4 employed by schools in this state and for persons employed
5 by the judicial department of this state. It is for the purpose
6 of providing assurances of safety that §61-7-11a(b), §61-7-
7 11a(g), and §61-7-11a(h), of this code and §61-7-
8 11a(b)(2)(I) of this code are enacted as a reasonable
9 regulation of the manner in which citizens may exercise the
10 rights accorded to them pursuant to section 22, article III of
11 the Constitution of the State of West Virginia.

12 (b) (1) It is unlawful to possess a firearm or other deadly
13 weapon:

14 (A) On a school bus as defined in §17A-1-1 of this code;

15 (B) In or on the grounds of any primary or secondary
16 educational facility of any type: *Provided*, That it shall not
17 be unlawful to possess a firearm or other deadly weapon in
18 or on the grounds of any private primary or secondary
19 school, if such institution has adopted a written policy
20 allowing for possession of firearms or other deadly weapons
21 in the facility or on the grounds thereof;

22 (C) At a school-sponsored function that is taking place
23 in a specific area that is owned, rented, or leased by the West
24 Virginia Department of Education, the West Virginia
25 Secondary Schools Activities Commission, a county school
26 board, or local public school for the actual period of time
27 the function is occurring.

28 (2) This subsection does not apply to:

29 (A) A law-enforcement officer employed by a federal,
30 state, county, or municipal law-enforcement agency;

31 (B) Any probation officer appointed pursuant to §62-
32 12-5 or chapter 49 of this code in the performance of his or
33 her duties;

34 (C) A retired law-enforcement officer who meets all the
35 requirements to carry a firearm as a qualified retired law-
36 enforcement officer under the Law-Enforcement Officer
37 Safety Act of 2004, as amended, pursuant to 18 U.S.C.
38 §926C(c), carries that firearm in a concealed manner, and
39 has on their person official identification in accordance with
40 that act;

41 (D) A person, other than a student of a primary and
42 secondary facility, specifically authorized by the board of
43 education of the county or principal of the school where the
44 property is located to conduct programs with valid
45 educational purposes;

46 (E) A person who, as otherwise permitted by the
47 provisions of this article, possesses an unloaded firearm or
48 deadly weapon in a motor vehicle or leaves an unloaded
49 firearm or deadly weapon in a locked motor vehicle;

50 (F) Programs or raffles conducted with the approval of
51 the county board of education or school which include the
52 display of unloaded firearms;

53 (G) The official mascot of West Virginia University,
54 commonly known as the Mountaineer, acting in his or her
55 official capacity;

56 (H) The official mascot of Parkersburg South High
57 School, commonly known as the Patriot, acting in his or her
58 official capacity; or

59 (I) Any person, 21 years old or older, who has a valid
60 concealed handgun permit may possess a concealed
61 handgun while in a motor vehicle in a parking lot, traffic
62 circle, or other areas of vehicular ingress or egress to a
63 public school: *Provided, That:*

64 (i) When he or she is occupying the vehicle the person
65 stores the handgun out of view from persons outside the
66 vehicle; or

67 (ii) When he or she is not occupying the vehicle the
68 person stores the handgun out of view from persons outside
69 the vehicle, the vehicle is locked, and the handgun is in a
70 glove box or other interior compartment, or in a locked
71 trunk, or in a locked container securely fixed to the vehicle.

72 (3) A person violating this subsection is guilty of a
73 felony and, upon conviction thereof, shall be imprisoned in
74 a state correctional facility for a definite term of years of not
75 less than two years nor more than 10 years, or fined not
76 more than \$5,000, or both fined and imprisoned.

77 (c) A school principal subject to the authority of the
78 State Board of Education who discovers a violation of §61-
79 7-11a(b) of this code shall report the violation as soon as
80 possible to:

81 (1) The State Superintendent of Schools. The State
82 Board of Education shall keep and maintain these reports
83 and may prescribe rules establishing policy and procedures
84 for making and delivering the reports as required by this
85 subsection; and

86 (2) The appropriate local office of the State Police,
87 county sheriff or municipal police agency.

88 (d) In addition to the methods of disposition provided
89 by §49-5-1 *et seq.* of this code, a court which adjudicates a
90 person who is 14 years of age or older as delinquent for a
91 violation of §61-7-11a(b) of this code may order the
92 Division of Motor Vehicles to suspend a driver's license or
93 instruction permit issued to the person for a period of time
94 as the court considers appropriate, not to extend beyond the
95 person's nineteenth birthday. If the person has not been
96 issued a driver's license or instruction permit by this state,
97 a court may order the Division of Motor Vehicles to deny

98 the person's application for a license or permit for a period
99 of time as the court considers appropriate, not to extend
100 beyond the person's nineteenth birthday. A suspension
101 ordered by the court pursuant to this subsection is effective
102 upon the date of entry of the order. Where the court orders
103 the suspension of a driver's license or instruction permit
104 pursuant to this subsection, the court shall confiscate any
105 driver's license or instruction permit in the adjudicated
106 person's possession and forward to the Division of Motor
107 Vehicles.

108 (e)(1) If a person 18 years of age or older is convicted
109 of violating §61-7-11a(b) of this code and if the person does
110 not act to appeal the conviction within the time periods
111 described in §61-7-11a(e)(2) of this code, the person's
112 license or privilege to operate a motor vehicle in this state
113 shall be revoked in accordance with the provisions of this
114 section.

115 (2) The clerk of the court in which the person is
116 convicted as described in §61-7-11a(e)(1) of this code shall
117 forward to the commissioner a transcript of the judgment of
118 conviction. If the conviction is the judgment of a magistrate
119 court, the magistrate court clerk shall forward the transcript
120 when the person convicted has not requested an appeal
121 within 20 days of the sentencing for the conviction. If the
122 conviction is the judgment of a circuit court, the circuit clerk
123 shall forward a transcript of the judgment of conviction
124 when the person convicted has not filed a notice of intent to
125 file a petition for appeal or writ of error within 30 days after
126 the judgment was entered.

127 (3) If, upon examination of the transcript of the
128 judgment of conviction, the commissioner determines that
129 the person was convicted as described in §61-7-11a(e)(1) of
130 this code, the commissioner shall make and enter an order
131 revoking the person's license or privilege to operate a motor
132 vehicle in this state for a period of one year or, in the event
133 the person is a student enrolled in a secondary school, for a
134 period of one year or until the person's twentieth birthday,

135 whichever is the greater period. The order shall contain the
136 reasons for the revocation and the revocation period. The
137 order of suspension shall advise the person that because of
138 the receipt of the court's transcript, a presumption exists that
139 the person named in the order of suspension is the same
140 person named in the transcript. The commissioner may
141 grant an administrative hearing which substantially
142 complies with the requirements of the provisions of §17C-
143 5A-2 of this code upon a preliminary showing that a
144 possibility exists that the person named in the notice of
145 conviction is not the same person whose license is being
146 suspended. The request for hearing shall be made within 10
147 days after receipt of a copy of the order of suspension. The
148 sole purpose of this hearing is for the person requesting the
149 hearing to present evidence that he or she is not the person
150 named in the notice. If the commissioner grants an
151 administrative hearing, the commissioner shall stay the
152 license suspension pending the commissioner's order
153 resulting from the hearing.

154 (4) For the purposes of this subsection, a person is
155 convicted when he or she enters a plea of guilty or is found
156 guilty by a court or jury.

157 (f)(1) It is unlawful for a parent, guardian, or custodian
158 of a person less than 18 years of age who knows that the
159 person is in violation of §61-7-11a(b) of this code or has
160 reasonable cause to believe that the person's violation of
161 §61-7-11a(b) of this code is imminent to fail to immediately
162 report his or her knowledge or belief to the appropriate
163 school or law-enforcement officials.

164 (2) A person violating this subsection is guilty of a
165 misdemeanor and, upon conviction thereof, shall be fined
166 not more than \$1,000, or shall be confined in jail not more
167 than one year, or both fined and confined.

168 (g)(1) It is unlawful for a person to possess a firearm or
169 other deadly weapon on the premises of a court of law,
170 including family courts.

171 (2) This subsection does not apply to:

172 (A) A law-enforcement officer acting in his or her
173 official capacity; and

174 (B) A person exempted from the provisions of this
175 subsection by order of record entered by a court with
176 jurisdiction over the premises or offices.

177 (3) A person violating this subsection is guilty of a
178 misdemeanor and, upon conviction thereof, shall be fined
179 not more than \$1,000, or shall be confined in jail not more
180 than one year, or both fined and confined.

181 (h)(1) It is unlawful for a person to possess a firearm or
182 other deadly weapon on the premises of a court of law,
183 including family courts, with the intent to commit a crime.

184 (2) A person violating this subsection is guilty of a
185 felony and, upon conviction thereof, shall be imprisoned in
186 a state correctional facility for a definite term of years of not
187 less than two years nor more than 10 years, or fined not
188 more than \$5,000, or both fined and imprisoned.

189 (i) Nothing in this section may be construed to be in
190 conflict with the provisions of federal law.



CHAPTER 70

**(S. B. 364 - By Senators Mann, Karnes, Rucker,
Gaunch, Azinger, Swope, Takubo and Cline)**

[Passed March 2, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §18-8-11 of the Code of West Virginia, 1931, as amended, relating to allowing a parent or

legal guardian of a homeschooled child to provide a signed statement in lieu of a driver eligibility certificate by the attendance director or chief administrator affirming that the child is being educated in accordance with law, is making satisfactory academic progress, and meets certain conditions to be eligible to obtain a permit or license for operation of a motor vehicle.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

1 (a) In accordance with the provisions of §17B-2-3a and
2 §17B-2-5 of this code, the Division of Motor Vehicles shall
3 deny a license or instruction permit for the operation of a
4 motor vehicle to any person under the age of 18 who does
5 not at the time of application present a diploma or other
6 certificate of graduation issued to the person from a
7 secondary high school of this state or any other state or
8 documentation that the person: (1) Is enrolled and making
9 satisfactory progress in a course leading to a general
10 education development certificate (GED) from a state-
11 approved institution or organization or has obtained the
12 certificate; (2) is enrolled and is making satisfactory
13 academic progress in a secondary school of this state or any
14 other state; (3) is excused from the requirement due to
15 circumstances beyond his or her control; or (4) is enrolled
16 in an institution of higher education as a full-time student in
17 this state or any other state.

18 (b) The attendance director or chief administrator shall,
19 upon request, provide a driver's eligibility certificate on a
20 form approved by the Department of Education to any
21 student at least 15 but less than 18 years of age who is
22 properly enrolled and is making satisfactory academic
23 progress in a school under the jurisdiction of the official for

24 presentation to the Division of Motor Vehicles on
25 application for or reinstatement of an instruction permit or
26 license to operate a motor vehicle: *Provided*, That a parent
27 or legal guardian of a child who is being educated pursuant
28 to §18-8-1(c) of this code may provide a signed statement
29 in lieu of a driver eligibility certificate issued by the
30 attendance director or chief administrator affirming that the
31 child is being educated in accordance with law, is making
32 satisfactory academic progress, and meets the conditions to
33 be eligible to obtain any permit or license under this section.

34 (c) Whenever a student at least 15 but less than 18 years
35 of age, except as provided in §18-8-11(g) of this code,
36 withdraws from school, the attendance director or chief
37 administrator shall notify the Division of Motor Vehicles of
38 the student's withdrawal no later than five days from the
39 date of the withdrawal. Within five days of receipt of the
40 notice, the Division of Motor Vehicles shall send notice to
41 the student that the student's instruction permit or license to
42 operate a motor vehicle will be suspended under the
43 provisions of §17B-3-6 of this code on the thirtieth day
44 following the date the notice was sent unless documentation
45 of compliance with the provisions of this section is received
46 by the Division of Motor Vehicles before that time. The
47 notice shall also advise the student that he or she is entitled
48 to a hearing before the county superintendent of schools or
49 his or her designee or before the appropriate private school
50 official concerning whether the student's withdrawal from
51 school was due to a circumstance or circumstances beyond
52 the control of the student. If suspended, the division may not
53 reinstate an instruction permit or license until the student
54 returns to school and shows satisfactory academic progress
55 or until the student attains 18 years of age.

56 (d) Whenever a student at least 15 but less than 18 years
57 of age is enrolled in a secondary school and fails to maintain
58 satisfactory academic progress, the attendance director or
59 chief administrator shall follow the procedures set out in
60 §18-8-11(c) of this code to notify the Division of Motor

61 Vehicles. Within five days of receipt of the notice, the
62 Division of Motor Vehicles shall send notice to the student
63 that the student's instruction permit or license will be
64 suspended under the provisions of §17B-3-6 of this code on
65 the thirtieth day following the date the notice was sent
66 unless documentation of compliance with the provisions of
67 this section is received by the Division of Motor Vehicles
68 before that time. The notice shall also advise the student that
69 he or she is entitled to a hearing before the county
70 superintendent of schools or his or her designee or before
71 the appropriate private school official concerning whether
72 the student's failure to make satisfactory academic progress
73 was due to a circumstance or circumstances beyond the
74 control of the student. Once suspension is ordered, the
75 division may not reinstate an instruction permit or license
76 until the student shows satisfactory academic progress or
77 until the student attains 18 years of age.

78 (e) Upon written request of a student, within 10 days of
79 receipt of a notice of suspension as provided by this section,
80 the Division of Motor Vehicles shall afford the student the
81 opportunity for an administrative hearing. The scope of the
82 hearing shall be limited to determining if there is a question
83 of improper identity, incorrect age, or some other clerical
84 error.

85 (f) For the purposes of this section:

86 (1) Withdrawal is defined as more than 10 consecutive
87 or 15 total days unexcused absences during a school year,
88 or suspension pursuant to §18A-5-1a(a) and §18A-5-1a(b)
89 of this code.

90 (2) "Satisfactory academic progress" means the
91 attaining and maintaining of grades sufficient to allow for
92 graduation and course-work in an amount sufficient to allow
93 graduation in five years or by age 19, whichever is earlier.

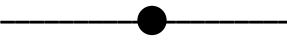
94 (3) "Circumstances outside the control of the student"
95 shall include, but not be limited to, medical reasons, familial

96 responsibilities and the necessity of supporting oneself or
97 another.

98 (4) Suspension or expulsion from school or
99 imprisonment in a jail or a West Virginia correctional
100 facility is not a circumstance beyond the control of the
101 student.

102 (g) Whenever the withdrawal from school of the
103 student, the student's failure to enroll in a course leading to
104 or to obtain a GED or high school diploma, or the student's
105 failure to make satisfactory academic progress is due to a
106 circumstance or circumstances beyond the control of the
107 student, or the withdrawal from school is for the purpose of
108 transfer to another school as confirmed in writing by the
109 student's parent or guardian, no notice shall be sent to the
110 Division of Motor Vehicles to suspend the student's motor
111 vehicle operator's license and if the student is applying for
112 a license, the attendance director or chief administrator shall
113 provide the student with documentation to present to the
114 Division of Motor Vehicles to excuse the student from the
115 provisions of this section. The school district superintendent
116 (or the appropriate school official of any private secondary
117 school) with the assistance of the county attendance director
118 and any other staff or school personnel shall be the sole
119 judge of whether any of the grounds for denial or suspension
120 of a license as provided by this section are due to a
121 circumstance or circumstances beyond the control of the
122 student.

123 (h) The state board shall promulgate rules necessary for
124 uniform implementation of this section among the counties
125 and as may otherwise be necessary for the implementation
126 of this section. The rule may not include attainment by a
127 student of any certain grade point average as a measure of
128 satisfactory progress toward graduation.



CHAPTER 71

(Com. Sub. for S. B. 561 - By Senator Jeffries)

[Passed March 5, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

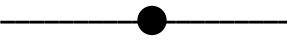
AN ACT to amend and reenact §18-5-12 of the Code of West Virginia, 1931, as amended, relating to increasing the minimum contract price that requires the execution of a bond with respect to the building or repairing of school property.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-12. Bond of contractors.

- 1 Boards shall require all persons contracting for the
- 2 building or repairing of school property, where the contract
- 3 exceeds \$25,000 to execute a bond, with approved security,
- 4 in the amount of the contract price.



CHAPTER 72

**(Com. Sub. for H. B. 3089 - By Delegates Espinosa,
Statler, Higginbotham, Upson, Cooper, Rowan,
Harshbarger and Dean)**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended; by adding thereto a new section, designated §18-2A-10, relating to the adoption of instructional resources for use in the public schools; providing for transition to new provisions for instructional resources adoption; defining instructional resources; providing for adoption cycle rule; requiring person, firm or corporation desiring to offer instructional resources for use by students to file statement containing and verifying certain information; requiring state board to provide list of vendors to counties; prohibiting county board from adopting or using instructional resources not in compliance; disqualification of person, firm or corporation for failure to honor terms of filing; supplementary resources exempted; requiring necessary instructional resources be furnished to students free of charge, including reasonable access to electronic resources; requiring county board policy on instructional resources adoption and specifying minimum provisions; and prohibiting board of education member or employee from acting as sales agents for person, firm or corporation filing statement with superintendent.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2A. ADOPTION OF INSTRUCTIONAL
RESOURCES.**

§18-2A-10. Transition to system of instructional resources adoption at county board level.

1 (a) The purpose of this section is to provide for a
2 transition to the county board level of the process for review
3 and adoption of instructional resources required to be used
4 in the schools under the jurisdiction of the county board.
5 Notwithstanding any other provision of this article to the
6 contrary, for instructional resources adopted by a county
7 board for use in the school year beginning July 1, 2019, and
8 successive school years, the provisions of sections one, two,
9 three, four, five, six, seven and eight of this article are
10 repealed to the extent that they are in conflict with the
11 provisions of this section: *Provided*, That nothing in this
12 section limits or prevents a county board from adopting
13 instructional resources approved and included on the state
14 multiple list under those provisions for the duration of the
15 adoption cycle if they choose to do so.

16 (b) As used in this section, “instructional resources”
17 means print materials, electronic resources and systems, or
18 combinations of such instructional resources which convey
19 information to a student that covers no less than eighty
20 percent the required content and skills approved by the state
21 board for subjects taught in the public schools of the state.

22 (c) The state board shall set by rule an adoption cycle
23 for instructional resources.

24 (d) Any person, firm or corporation desiring to offer
25 instructional resources for use by students in the public
26 schools of West Virginia shall, before the instructional
27 resources may be adopted and purchased by any county
28 board, file with the state superintendent, on or before
29 January 1 of each year, a statement containing and verifying
30 the following information:

31 (1) The instructional resources to be offered for
32 purchase meet the non-negotiable evaluation criteria
33 established by the state board;

34 (2) The instructional resources to be offered for
35 purchase by the vendor covers no less than eighty percent
36 of the required content and skills for the subject as approved
37 by the state board;

38 (3) The list wholesale price to county boards in West
39 Virginia for the specified instructional resource will be no
40 more than the lowest list wholesale price available to school
41 districts in any other state; and

42 (4) The list wholesale price filed for any specified
43 number of electronic files for any print instructional
44 resources the publisher offers with the print instructional
45 resources does not exceed the list wholesale price for the
46 same number of the printed version of the print instructional
47 resources.

48 (e) The state board shall annually provide to all county
49 boards of education a list of all vendors that have provided
50 a statement in accordance with subsection (d) of this
51 section.

52 (f) A county board may not adopt or cause to be used in
53 the public schools any instructional resource unless the
54 person, firm or corporation offering the instructional
55 resource for adoption or use has complied with this section,
56 except for the adoption of instructional resources approved
57 and included on the state multiple list as provided in
58 subsection (a) of this section.

59 (g) If a person, firm or corporation files a statement
60 under subsection (d) of this section and fails or refuses to
61 furnish the instructional resources to any county board in
62 accordance with the terms provided in the statement, the
63 board at once shall notify the state superintendent of the
64 failure or refusal. If the state superintendent finds the failure
65 or refusal to be true, the state superintendent shall disqualify
66 the person, firm or corporation and notify each county board
67 that its instructional resources may not thereafter be adopted

68 and purchased by any county board until the person, firm or
69 corporation is requalified.

70 (h) This section does not apply to the purchase of
71 supplementary instructional resources, including, but not
72 limited to, reading books, library books, reference books, or
73 any other books. These supplementary instructional
74 resources shall be ordered, received, examined, and paid for
75 in the same manner and by the same persons as other
76 supplies and equipment.

77 (i) Each county board shall furnish, free of charge, the
78 necessary instructional resources to the students attending
79 the public schools in that county. A county board that
80 chooses to furnish electronic instructional resources to its
81 students shall provide reasonable access to the electronic
82 resources and necessary computer equipment to students
83 required to complete homework assignments that require
84 using the resources and equipment and to teachers providing
85 these homework assignments. All instructional resources
86 furnished as provided in this section shall be the property of
87 the county board and loaned to students on terms as each
88 board prescribes.

89 (j) Every county board shall adopt a policy regarding the
90 adoption of instructional resources which shall include, at a
91 minimum, the following:

92 (1) The process for reviewing instructional resources to
93 ensure the resources meet the non-negotiable requirements
94 established by the state board and cover no less than eighty
95 percent of the required content and skills for a subject as
96 approved by the state board: *Provided*, That a county board
97 may rely on an instructional material review completed by
98 the state department of education to fulfill this requirement;

99 (2) The composition, duties and responsibilities of the
100 county's instructional resource review committee;

101 (3) The process for recommending instructional
102 resources that are proposed for adoption;

103 (4) At a properly noticed meeting, the county board
104 shall determine by a majority vote of all members elected
105 which instructional resources shall be required in the
106 schools under its control; and

107 (5) The county board shall provide an annual report of
108 the instructional resources adopted to the state board of
109 education.

110 (k) A board of education member or employee may not
111 act as sales agent, either directly or indirectly, for any
112 person, firm, or corporation that files an instructional
113 resources statement with the state superintendent.



CHAPTER 73

**(H. B. 4183 - By Delegates Espinosa, R. Romine,
Upson, Higginbotham, Rohrbach, Kelly, Cooper,
Westfall and Dean)**

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §18-28-3 of the Code of West Virginia, 1931, as amended, relating generally to testing requirements for nonpublic schools; requiring a nationally normed standardized achievement test be administered at the same grade levels and in the same subject areas as required in the public schools; requiring test to be published or normed within the last ten years; requiring the student participation rate on the standardized achievement test be the same as that required in the public schools; removing exemption for nonpublic schools that exclusively teach special education

students or students with learning disabilities from provisions pertaining to accountability for the school's composite test results falling below the 40th percentile; requiring for those schools assessment to be made of students at the same grade levels and in the same subject areas as required in the public schools; allowing testing in additional subject areas or grade levels at sole discretion of school; and conforming provisions pertaining to accountability for a school's composite test results falling below the 40th percentile.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR SCHOOLS OF A RELIGIOUS ORDER.

§18-28-3. Standardized testing requirements.

1 (a) Each private, parochial or church school or school of
2 a religious order or other nonpublic school electing to
3 operate under this statute in lieu of the approval
4 requirements set forth as part of §18-8-1(b) of this code,
5 shall administer during each school year a nationally
6 normed standardized achievement test which test shall be
7 selected by the chief administrative officer of each school.
8 The test shall be administered to students at the same grade
9 levels and in the same subject areas as required in the public
10 schools of the state for administration of the state-wide
11 summative assessment. The selected test shall be published
12 or normed within the last ten years and shall be administered
13 under standardized conditions as set forth by the published
14 instructions of the selected test. The student participation
15 rate on the standardized achievement test must be the same
16 as that required in the public schools for a school's
17 composite score to be considered valid.

18 (b) Notwithstanding subsection (a) of this section, any
19 private, parochial, church school, school of a religious order
20 or other nonpublic school that exclusively teaches special
21 education students or children with learning disabilities
22 shall academically assess students by one or more of the

23 following methods: (1) A standardized group achievement
24 test; (2) a standardized individual achievement test; (3) a
25 written narrative of an evaluation of a portfolio of samples
26 of a child's work; (4) an alternative academic assessment of
27 the child's proficiency as mutually agreed by the county
28 superintendent, parent(s) or legal guardian(s) and the
29 school. The assessment shall be made of students at the
30 same grade levels and in the same subject areas as required
31 in the public schools of the state for administration of the
32 state-wide summative assessment.

33 (c) Nothing in this section prohibits a private parochial,
34 church school, school of a religious order or other nonpublic
35 school from administering standardized achievement tests
36 in additional subject areas or at additional grade levels as
37 they may choose at their sole discretion.

38 (d) Each child's testing or assessment results and the
39 school composite results shall be made available to the
40 child's parents or legal guardians. Upon request of a duly
41 authorized representative of the West Virginia Department
42 of Education, the school's composite results shall be
43 furnished by the school or by a parents organization
44 composed of the parents or guardians of children enrolled
45 in said school to the State Superintendent of Schools.

46 (e) Each school to which this article applies shall:

47 (1) Establish curriculum objectives, the attainment of
48 which will enable students to develop the potential for
49 becoming literate citizens.

50 (2) Provide an instructional program that will make
51 possible the acquisition of competencies necessary to
52 become a literate citizen.

53 (f) If the school's composite test results for any single year
54 fall below the fortieth percentile on the selected standardized
55 achievement test or a comparable level established by the state
56 board for assessment methods authorized pursuant to

57 subsection (b) of this section, the school shall initiate a
58 remedial program to foster achievement above that level. If
59 after two consecutive calendar years school composite test
60 results are not above the fortieth percentile or comparable
61 level, attendance at the school no longer satisfies the
62 compulsory school attendance requirement of §18-8-1(k) of
63 this code, until the percentile standards herein set forth are met.



CHAPTER 74

**(H. B. 4402 - By Delegates Espinosa, Statler, Moye,
Hornbuckle, Kelly, Rodighiero, Blair, Householder,
Higginbotham, Dean and Campbell)**

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §18-2-41, relating to the education and prevention of sexual abuse of children; mandating that children in grades K-12 receive sexual abuse education at least once during the academic year beginning July 1, 2019; requiring the State Board of Education to promulgate legislative rules to facilitate this process and develop resources by December 31, 2018; providing a list of minimum content for said legislative rules; requiring that the state board promulgate legislative rules for sexual abuse education and prevention training of public school employees by December 31, 2018; providing for an emergency rule, if necessary; providing a list of minimum content for said legislative rules; providing that said training be administered every two years; and providing additional requirements of said training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-41. Education and Prevention of the Sexual Abuse of Children.

1 (a) Education of children in grades K-12 — Beginning
2 July 1, 2019, children in grades K-12 shall receive body age-
3 appropriate safety information at least once per academic
4 school year, with a preference for four times per academic
5 year. To facilitate this process and develop resources, the
6 state board shall propose a legislative rule for promulgation,
7 in accordance with §29A-3b-1 *et seq.* of this code, by
8 December 31, 2018. The rule shall provide for at least the
9 following:

10 (1) Developmentally appropriate education and
11 resources;

12 (2) Social media usage and content;

13 (3) Implementation of best practices;

14 (4) Differing county and school sizes, demographics,
15 etc. relating to implementation strategies;

16 (5) Strategies for dealing with disclosures after student
17 education;

18 (6) Rules informed by family voice;

19 (7) Offender dynamics;

20 (8) Child-on-child scenarios;

21 (9) Rules on development of supplementary materials,
22 including posting of the child abuse hotline, to embed into
23 the school climate;

24 (10) Protocols for local crisis response in conjunction
25 with §18-9F-9 of this code.

26 (b) Training of public school employees. The state
27 board shall propose by December 31, 2018 a legislative rule
28 for promulgation in accordance with §29A-3b-1 *et seq.* of
29 this code, and if necessary may promulgate an emergency
30 rule in accordance with said article, for the establishment of

31 standards for training requirements of all public school
32 employees focused on developing skills, knowledge, and
33 capabilities related to preventing child sexual abuse and
34 recognizing and responding to suspected abuse and neglect.
35 The rule shall provide for at least the following:

36 (1) This required training shall include comprehensive
37 instruction and information to better equip schools and their
38 employees, including how to:

39 (A) Recognize sexually offending behaviors in adults,
40 questionable behaviors such as boundary violations, and
41 signs in adults that might indicate they pose a sexual risk to
42 children;

43 (B) Recognize, appropriately respond to, and prevent
44 sexually inappropriate, coercive, or abusive behaviors
45 among children and youth served by schools;

46 (C) Recognize behaviors and verbal cues that might
47 indicate a child or youth has been a victim of abuse or
48 neglect;

49 (D) Support the healthy development of children and
50 youth and the building of protective factors to mitigate
51 against their sexual victimization by adults or peers;

52 (E) Recognize and appropriately respond to student
53 infatuations and flirtations with adults in schools;

54 (F) Recognize appropriate and inappropriate social
55 media usage by adults and children;

56 (G) Provide consistent and standard protocols for
57 responding to disclosures of sexual abuse or reports of
58 boundary-violating behaviors by adults or children in a
59 supportive and appropriate manner which meet mandated
60 reporting requirements;

61 (H) Provide adequate understanding of the age-
62 appropriate, comprehensive, evidence-informed child
63 sexual abuse prevention education which will be offered to
64 their students; and

65 (I) Reflect the research on Adverse Childhood
66 Experiences (ACEs) and trauma-informed care.

67 (2) The rule shall contain provisions to ensure public
68 school employees complete the required training every two
69 years.

70 (A) The required training shall be at least a cumulative
71 four hours (half day) of instruction on the elements
72 identified in this section.

73 (B) A skills renewal is required every two years
74 thereafter.

75 (C) The mode of delivery for the trainings may include
76 in-person or e-learning instruction and may include a series
77 of trainings or modules.

78 (D) The state board shall provide certificates of
79 satisfactory completion for the employee and the employer
80 documenting the employee completed the required training.



CHAPTER 75

**(Com. Sub. for H. B. 4478 - By Delegates Lovejoy,
Rohrbach, Hanshaw, Hornbuckle, Williams, Byrd,
Canestraro, R. Miller, Robinson, Rowe and Isner)**

[Passed March 7, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5D-5, relating to authorizing public schools to distribute excess food to students and others who suffer from food insecurity; making findings and determination; establishing “The Shared Table” initiative; providing for State Board rule; minimum

contents of rule; consistency with health department and Food and Drug Administration requirements and guidelines; compliance and coverage under Good Samaritan Food Donation Act; and requiring county board establishment of program to assist and encourage school participation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.

§18-5D-5. Shared table initiative.

1 (a) The Legislature finds and determines that:

2 (1) In West Virginia, one in four children suffer from
3 food insecurity; however, every day each school has a large
4 percentage of food that is left uneaten and thrown away, and
5 in many cases this food can be reused;

6 (2) A new initiative called “The Shared Table”
7 encourages schools to collect unused food appropriate for
8 redistribution, and make that food available throughout the
9 day to students who may be hungry, to provide a method for
10 discrete distribution of that food to be taken home by kids
11 with food insecurity, and to donate any unused food to local
12 food pantries and other entities that distribute food to those
13 in need;

14 (3) This program has begun to catch on nationally and
15 has shown itself to be an effective way to distribute excess
16 school food;

17 (4) The Shared Table initiative can be as simple as
18 designating a table or location in the school for food to be
19 taken by students through the school day, and can also
20 provide a system of discretely placing food in containers in
21 student’s lockers each day to take home, and other creative
22 initiatives to promote consumption of unused food already
23 provided by schools to students and others who have food
24 insecurity at home; and

25 (5) The Shared Table initiative does not require school
26 cafeterias to produce extra food and is only intended to
27 promote the more effective consumption of existing food
28 particularly to students who may otherwise go without.
29 Similar initiatives have been implemented in various states
30 and have been very successful in safely distributing food
31 consistent with U.S. Food and Drug Administration and
32 local health agencies requirements.

33 Therefore, the purpose of this section is to establish a
34 statewide initiative to facilitate this worthwhile program.

35 (b) The state board shall promulgate a rule in
36 accordance with §29A-3B-1 *et seq.* of this code that
37 provides policy guidance to county boards on the
38 management and distribution of excess school food
39 consistent with state and county health department and
40 United States Food and Drug Administration requirements
41 and guidelines for the distribution of excess foods. The
42 guidance policy at a minimum shall provide a list of food
43 products and methodologies for distribution that include,
44 but are not limited to:

45 (1) The types of foods that may be distributed;

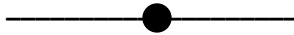
46 (2) Methods of distribution to make excess food
47 available at other times during the school day;

48 (3) Methods of distributing excess food to students to
49 consume after school; and

50 (4) Methods to otherwise donate excess food to persons
51 or organizations providing food to persons or families
52 suffering from food insecurity.

53 (c) The preparation, safety, and donation of food made
54 available to students during a regular school meal time and
55 donated to a food bank or any other nonprofit charitable
56 organization for distribution, shall comply with and be
57 thereby covered by the Good Samaritan Food Donation Act,
58 §55-7D-1 *et seq.* of this code.

- 59 (d) The methods of distributing excess food to students
60 within a school may include a sharing table where food
61 service staff, students and faculty may return appropriate
62 food items consistent with state board guidelines to make
63 those food items available to students during the school day.
- 64 (e) Each county board of education shall establish a
65 program to assist and encourage schools to participate in the
66 Shared Table initiative.



CHAPTER 76

**(Com. Sub. for H. B. 4619 - By Delegates Espinosa,
Statler, Upson, Folk, Cooper, Rohrbach, Atkinson
and Cowles)**

[Passed March 2, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §18-9A-10 of the Code of West Virginia, 1931, as amended, relating to supporting implementation of comprehensive systems for teacher and leader induction and professional growth; requiring amount of increase in local share to be added to preceding year appropriation for such purpose; providing factors to be taken into account in making allocations to counties; providing county may not receive less than the 2016-2017 allocation from certain line items; requiring moneys allocated to be used for implementation of comprehensive systems for teacher and leader induction and professional growth; and removing obsolete cross-references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs, instructional technology, and teacher and leader induction and professional growth.

1 (a) The total allowance to improve instructional
2 programs and instructional technology is the sum of the
3 following:

4 (1) For instructional improvement, in accordance with
5 county and school electronic strategic improvement plans
6 required by §18-2E-5 of this code, an amount equal to ten
7 percent of the increase in the local share amount for the next
8 school year shall be added to the amount of the
9 appropriation for this purpose for the immediately
10 preceding school year. The sum of these amounts shall be
11 allocated to the counties as follows:

12 (A) One hundred fifty thousand dollars shall be
13 allocated to each county; and

14 (B) Allocation to the counties of the remainder of these
15 funds shall be made proportional to the average of each
16 county's average daily attendance for the preceding year and
17 the county's second month net enrollment.

18 Moneys allocated by this subdivision shall be used to
19 improve instructional programs according to the county and
20 school strategic improvement plans required by §18-2E-5 of
21 this code and approved by the state board.

22 Up to fifty percent of this allocation for the
23 improvement of instructional programs may be used to
24 employ professional educators and service personnel in the
25 county. Prior to the use of any funds from this subdivision
26 for personnel costs, the county board must receive
27 authorization from the state superintendent. The state
28 superintendent shall require the county board to
29 demonstrate: (1) The need for the allocation; (2) efficiency
30 and fiscal responsibility in staffing; (3) sharing of services
31 with adjoining counties in the use of the total local district
32 board budget; and (4) employment of technology

33 integration specialists to meet the needs for implementation
34 of the West Virginia Strategic Technology Learning Plan.
35 County boards shall make application for the use of funds
36 for personnel for the next fiscal year by May 1 of each year.
37 On or before June 1, the state superintendent shall review
38 all applications and notify applying county boards of the
39 approval or disapproval of the use of funds for personnel
40 during the fiscal year appropriate. The state superintendent
41 shall require the county board to demonstrate the need for
42 an allocation for personnel based upon the county's inability
43 to meet the requirements of state law or state board policy.

44 The funds available for personnel under this subdivision
45 may not be used to increase the total number of professional
46 noninstructional personnel in the central office beyond four.

47 The plan shall be made available for distribution to the
48 public at the office of each affected county board; plus

49 (2) For the purposes of improving instructional
50 technology, an amount equal to twenty percent of the
51 increase in the local share amount for the next school year
52 shall be added to the amount of the appropriation for this
53 purpose for the immediately preceding school year. The
54 sum of these amounts shall be allocated to the counties as
55 follows:

56 (A) Thirty thousand dollars shall be allocated to each
57 county; and

58 (B) Allocation to the counties of the remainder of these
59 funds shall be made proportional to the average of each
60 county's average daily attendance for the preceding year and
61 the county's second month net enrollment.

62 Moneys allocated by this subdivision shall be used to
63 improve instructional technology programs according to the
64 county board's strategic technology learning plan.

65 This allocation for the improvement of instructional
66 technology programs may also be used for the employment

67 of technology system specialists essential for the technology
68 systems of the schools of the county to be fully functional
69 and readily available when needed by classroom teachers.
70 The amount of this allocation used for the employment of
71 technology system specialists shall be included and justified
72 in the county board's strategic technology learning plan;
73 plus

74 (3) One percent of the state average per pupil state aid
75 multiplied by the number of students enrolled in dual credit,
76 advanced placement and international baccalaureate
77 courses, as defined by the state board, distributed to the
78 counties proportionate to enrollment in these courses in
79 each county; plus

80 (4) For the purpose of supporting county-level
81 implementation of the comprehensive systems for teacher
82 and leader induction and professional growth pursuant to
83 §18A-3C-3 of this code, an amount equal to twenty percent
84 of the increase in the local share amount for the next school
85 year shall be added to the amount of the appropriation for
86 this purpose for the immediately preceding school year. The
87 sum of these amounts shall be allocated to the counties in a
88 manner established by the State Board which takes into
89 account the following factors:

90 (A) The number of full-time-equivalent teachers
91 employed by the county with zero years of experience;

92 (B) The total number of full-time-equivalent teachers
93 employed by the county with one year of experience, with
94 two years of experience and with three years of experience;

95 (C) The number of full-time-equivalent principals,
96 assistant principals and vocational administrators employed
97 by the county who are in their first or second year of
98 employment as a principal, assistant principal or vocational
99 administrator;

100 (D) The number of full-time-equivalent principals,
101 assistant principals and vocational administrators employed
102 by the county who are in their first year in an assignment at
103 a school with a programmatic level in which they have not
104 previously served as a principal, assistant principal or
105 vocational administrator; and

106 (E) Needs identified in the strategic plans for continuous
107 improvement of schools and school systems including those
108 identified through the performance evaluations of
109 professional personnel.

110 Notwithstanding any provision of this subsection to the
111 contrary, no county may receive an allocation for the
112 purposes of this subdivision which is less than the county's
113 total 2016-2017 allocation from the Teacher Mentor and
114 Principals Mentorship appropriations to the Department of
115 Education. Moneys allocated by this subdivision shall be
116 used for implementation of the comprehensive systems for
117 teacher and leader induction and professional growth
118 pursuant to §18A-3C-3 of this code; plus

119 (5) An amount not less than the amount required to meet
120 debt service requirements on any revenue bonds issued prior
121 to January 1, 1994, and the debt service requirements on any
122 revenue bonds issued for the purpose of refunding revenue
123 bonds issued prior to January 1, 1994, shall be paid by the
124 Department of Education in accordance with the
125 expenditure schedule approved by the state budget office
126 into the School Building Capital Improvements Fund
127 created by §18-9D-6 of this code and shall be used solely
128 for the purposes of that article. The School Building Capital
129 Improvements Fund shall not be utilized to meet the debt
130 services requirement on any revenue bonds or revenue
131 refunding bonds for which moneys contained within the
132 School Building Debt Service Fund have been pledged for
133 repayment pursuant to that section.

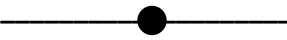
134 (b) Notwithstanding the restrictions on the use of funds
135 pursuant to subdivisions (1) and (2), subsection (a) of this
136 section, a county board may:

137 (1) Utilize up to twenty-five percent of the allocation for
138 the improvement of instructional programs in any school
139 year for school facility and equipment repair, maintenance
140 and improvement or replacement and other current expense
141 priorities and for emergency purposes. The amount of this
142 allocation used for any of these purposes shall be included
143 and justified in the county and school strategic improvement
144 plans or amendments thereto; and

145 (2) Utilize up to fifty percent of the allocation for
146 improving instructional technology in any school year for
147 school facility and equipment repair, maintenance and
148 improvement or replacement and other current expense
149 priorities and for emergency purposes. The amount of this
150 allocation used for any of these purposes shall be included
151 and justified in the county board's strategic technology
152 learning plan or amendments thereto.

153 (c) When the school improvement bonds secured by
154 funds from the School Building Capital Improvements Fund
155 mature, the State Board of Education shall annually deposit
156 an amount equal to \$24,000,000 from the funds allocated in
157 this section into the School Construction Fund created
158 pursuant to the provisions of §18-9D-6 of this code to
159 continue funding school facility construction and
160 improvements.

161 (d) Any project funded by the School Building
162 Authority shall be in accordance with a comprehensive
163 educational facility plan which must be approved by the
164 state board and the School Building Authority.



CHAPTER 77

**(S. B. 351 - By Senators Trump, Weld, Azinger,
Clements, Cline, Jeffries, Karnes, Maynard, Ojeda,
Romano, Rucker, Smith, Swope and Woelfel)**

[Passed March 5, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §3-1-19 of the Code of West Virginia, 1931, as amended, relating to ballot commissioners; and permitting ballot commissioners to serve while candidates for certain offices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-19. Ballot commissioners; selection; duties generally; vacancies.

1 (a) In each county in the state, the Board of Ballot
2 Commissioners shall be comprised of:

3 (1) The clerk of the county commission while holding
4 office; and

5 (2) Two other persons as follows:

6 (A) One person appointed by the county executive
7 committee of the political party that cast the largest number
8 of votes in the state at the last preceding general election;
9 and

10 (B) One person appointed by the county executive
11 committee of the political party that cast the second largest

12 number of votes in the state at the last preceding general
13 election.

14 (b) If the county executive committees do not make the
15 appointments in a timely manner, then the county clerk shall
16 make the appointments.

17 (c) The county clerk shall serve as chairman.

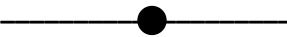
18 (d) The county clerk shall notify the chairman of the
19 respective county executive committees of the two parties,
20 at least five days before the time of the making of the
21 appointments.

22 (e) If at any time after notice is given, and before or on
23 the day so fixed for making appointments, the chairman of
24 each of the committees shall designate, in writing, a member
25 of his or her party as ballot commissioner. Each designee
26 shall be appointed if he or she meets the qualifications of a
27 voter: *Provided*, That a ballot commissioner cannot be a
28 candidate for any office in any election held during the time
29 he or she is serving as ballot commissioner, other than state,
30 county, or district executive committee or delegate to the
31 national convention of a political party.

32 (f) Ballot commissioners shall be appointed between
33 January 15 and January 30, in each year in which a general
34 election is to be held, for a term of two years beginning on
35 February 1 next ensuing.

36 (g) The ballot commissioners shall perform their duties
37 at all general, special, and primary elections held in the
38 county or any magisterial district thereof during their term
39 of office.

40 (h) A vacancy shall be filled in the same manner as an
41 original appointment, but immediate notice of a vacancy
42 shall, where necessary, be deemed in compliance with the
43 five-day notice provision.



CHAPTER 78

(Com. Sub. for S. B. 548 - By Senators Jeffries, Baldwin, Beach, Drennan, Facemire, Gaunch, Ojeda, Plymale, Prezioso, Romano, Smith, Stollings, Swope and Cline)

[Passed March 9, 2018; in effect from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §3-1-44 and §3-1-48 of the Code of West Virginia, 1931, as amended, all relating generally to the conduct of elections; authorizing compensation for election officials be fixed by county commission; requiring all election officials within a classification to be paid the same amount within each county; authorizing Secretary of State to set maximum compensation rates in certain elections where costs are determined to be obligations of the state; declaring compensation above maximum compensation set by Secretary of State in certain elections to be county obligation; permitting State Election Commission, with recommendation from HAVA Grant Board and consistent with legislative rules of the program, approve grant to a county for the purchase of election systems or upgrades from the county assistance voting equipment fund; and directing Secretary of State issue emergency rules setting criteria for issuance of grants.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-44. Compensation of election officials; expenses.

- 1 (a) Each ballot commissioner is to be paid a sum, to be
- 2 fixed by the county commission, for each day he or she
- 3 serves as ballot commissioner, but in no case may a ballot

4 commissioner receive allowance for more than 10 days'
5 services for any one primary, general, or special election.

6 (b) Each commissioner of election and poll clerk is to
7 be paid a sum, to be fixed by the county commission, for
8 one day's services for attending the school of instruction for
9 election officials if the commissioner or poll clerk provides
10 at least one day's service during an election and a sum for
11 his or her services at any one election: *Provided*, That each
12 commissioner of election and poll clerk is to be paid a sum
13 for his or her services at any of the three special elections
14 described in §3-1-44(g) of this code.

15 (c) Each alternate commissioner of election and poll
16 clerk may be paid a sum, to be fixed by the county
17 commission, for one day's services for attending the school
18 of instruction for election officials: *Provided*, That no
19 alternate may be eligible for compensation for election
20 training unless the alternate is subsequently appointed as an
21 election official or is instructed to attend and actually
22 attends training as an alternate and is available to serve on
23 election day.

24 (d) The commissioners of election or poll clerks
25 obtaining and delivering the election supplies, as provided
26 in §3-1-24 of this code, and returning them, as provided in
27 §3-5-1 *et seq.* and §3-6-1 *et seq.* of this code, are to be paid
28 an additional sum, fixed by the county commission, for his
29 or her services pursuant to this subsection at any one
30 election. In addition, he or she is to be paid mileage up to
31 the rate of reimbursement authorized by the travel
32 management rule of the Department of Administration for
33 each mile necessarily traveled in the performance of his or
34 her services.

35 (e) The compensation of election officers, cost of
36 printing ballots and all other expenses incurred in holding
37 and making the return of elections, other than the three
38 special elections described in §3-1-44(f) of this code, are to

39 be audited by the county commission and paid out of the
40 county treasury.

41 (f) All persons within a class of election officials, as
42 classified in this section, shall be paid the same amount
43 within the county.

44 (g) The compensation of election officers, cost of
45 printing ballots, and all other reasonable and necessary
46 expenses in holding and making the return of a special
47 election for the purpose of taking the sense of the voters on
48 the question of calling a constitutional convention, of a
49 special election to elect members of a constitutional
50 convention, and of a special election to ratify or reject the
51 proposals, acts, and ordinances of a constitutional
52 convention are obligations of the state incurred by the ballot
53 commissioners, clerks of the circuit courts, clerks of the
54 county commissions, and county commissions of the
55 various counties as agents of the state. All expenses of these
56 special elections are to be audited by the Secretary of State.
57 The Secretary of State shall prepare and transmit to the
58 county commissions forms on which the county
59 commissions shall certify all expenses of these special
60 elections to the Secretary of State. If satisfied that the
61 expenses as certified by the county commissions are
62 reasonable and were necessarily incurred, the Secretary of
63 State shall requisition the necessary warrants from the
64 Auditor of the state to be drawn on the state Treasurer and
65 shall mail the warrants directly to the vendors of the special
66 election services, supplies, and facilities.

67 (h) Notwithstanding the authority granted to county
68 commissions to set compensation for election officials in
69 this section, the Secretary of State may set maximum rates
70 of compensation of the election officials identified in this
71 section at any election for which the obligations incurred by
72 the ballot commissioners, clerks of the county commissions,
73 and county commissions of the various counties are
74 determined to be obligations of the state.

§3-1-48. Legislative findings; State Election Fund; loans to counties; availability of funds; repayment of loans; grants to counties for election systems.

1 (a) *Legislative findings.* — The Help America Vote Act
2 of 2002, PL 107-252, 42 U.S.C. §15301, *et seq.*, provides
3 funding so that all states will be able to implement some
4 form of electronic voting system to replace punch card and
5 lever machines by 2006. The new voting systems must meet
6 several requirements including notifying the voter of over
7 votes and permitting each voter to review his or her ballot
8 and correct errors before casting the vote. The limited, finite
9 funding available to the state will not be sufficient to meet
10 current and future needs for equipment and services as
11 equipment needs to be obtained, repaired, or replaced as
12 technology changes. It is the intent of the Legislature to
13 maximize the available funds by establishing a no-interest
14 loan program to assist any county, regardless of its current
15 voting system, in purchasing necessary electronic voting
16 equipment and services. As the loans are repaid funds will
17 continue to be available to meet future needs. It is not the
18 intent of the Legislature to mandate any technology for
19 voting systems to be utilized in this state and this section is
20 intended only to establish terms and conditions for
21 providing loan assistance to counties in accordance with the
22 provisions of this section.

23 (b) *State Election Fund.* — The special revenue account
24 created in the State Treasury and known as the State
25 Election Fund account is continued. Expenditures from the
26 account shall be used by the Secretary of State for the
27 administration of this chapter in accordance with the
28 provisions of 42 U.S.C. §15301, *et seq.*, the Help America
29 Vote Act of 2002, PL 107-252, in accordance with the
30 provisions of §4-11-1 *et seq.* of this code.

31 (c) *Establishment of special revenue account.* — There
32 is created in the State Treasury a special revenue revolving
33 fund account known as the County Assistance Voting
34 Equipment Fund which shall be an interest-bearing account.

35 The fund shall consist of an initial transfer not to exceed
36 \$8,500,000 from the State Election Fund established under
37 §3-1-48(b) of this code pursuant to legislative
38 appropriation; any future funds received from the federal
39 government under the Help America Vote Act of 2002, PL
40 107-252, 42 U.S.C. §15301, *et seq.*, or subsequent acts
41 providing funds to states to obtain, modify, or improve
42 voting equipment and obtain necessary related services
43 including voting systems, technology, and methods for
44 casting and counting votes; any funds appropriated by the
45 Legislature or transferred by any public agency as
46 contemplated or permitted by applicable federal or state
47 law; and any accrued interest or other return on the moneys
48 in the fund. The balance remaining in the fund at the end of
49 each fiscal year shall remain in the fund and not revert to the
50 State General Revenue Fund.

51 (d) *Use of funds.* — The money in the fund shall be used
52 only in the manner and for the purposes prescribed in this
53 section. Notwithstanding any provision of law to the
54 contrary, funds in the County Assistance Voting Equipment
55 Fund may not be designated or transferred for any purpose
56 other than those set forth in this section.

57 (e) *Administration of the fund.* — The Secretary of State
58 shall administer the fund with the approval of the State
59 Election Commission.

60 (f) *Investment of fund.* — The moneys of the fund shall
61 be invested pursuant to §12-6-1 *et seq.* of this code and in
62 such a manner that sufficient moneys are available as
63 needed for loans authorized under this section.

64 (g) *Loans to counties.* — The county assistance voting
65 equipment fund shall be used to make no-interest loans to
66 counties to obtain, modify, or replace voting equipment,
67 software, and necessary related services including voting
68 systems, technology, and methods for casting and counting
69 votes: *Provided,* That any county commission that
70 purchased an electronic voting system prior to November

71 13, 2004, is eligible to apply for matching funds under this
72 section to upgrade the system: *Provided, however,* That
73 matching funds available for an upgrade shall not exceed
74 the amount available under §3-1-48(g)(1) of this code for
75 the purchase of a new electronic voting system under the
76 Secretary of State's authorized contract. The loans shall be
77 made under the following terms and conditions:

78 (1) The State Election Commission shall, subject to
79 availability of funds, loan no more than 50 percent of the
80 cost of the voting equipment or services to any county
81 commission: *Provided,* That a portion or all of the county
82 matching requirement may be waived in limited
83 circumstances as determined by the State Election
84 Commission pursuant to this section.

85 (2) The county commission shall provide sufficient
86 documentation to establish to the satisfaction of the State
87 Election Commission that the county commission has at
88 least 50 percent of the money necessary to obtain the voting
89 equipment, software, or services for which the loan is
90 sought.

91 (3) The county commission shall enter into a contract
92 with the State Election Commission for the repayment of
93 the loan over a period not to exceed five years or the length
94 of the contract to obtain the equipment, software, or
95 services, whichever is less.

96 (4) The county commission shall use the loan for voting
97 equipment and services certified by the State Election
98 Commission pursuant to the provisions of §3-4a-1 *et seq.* of
99 this code and authorized for use by the Secretary of State.

100 (5) A county commission may apply for a loan on a form
101 provided by the Secretary of State. The form shall, in
102 addition to requesting information necessary for processing
103 the application, state the deadline for submitting the
104 application and the eligibility requirements for obtaining a
105 loan.

106 (6) The State Election Commission may waive a portion
107 or all of the matching money required by this subsection for
108 a county commission that can establish that it has exercised
109 due diligence in raising its share of the costs but has been
110 unable to do so. On forms provided by the Secretary of State
111 the county commission shall request a waiver and shall
112 make a full financial disclosure of its assets and liabilities
113 as well as potential for future income when applying for a
114 waiver. The county commission shall demonstrate, to the
115 satisfaction of the State Election Commission, its inability
116 to meet the matching requirements of this subsection and its
117 ability to repay the loan in a timely manner.
118 Notwithstanding the provisions of §3-1-48(g)(3) of this
119 code, the State Election Commission may extend the
120 repayment period on a year-to-year basis for a repayment
121 period not to exceed five additional years.

122 (h) *Application.* — An application for a loan shall be
123 approved by the State Election Commission if the
124 requirements of this section have been met.

125 (i) *Rulemaking.* — The Secretary of State shall propose
126 for promulgation in accordance with §29A-3-1 *et seq.* of
127 this code emergency and legislative rules necessary to
128 effectuate the purposes of this section.

129 (j) *Availability of loans.* — The State Election
130 Commission may not approve a loan under this section until
131 final standards for electronic voting equipment with a voter
132 verified paper ballot have been established by the Secretary
133 of State or the national institute for standards and
134 technology. The State Election Commission may not
135 approve a loan for the purchase, lease, rental, or other
136 similar transaction to obtain electronic voting equipment,
137 software, or necessary related services unless obtained
138 under a contract authorized by the Secretary of State
139 pursuant to rules promulgated under this section.

140 (k) *Repayment of loans.* — The Secretary of State may,
141 by civil action, mandamus, or other judicial or

142 administrative proceeding, compel performance by a county
143 commission of all the terms and conditions of the loan
144 agreement between the state and that county commission
145 including periodic reduction of any moneys due the county
146 from the state.

147 (l) Notwithstanding the provisions of this section
148 relating to loan procedures, the State Election Commission
149 may, with a recommendation from the HAVA Grant Board,
150 and consistent with the legislative rules of the program,
151 approve a grant to a county for the purchase of election
152 systems, or election system upgrades, payable from the
153 County Assistance Voting Equipment Fund: *Provided*, That
154 the Secretary of State shall issue emergency rules setting
155 forth the criteria for the issuance of grants to the counties.



CHAPTER 79

**(Com. Sub. for S. B. 582 - By Senators Clements and
Maroney)**

[Passed March 10, 2018; in effect from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §3-1-28 of the Code of West Virginia, 1931, as amended, relating to eligibility to be appointed or serve as an election official; permitting candidates for district, county, or state political party executive committee to serve as election officials; and permitting the parent, child, sibling, or spouse of a candidate for district, county, or state political party executive committee to serve as election officials.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-28. Election officials; eligibility, suspension of eligibility.

1 (a) To be eligible to be appointed or serve as an election
2 official in any state, county, or municipal election held in
3 West Virginia, a person:

4 (1) Must be a registered voter of the county for elections
5 held throughout the county and a registered voter of the
6 municipality for elections held within the municipality:
7 *Provided*, That if the required number of persons eligible to
8 serve as election officials for a municipal election are not
9 available or are not willing to serve as election officials for
10 a municipal election, a registered voter of the county in
11 which the municipality is located may serve as an election
12 official for elections held within the municipality;

13 (2) Must be able to read and write the English language;

14 (3) May not be a candidate on the ballot or an official
15 write-in candidate in the election for any office, other than
16 for district, county, or state political party executive
17 committee;

18 (4) May not be the parent, child, sibling, or spouse of a
19 candidate on the ballot for any office, other than for district,
20 county, or state political party executive committee, or an
21 official write-in candidate for any office, other than for
22 district, county, or state political party executive committee,
23 in the precinct where the official serves;

24 (5) May not be a person prohibited from serving as an
25 election official pursuant to any other federal or state
26 statute; and

27 (6) May not have been previously convicted of a
28 violation of any election law.

29 (b) The county commission may, upon majority vote,
30 suspend the eligibility to serve as an election official in any
31 election for four years for the following reasons:

32 (1) Failure to appear at the polling place at the
33 designated time without proper notice and just cause;

34 (2) Failure to perform the duties of an election official
35 as required by law;

36 (3) Improper interference with a voter casting a ballot or
37 violating the secrecy of the voter's ballot;

38 (4) Being under the influence of alcohol or drugs while
39 serving as an election official; or

40 (5) Having anything wagered or bet on an election.

41 (c) The county commission may, upon majority vote,
42 suspend the eligibility to serve as an election official in any
43 election for two years upon petition of 25 registered voters
44 of the precinct where the official last served and upon
45 presentation of evidence of any of the grounds set forth in
46 §31-1-28(b) of this code: *Provided*, That the petition
47 requesting the suspension of the election official is filed
48 with the county commission at least 90 days prior to an
49 election date. The names of those persons signing the
50 petition must be kept confidential.



CHAPTER 80

**(Com. Sub. for H. B. 3004 - By Delegates Hill, Martin,
Howell, Kessinger, Statler, Shott, McGeehan, and
Espinosa)**

[Passed March 1, 2018; in effect ninety days from passage.]

AN ACT to amend and reenact §3-10-3, §3-10-4, §3-10-5, and
§3-10-7 of the Code of West Virginia, 1931, as amended, all
relating generally to filling vacancies in certain offices;

providing that the Governor shall appoint a person to fill a vacancy in an elected state office, choosing from a list of candidates required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred; establishing a deadline for a party executive committee to submit names of qualified persons for vacancies in elected state offices; providing that appointments to elected state offices be made within a time certain; providing that the Governor shall appoint a person, of the same political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in an elected state office when a party executive committee fails to submit names of qualified persons; providing that the Governor shall appoint a person, from a list of qualified persons required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in the office of United States Senator; establishing a deadline for an executive committee to submit names of qualified persons for vacancies in the office of United States Senator; providing that appointment to fill vacancies in office of United States Senator be made within a time certain; providing for Governor to appoint a person, of the same political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in United States Senate when the party executive committee fails to submit qualified names of qualified persons; providing for the Governor to appoint a person, of the same political party with which the person holding the office immediately preceding the vacancy was affiliated, to fill a vacancy in the state Legislature; providing for a county commission to select a person to fill a vacancy in the office of county commissioner or county clerk, who, for at least sixty days prior to the time a vacancy occurred, was affiliated with the same political party with which the individual vacating the office was affiliated at the time the vacancy occurred; providing a process by which the two most senior county commissioners may select a person, from a list of candidates required to be submitted by the

executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in the county commission when the commission fails to make a selection; providing for the Governor to appoint a person, from a list of candidates required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in office of county commissioner if vacancies in the commission prevent a quorum; establishing a deadline for an executive committee to submit names of qualified persons for vacancies in a county commission; clarifying that appointments to county commissions to fill vacancies are for time periods specified by statute; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.

1 (a) Any vacancy occurring in the offices of Secretary of
2 State, Auditor, Treasurer, Attorney General, Commissioner
3 of Agriculture, or in any office created or made elective to
4 be filled by the voters of the entire state, is filled by the
5 Governor of the state by appointment and subsequent
6 election to fill the remainder of the term, if required by §3-
7 10-1 of this code. The Governor shall make the appointment
8 from a list of three legally qualified persons submitted by
9 the party executive committee of the same political party
10 with which the person holding the office immediately
11 preceding the vacancy was affiliated at the time the vacancy
12 occurred. The list of qualified persons to fill the vacancy
13 shall be submitted to the Governor within 15 days after the
14 vacancy occurs, and the Governor shall duly make his or her
15 appointment to fill the vacancy from the list of legally
16 qualified persons within five days after the list is received.
17 If the list is not submitted to the Governor within the 15-day

18 period, the Governor shall appoint, within five days
19 thereafter, a legally qualified person of the same political
20 party with which the person holding the office immediately
21 preceding the vacancy was affiliated at the time the vacancy
22 occurred: *Provided*, That the provisions of this subsection
23 do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-
24 10-3(e) of this code.

25 (b) Any vacancy occurring in the offices of Justice of
26 the Supreme Court of Appeals, judge of a circuit court, or
27 judge of a family court is filled by the Governor of the state
28 by appointment and, if the unexpired term be for a period of
29 more than two years, by a subsequent election to fill the
30 remainder of the term, as required by §3-10-3(d) of this
31 code. If an election is required under §3-10-3(d) of this
32 code, the Governor, circuit court, or the chief judge thereof
33 in vacation, is responsible for the proper proclamation by
34 order and notice required by §3-10-1 of this code.

35 (c) Any vacancy in the office of magistrate is appointed
36 according to the provisions of §50-1-6 of this code, and, if
37 the unexpired term be for a period of more than two years,
38 by a subsequent election to fill the remainder of the term, as
39 required by §3-10-3(d) of this code.

40 (d) (1) When the vacancy in the office of Justice of the
41 Supreme Court of Appeals, judge of the circuit court, judge
42 of a family court, or magistrate occurs after the 84th day
43 before a general election, and the affected term of office
44 ends on December 31 following the succeeding general
45 election two years later, the person appointed to fill the
46 vacancy shall continue in office until the completion of the
47 term.

48 (2) When the vacancy occurs before the close of the
49 candidate filing period for the primary election, and if the
50 unexpired term be for a period of greater than two years, the
51 vacancy shall be filled by election in the nonpartisan judicial
52 election held concurrently with the primary election and the

53 appointment shall continue until a successor is elected and
54 certified.

55 (3) When the vacancy occurs after the close of candidate
56 filing for the primary election and not later than 84 days
57 before the general election, and if the unexpired term be for
58 a period of greater than two years, the vacancy shall be filled
59 by election in a nonpartisan judicial election held
60 concurrently with the general election, and the appointment
61 shall continue until a successor is elected and certified.

62 (e) When an election to fill a vacancy is required to be
63 held at the general election, according to the provisions of
64 §3-10-3(d) of this code, a special candidate filing period
65 shall be established. Candidates seeking election to any
66 unexpired term for Justice of the Supreme Court of Appeals,
67 judge of a circuit court, judge of the family court, or
68 magistrate shall file a certificate of announcement and pay
69 the filing fee no earlier than the first Monday in August and
70 no later than 77 days before the general election.

§3-10-4. Vacancies in representation in United States Congress.

1 (a) (1) If there is a vacancy in the representation from
2 this state in the House of Representatives in the Congress of
3 the United States, the Governor shall, within five days after
4 the fact comes to his or her knowledge, issue a proclamation
5 setting dates for a special general election that is not less
6 than 84 nor more than 120 days from the date of the vacancy
7 and requiring nomination of candidates as provided in §3-
8 10-4(a)(2) of this code: *Provided*, That no such
9 proclamation may be made nor may a special election be
10 held if the vacancy occurs after the 84th day prior to the
11 regularly scheduled general election for a new full term of
12 the office. The election shall follow the requirements of §3-
13 10-1 of this code that are not in conflict with this section.

14 (2) The party executive committees for the
15 congressional district for which there is a vacancy shall
16 each, within 30 days of the Governor's proclamation,

17 nominate a candidate to stand at the general election
18 required by §3-10-4(a)(1) of this code.

19 (b) If there is a vacancy in the representation from this
20 state in the Senate of the United States Congress, the
21 vacancy shall be filled by the Governor of the state by
22 appointment. The Governor shall make the appointment
23 from a list of three legally qualified persons submitted by
24 the party executive committee of the same political party
25 with which the person holding the office immediately
26 preceding the vacancy was affiliated at the time the vacancy
27 occurred. The list of qualified persons to fill the vacancy
28 shall be submitted to the Governor within 15 days after the
29 vacancy occurs, and the Governor shall duly make his or her
30 appointment to fill the vacancy from the list of legally
31 qualified persons within five days after the list is received.
32 If the list is not submitted to the Governor within the 15-day
33 period, the Governor shall appoint, within five days
34 thereafter, a legally qualified person of the same political
35 party with which the person holding the office immediately
36 preceding the vacancy was affiliated at the time the vacancy
37 occurred.

38 Furthermore,

39 (1) If the vacancy occurs on or before the primary cutoff
40 date, then an election shall be held pursuant to §3-10-1 of
41 this code; or

42 (2) If the vacancy occurs after the primary cutoff date,
43 but on or before the general cutoff date, then the
44 Governor shall issue a proclamation providing for: (A) A
45 special filing period; (B) a special primary election to be
46 held in conjunction with the upcoming general election;
47 and (C) a special general election to be held not less than
48 84 nor more than 120 days following the date of the
49 special primary election. Each election shall follow the
50 requirements of §3-10-1 of this code that are not in
51 conflict with this section.

§3-10-5. Vacancies in state Legislature.

1 (a) Any vacancy in the office of state senator or member
2 of the House of Delegates shall be filled by appointment by
3 the Governor, from a list of three legally qualified persons
4 submitted by the party executive committee of the same
5 political party with which the person holding the office
6 immediately preceding the vacancy was affiliated at the
7 time the vacancy occurred. The list of qualified persons to
8 fill the vacancy shall be submitted to the Governor within
9 15 days after the vacancy occurs and the Governor shall
10 duly make his or her appointment to fill the vacancy from
11 the list of legally qualified persons within five days after the
12 list is received. If the list is not submitted to the Governor
13 within the 15-day period, the Governor shall appoint within
14 five days thereafter a legally qualified person of the same
15 political party with which the person holding the office
16 immediately preceding the vacancy was affiliated at the
17 time the vacancy occurred.

18 (b) In the case of a member of the House of Delegates,
19 the list shall be submitted by the party executive committee
20 of the delegate district in which the vacating member
21 resided at the time of his or her election or appointment. The
22 appointment to fill a vacancy in the House of Delegates is
23 for the unexpired term.

24 (c) In the case of a state senator, the list shall be
25 submitted by the party executive committee of the state
26 senatorial district in which the vacating senator resided at
27 the time of his or her election or appointment. The
28 appointment to fill a vacancy in the state Senate is for the
29 unexpired term, unless §3-10-1 of this code requires a
30 subsequent election to fill the remainder of the term, which
31 shall follow the procedure set forth in said section.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

1 (a) Any vacancy in the office of county commissioner
2 or clerk of county commission shall be filled by
3 appointment by the county commission. The appointee must
4 be a person of the same political party with which the person
5 holding the office immediately preceding the vacancy was
6 affiliated at the time the vacancy occurred: *Provided*, That
7 at the time of appointment, the appointee must have been a
8 member of that political party for at least 60 days prior to
9 the occurrence of the vacancy.

10 (b) If a quorum of the county commission fails to make
11 an appointment within 30 days, the county executive
12 committee of the same political party with which the person
13 holding the office preceding the vacancy was affiliated at
14 the time the vacancy occurred, shall submit a list of three
15 legally qualified persons to fill the vacancy. Within 15 days
16 from the date on which the list is received, the county
17 commission shall appoint a candidate from the list to fill the
18 vacancy. If the county commission fails to make the
19 appointment within the specified time, then the county
20 commissioner with the longest tenure shall eliminate one
21 name from the submitted list, followed by the county
22 commissioner with the second-longest tenure then
23 eliminating one name from the submitted list. The name
24 remaining after those two names have been eliminated shall
25 be deemed to be appointed by the county commission to fill
26 the vacancy.

27 (c) If the number of vacancies in a county commission
28 deprives that body of a quorum, the Governor shall make an
29 appointment to fill any vacancy in the county commission
30 necessary to create a quorum, from a list of three legally
31 qualified persons submitted by the party executive
32 committee of the same political party with which the person
33 holding the office immediately preceding the vacancy was
34 affiliated at the time the vacancy occurred. The Governor
35 shall make any appointments necessary, beginning with the
36 vacancy first created, to create a quorum in accordance with
37 the same procedures applicable to county commissions
38 under §3-10-7(a) of this code. Once a quorum of the county

39 commission is reestablished by gubernatorial appointment,
40 the authority to fill the remaining vacancies shall be filled
41 in the manner prescribed in §3-10-7(a) of this code.

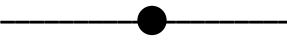
42 (d) An appointment made pursuant to this section is for
43 the period of time provided in §3-10-1 of this code.

44 (e) Notwithstanding any code provision to the contrary,
45 a county commission may appoint a temporary successor to
46 the office of clerk of the county commission until the
47 requirements of this section have been met. The temporary
48 successor may serve no more than 30 days from the date of
49 the vacancy.

50 (f) If an election is necessary under §3-10-1 of this code,
51 the county commission, or the president thereof in vacation,
52 shall be responsible for the proper proclamation, by order,
53 and notice required by §3-10-1 of this code.

54 (g) §3-10-1 of this code shall be followed with respect
55 to any election needed to fill a vacancy, except that if the
56 vacancy occurs after the primary cutoff date but not later
57 than the general cutoff date, candidates to fill the vacancy
58 shall be nominated by the county executive committee in
59 the manner provided in §3-5-19 of this code, as in the case
60 of filling vacancies in nominations, and the names of the
61 persons, so nominated and certified to the clerk of the
62 county commission of the county, shall be placed upon the
63 ballot to be voted at the next general election.

64 (h) If the election for an unexpired term is held at the same
65 time as the election for a full term for county commissioner,
66 the full term shall be counted first and the unexpired term shall
67 be counted second. If the candidate with the highest number of
68 votes for the unexpired term resides in the same magisterial
69 district as the candidate with the highest number of votes for
70 the full term, the candidate for the full term shall be seated. The
71 candidate with the next highest number of votes for the
72 unexpired term residing in a different magisterial district shall
73 be seated for the unexpired term.



CHAPTER 81

**(Com. Sub. for H. B. 4002 - By Delegates Overington,
Cowles, Moore, Hill, C. Romine, Deem, Hamilton,
Jennings, Mr. Speaker (Mr. Armstead) and
Maynard)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2018.]

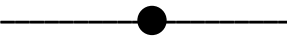
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §1-2-2c, relating to the decennial redistricting of the House of Delegates and providing that following the reapportionment and redistricting of the Legislature following the United States Census in 2020, all delegates shall be elected from one hundred single member districts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-2c. Redistricting.

1 Upon the reapportionment and redistricting of the
2 Legislature following the United States Census in 2020 and
3 in each subsequent reapportionment and redistricting, the
4 House of Delegates shall be composed of one hundred
5 single member districts, with apportionment to meet
6 constitutional standards.



CHAPTER 82

(H. B. 4434 - By Delegates Shott and Hanshaw)

[Passed March 7, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §3-5-23 of the Code of West Virginia, 1931, as amended, to prohibit any person from becoming a candidate for political office by virtue of the nomination-certificate process when he or she, at the time of the filing of the nomination certificate or certificates, is registered and affiliated with a recognized political party as defined in §3-1-8 of this code or when he or she was a candidate for nomination by a recognized political party as defined in §3-1-8 of this code but failed to win the nomination of his or her party.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-23. Certificate nominations; requirements and control; penalties.

1 (a) Groups of citizens having no party organization may
2 nominate candidates who are not already candidates in the
3 primary election for public office otherwise than by
4 conventions or primary elections. In that case, the candidate
5 or candidates, jointly or severally, shall file a nomination
6 certificate in accordance with the provisions of this section
7 and the provisions of §3-5-24 of this code.

8 (b) The person or persons soliciting or canvassing
9 signatures of duly qualified voters on the certificate or
10 certificates, may solicit or canvass duly registered voters

11 residing within the county, district, or other political
 12 division represented by the office sought, but must first
 13 obtain from the clerk of the county commission credentials
 14 which must be exhibited to each voter canvassed or
 15 solicited, which credentials may be in the following form or
 16 effect:

17 State of West Virginia, County of, ss:

18 This certifies that the holder of this credential is hereby
 19 authorized to solicit and canvass duly registered voters
 20 residing in (here place the county, district or
 21 other political division represented by the office sought) to
 22 sign a certificate purporting to nominate
 23 (here place name of candidate heading list on certificate) for
 24 the office of and others, at the general
 25 election to be held on, 20.....

26 Given under my hand and the seal of my office this
 27 day of, 20.....

28

29 Clerk, county commission of County.

30 The clerk of each county commission, upon proper
 31 application made as herein provided, shall issue such
 32 credentials and shall keep a record thereof.

33 (c) The certificate shall be personally signed by duly
 34 registered voters, in their own proper handwriting or by
 35 their marks duly witnessed, who must be residents within
 36 the county, district, or other political division represented
 37 by the office sought wherein the canvass or solicitation is
 38 made by the person or persons duly authorized. The
 39 signatures need not all be on one certificate. The number of
 40 signatures shall be equal to not less than one percent of the
 41 entire vote cast at the last preceding general election for the
 42 office in the state, district, county, or other political division
 43 for which the nomination is to be made, but in no event shall
 44 the number be less than 25. The number of signatures shall

45 be equal to not less than one percent of the entire vote cast
46 at the last preceding general election for any statewide,
47 congressional, or presidential candidate, but in no event
48 shall the number be less than 25. Where two or more
49 nominations may be made for the same office, the total of
50 the votes cast at the last preceding general election for the
51 candidates receiving the highest number of votes on each
52 ticket for the office shall constitute the entire vote. A
53 signature on a certificate may not be counted unless it be
54 that of a duly registered voter of the county, district, or other
55 political division represented by the office sought wherein
56 the certificate was presented.

57 (d) The certificates shall state the name and residence of
58 each of the candidates; that he or she is legally qualified to
59 hold the office; that the subscribers are legally qualified and
60 duly registered as voters and desire to have the candidates
61 placed on the ballot; and may designate, by not more than
62 five words, a brief name of the party which the candidates
63 represent and may adopt a device or emblem to be printed
64 on the official ballot. All candidates nominated by the
65 signing of the certificates shall have their names placed on
66 the official ballot as candidates, as if otherwise nominated
67 under the provisions of this chapter.

68 The Secretary of State shall prescribe the form and
69 content of the nomination certificates to be used for
70 soliciting signatures.

71 Offices to be filled by the voters of more than one
72 county shall use separate petition forms for the signatures of
73 qualified voters for each county.

74 Notwithstanding any other provision of this code to the
75 contrary, a duly registered voter may sign the certificate
76 provided in this section and may vote for candidates of his
77 or her choosing in the corresponding primary election.

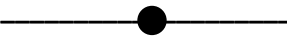
78 (e) The Secretary of State, or the clerk of the county
79 commission, as the case may be, may investigate the

80 validity of the certificates and the signatures thereon. If,
81 upon investigation, there is doubt as to the legitimacy and
82 the validity of certificate, the Secretary of State may ask the
83 Attorney General of the state, or the clerk of the county
84 commission may ask the prosecuting attorney of the county,
85 to institute a quo warranto proceeding against the nominee
86 by certificate to determine his or her right to the nomination
87 to public office and upon request being made, the Attorney
88 General or prosecuting attorney shall institute the quo
89 warranto proceeding. The clerk of the county commission
90 shall, at the request of the Secretary of State or the clerk of
91 the circuit court, compare the information from any
92 certificate to the county voter registration records in order
93 to assist in determining the validity of any certificates.

94 (f) For the purposes of this section, any person who, at
95 the time of the filing of the nomination certificate or
96 certificates, is registered and affiliated with a recognized
97 political party as defined in §3-1-8 of this code may not
98 become a candidate for political office by virtue of the
99 nomination-certificate process as set forth in this section.

100 (g) For the purposes of this section, any person who was
101 a candidate for nomination by a recognized political party
102 as defined in §3-1-8 of this code may not, after failing to
103 win the nomination of his or her political party, become a
104 candidate for the same political office by virtue of the
105 nomination-certificate process as set forth in this section.

106 (h) In addition to penalties prescribed elsewhere for
107 violation of this chapter, any person violating the provisions
108 of this section is guilty of a misdemeanor and, upon
109 conviction, shall be fined not more than \$1,000, or confined
110 in jail not more than one year, or both fined and confined:
111 *Provided*, That a criminal penalty may not be imposed upon
112 anyone who signs a nomination certificate and votes in the
113 primary election held after the date the certificate was
114 signed.



CHAPTER 83

(Com. Sub. for H. B. 4571 - By Delegates Campbell, Ambler, Lynch, R. Miller, Canestraro, Thompson, Hicks, Cooper, Wagner, Brewer and Dean)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended, relating to the filing of certificates of announcement of candidacy for a political office; requiring that the office of the Secretary of State be open from 9:00 a.m. until 11:59 p.m. on the last day of the period during which a certificate of announcement may be filed; and requiring that the offices of the county clerks of each county be open from 9:00 a.m. until 12:00 p.m. on the last day of the period during which a certificate of announcement may be filed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.

- 1 (a) Any person who is eligible and seeks to hold an
- 2 office or political party position to be filled by election in
- 3 any primary or general election held under the provisions of
- 4 this chapter shall file a certificate of announcement
- 5 declaring his or her candidacy for the nomination or election
- 6 to the office.

7 (b) The certificate of announcement shall be filed as
8 follows:

9 (1) Candidates for the House of Delegates, the State
10 Senate, circuit judge, family court judge, and any other
11 office or political position to be filled by the voters of more
12 than one county shall file a certificate of announcement with
13 the Secretary of State.

14 (2) Candidates for an office or political position to be
15 filled by the voters of a single county or a subdivision of a
16 county, except for candidates for the House of Delegates,
17 State Senate, circuit judge or family court judge, shall file a
18 certificate of announcement with the clerk of the county
19 commission.

20 (3) Candidates for an office to be filled by the voters of
21 a municipality shall file a certificate of announcement with
22 the recorder or city clerk.

23 (c) The certificate of announcement shall be filed with
24 the proper officer not earlier than the second Monday in
25 January before the primary election day and not later than
26 the last Saturday in January before the primary election day
27 and must be received before midnight, eastern standard
28 time, of that day or, if mailed, shall be postmarked by the
29 United States Postal Service before that hour. This includes
30 the offices of justice of the Supreme Court of Appeals,
31 circuit court judge, family court judge and magistrate,
32 which are to be filled on a nonpartisan and division basis at
33 the primary election: *Provided*, That on the final day of a
34 political filing period, the office of the Secretary of State
35 shall be open from 9:00 a.m. until 11:59 p.m. The offices
36 of the County Clerk in all counties of the state shall be open
37 on that final day of a political filing period from 9:00 a.m.
38 until 12:00 p.m.

39 (d) The certificate of announcement shall be on a form
40 prescribed by the Secretary of State on which the candidate
41 shall make a sworn statement before a notary public or other

42 officer authorized to administer oaths, containing the
43 following information:

44 (1) The date of the election in which the candidate seeks
45 to appear on the ballot;

46 (2) The name of the office sought; the district, if any;
47 and the division, if any;

48 (3) The legal name of the candidate and the exact name
49 the candidate desires to appear on the ballot, subject to
50 limitations prescribed in §3-5-13 of this code;

51 (4) The county of residence and a statement that the
52 candidate is a legally qualified voter of that county; and the
53 magisterial district of residence for candidates elected from
54 magisterial districts or under magisterial district limitations;

55 (5) The specific address designating the location at
56 which the candidate resides at the time of filing, including
57 number and street or rural route and box number and city,
58 state, and zip code;

59 (6) For partisan elections, the name of the candidate's
60 political party and a statement that the candidate: (A) Is a
61 member of and affiliated with that political party as
62 evidenced by the candidate's current registration as a voter
63 affiliated with that party; and (B) has not been registered as
64 a voter affiliated with any other political party for a period
65 of sixty days before the date of filing the announcement;

66 (7) For candidates for delegate to national convention,
67 the name of the presidential candidate to be listed on the
68 ballot as the preference of the candidate on the first
69 convention ballot; or a statement that the candidate prefers
70 to remain "uncommitted";

71 (8) A statement that the person filing the certificate of
72 announcement is a candidate for the office in good faith;

73 (9) The words “subscribed and sworn to before me this
74 _____ day of _____, 20____” and a space for the
75 signature of the officer giving the oath.

76 (e) The Secretary of State or the board of ballot
77 commissioners, as the case may be, may refuse to certify the
78 candidacy or may remove the certification of the candidacy
79 upon receipt of a certified copy of the voter’s registration
80 record of the candidate showing that the candidate was
81 registered as a voter in a party other than the one named in
82 the certificate of announcement during the sixty days
83 immediately preceding the filing of the certificate:
84 *Provided,* That unless a signed formal complaint of
85 violation of this section and the certified copy of the voter’s
86 registration record of the candidate are filed with the officer
87 receiving that candidate’s certificate of announcement no
88 later than ten days following the close of the filing period,
89 the candidate may not be refused certification for this
90 reason.

91 (f) The certificate of announcement shall be subscribed
92 and sworn to by the candidate before some officer qualified
93 to administer oaths, who shall certify the same. Any person
94 who knowingly provides false information on the certificate
95 is guilty of false swearing and shall be punished in
96 accordance with §3-9-3 of this code.

97 (g) Any candidate for delegate to a national convention
98 may change his or her statement of presidential preference
99 by notifying the Secretary of State by letter received by the
100 Secretary of State no later than the third Tuesday following
101 the close of candidate filing. When the rules of the political
102 party allow each presidential candidate to approve or reject
103 candidates for delegate to convention who may appear on
104 the ballot as committed to that presidential candidate, the
105 presidential candidate or the candidate’s committee on his
106 or her behalf may file a list of approved or rejected
107 candidates for delegate and the Secretary of State shall list
108 as “uncommitted” any candidate for delegate who is
109 disapproved by the presidential candidate.

110 (h) A person may not be a candidate for more than one
111 office or office division at any election: *Provided*, That a
112 candidate for an office may also be a candidate for President
113 of the United States, for membership on political party
114 executive committees or for delegate to a political party
115 national convention: *Provided, however*, That an
116 unsuccessful candidate for a nonpartisan office in an
117 election held concurrently with the primary election may be
118 appointed under the provisions of section nineteen of this
119 article to fill a vacancy on the general ballot.

120 (i) A candidate who files a certificate of announcement
121 for more than one office or division and does not withdraw,
122 as provided by §3-5-11 of this code, from all but one office
123 prior to the close of the filing period may not be certified by
124 the Secretary of State or placed on the ballot for any office
125 by the board of ballot commissioners.



CHAPTER 84

(Com. Sub. for S. B. 146 - By Senator Trump)

[Passed March 2, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended, relating to correcting technical errors within the Solid Waste Management Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-10. Prohibitions; permits required.

1 (a) Open dumps are prohibited and it is unlawful for any
2 person to create, contribute to, or operate an open dump or

3 for any landowner to allow an open dump to exist on the
4 landowner's property unless that open dump is under a
5 compliance schedule approved by the director. The
6 compliance schedule shall contain an enforceable sequence
7 of actions leading to compliance and shall not exceed two
8 years. Open dumps operated prior to April 1, 1988, by a
9 landowner or tenant for the disposal of solid waste
10 generated by the landowner or tenant at his or her residence
11 or farm, are not a violation of this section, if the open dump
12 was not a violation of law on January 1, 1988, and
13 unauthorized dumps which were created by unknown
14 persons are not a violation of this section: *Provided*, That a
15 person may not contribute additional solid waste to any such
16 dump after April 1, 1988, except that the landowners on
17 which unauthorized dumps have been or are being made are
18 not liable for the unauthorized dumping unless the
19 landowners refuse to cooperate with the division in stopping
20 the unauthorized dumping.

21 (b) It is unlawful for any person, unless the person holds
22 a valid permit from the division to install, establish,
23 construct, modify, operate, or abandon any solid waste
24 facility. All approved solid waste facilities shall be installed,
25 established, constructed, modified, operated, or abandoned
26 in accordance with §22-15-1 *et seq.* of this code, plans,
27 specifications, orders, instructions, and rules in effect.

28 (c) Any permit issued under §22-15-1 *et seq.* of this
29 code shall be issued in compliance with the requirements of
30 §22-15-1 *et seq.* of this code, its rules and §22-11-1 *et seq.*
31 of this code and the rules, promulgated under §22-11-1 *et*
32 *seq.* of this code, so that only a single permit is required of
33 a solid waste facility under those two articles. Each permit
34 issued under §22-15-1 *et seq.* of this code shall have a fixed
35 term not to exceed five years: *Provided*, That the director
36 may administratively extend a permit beyond its five-year
37 term, if the approved solid waste facility is in compliance
38 with §22-15-1 *et seq.* of this code, its rules, and §22-11-1 *et*
39 *seq.* of this code and the rules promulgated under §22-11-1
40 *et seq.* of this code: *Provided, however*, That the

41 administrative extension may not be for more than one year.
42 Upon expiration of a permit, the division may issue renewal
43 permits in compliance with rules promulgated by the
44 director.

45 (d) For existing solid waste facilities which formerly
46 held division of health permits which expired by law and for
47 which complete permit applications for new permits
48 pursuant to §22-15-1 *et seq.* of this code were submitted as
49 required by law, the division may enter an administrative
50 order to govern solid waste activities at the facilities, which
51 may include a compliance schedule, consistent with the
52 requirements of the division's solid waste management
53 rules, to be effective until final action is taken to issue or
54 deny a permit for the facility pursuant to §22-15-1 *et seq.* of
55 this code, or until further order of the division.

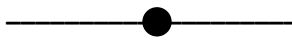
56 (e) A person may not dispose of any solid waste in this
57 state in a manner which endangers the environment or the
58 public health, safety, or welfare as determined by the
59 director: *Provided*, That the carcasses of dead animals may
60 be disposed of in any solid waste facility or in any other
61 manner as provided for in this code. Upon request by the
62 director, the Commissioner of the Bureau for Public Health
63 shall provide technical advice concerning the disposal of
64 solid waste or carcasses of dead animals within the state.

65 (f) A commercial solid waste facility shall not
66 discriminate in favor of or against the receipt of any waste
67 otherwise eligible for disposal at the facility based on its
68 geographic origin.

69 (g) In addition to all the requirements of §22-15-1 *et seq.*
70 of this code and the rules promulgated under §22-15-1 *et*
71 *seq.* of this code, the division may not issue a permit to
72 construct a new commercial solid waste facility or to expand
73 the spatial area of an existing facility, unless the Public
74 Service Commission has granted a certificate of need, as
75 provided in §24-2-1c of this code. If the director approves a
76 permit or permit modification, the certificate of need shall

77 become a part of the permit and all conditions contained in
78 the certificate of need shall be conditions of the permit and
79 may be enforced by the division in accordance with the
80 provisions of §22-15-1 *et seq.* of this code: *Provided*, That
81 the provisions of this subsection do not apply to materials
82 recovery facilities or mixed waste processing facilities as
83 defined by §22-15-2 of this code, except within a 35-mile
84 radius of a facility sited in a karst geological region and
85 which has been permitted by the West Virginia Department
86 of Environmental Protection as a mixed waste processing
87 facility and has received a certificate of need by July 1,
88 2016.

89 (h) The director shall propose legislative rules for
90 promulgation pursuant to §29A-3-1 *et seq.* of this code
91 which reflect the purposes as set forth in this section.



CHAPTER 85

**(Com. Sub. for S. B. 290 - By Senators Smith,
Azinger, Boso, Clements and Cline)**

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating to standards of water quality and effluent limitations; providing that the secretary may issue water pollution control permits that contain water quality-based effluent limits that are adjusted to reflect credit for pollutants in the permittee's intake water; providing that the secretary may not set benchmarks for substances in, or conditions of, discharges of stormwater that are more restrictive than the acute aquatic life water quality criterion, the federal benchmark, the chronic aquatic life water quality criterion, or the ambient aquatic life advisory concentration;

providing that the secretary shall establish effluent limits for stormwater that are developed in accordance with mixing zones that are appropriate for relevant conditions, upon request by a permit applicant; and providing that the secretary shall promptly develop guidance for determining how benchmarks in permits demonstrate the adequacy of stormwater best management practices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

1 (a) All persons affected by rules establishing water
2 quality standards and effluent limitations shall promptly
3 comply with the rules: *Provided, That:*

4 (1) Where necessary and proper, the secretary may
5 specify a reasonable time for persons not complying with
6 the standards and limitations to comply with the rules and,
7 upon the expiration of that period of time, the secretary shall
8 revoke or modify any permit previously issued which
9 authorized the discharge of treated or untreated sewage,
10 industrial wastes, or other wastes into the waters of this state
11 which result in reduction of the quality of the waters below
12 the standards and limitations established therefor by rules of
13 the board or secretary;

14 (2) For purposes of both this article and sections 309 and
15 505 of the federal Water Pollution Control Act, compliance
16 with a permit issued pursuant to this article shall be
17 considered compliance for purposes of both this article and
18 sections 301, 302, 303, 306, 307, and 403 of the federal
19 Water Pollution Control Act and with all applicable state
20 and federal water quality standards, except for any standard
21 imposed under section 307 of the federal Water Pollution
22 Control Act for a toxic pollutant injurious to human health.
23 Notwithstanding any provision of this code or rule or permit
24 condition to the contrary, water quality standards

25 themselves shall not be considered effluent standards or
26 limitations for the purposes of both this article and sections
27 309 and 505 of the federal Water Pollution Control Act and
28 may not be independently or directly enforced or
29 implemented except through the development of terms and
30 conditions of a permit issued pursuant to this article.
31 Nothing in this section, however, prevents the secretary
32 from modifying, reissuing, or revoking a permit during its
33 term. The provisions of this section addressing compliance
34 with a permit are intended to apply to all existing and future
35 discharges and permits without the need for permit
36 modifications; and

37 (3) The Legislature finds that there are concerns within
38 West Virginia regarding the applicability of the research
39 underlying the federal selenium criteria to a state such as
40 West Virginia which has high precipitation rates and free-
41 flowing streams, and that the alleged environmental impacts
42 that were documented in applicable federal research have
43 not been observed in West Virginia and, further, that
44 considerable research is required to determine if selenium is
45 having an impact on West Virginia streams, to validate or
46 determine the proper testing methods for selenium, and to
47 better understand the chemical reactions related to selenium
48 mobilization in water.

49 (4) The Legislature finds that the EPA has been
50 contemplating a revision to the federally recommended
51 criteria for several years, but has yet to issue a revised
52 standard.

53 (5) Because of the uncertainty regarding the
54 applicability of the current selenium standard, the secretary
55 is hereby directed to develop within six months of the
56 effective date of this subdivision an implementation plan for
57 the current selenium standard that will include, at minimum,
58 the following:

59 (A) Implementing the criteria as a threshold standard;

60 (B) A monitoring plan that will include chemical
61 speciation of any selenium discharge;

62 (C) A fish population survey and monitoring plan that
63 will be implemented at a representative location to assess
64 any possible impacts from selenium discharges if the
65 threshold criteria are exceeded; and

66 (D) The results of the monitoring will be reported to the
67 department for use in the development of state-specific
68 selenium criteria.

69 (6) Within 24 months of the effective date of this
70 subdivision, the secretary shall propose rules for legislative
71 approval in accordance with §29A-3-1 *et seq.* of this code
72 which establish a state-specific selenium standard that
73 protects aquatic life. Concurrent with proposing a
74 legislative rule, the secretary shall also submit the proposed
75 standard and supporting documentation to the administrator
76 of the Environmental Protection Agency. The secretary
77 shall also consult with and consider research and data from
78 the West Virginia Water Research Institute at West Virginia
79 University, the regulated community, and other appropriate
80 groups in developing the state-specific selenium standard.

81 (7) Within 30 days of the effective date of this section,
82 the secretary shall promulgate an emergency rule revising
83 the statewide aluminum water quality criteria for the
84 protection of aquatic life to incorporate aluminum criteria
85 values using a hardness-based equation. Concurrent with
86 issuing an emergency rule, the secretary shall also submit
87 the proposed revisions and supporting documentation to the
88 administrator of the Environmental Protection Agency.

89 (8) The secretary shall, within 90 days of receipt of any
90 completed request for a site-specific water quality criterion,
91 approve or deny the request. Any denial or approval of an
92 application shall detail the specific basis for the denial or
93 approval and any revisions needed to the application. Any
94 denial or approval of a request may be appealed to the
95 environmental quality board pursuant to §22-11-21 of this
96 code.

97 (b) The secretary may issue water pollution control
98 permits that contain water quality-based effluent limits that
99 are adjusted to reflect credit for pollutants in the permittee's
100 intake water (net limits).

101 (c) The secretary may not set benchmarks for substances
102 in, or conditions of, discharges of stormwater that are more
103 restrictive than the acute aquatic life water quality criterion,
104 the federal benchmark, the chronic aquatic life water quality
105 criterion, or the ambient aquatic life advisory concentration.

106 (d) Upon request by an applicant for a permit issued in
107 accordance with this article, the secretary shall establish
108 effluent limits for stormwater that are developed in
109 accordance with mixing zones that are appropriate for
110 relevant conditions.

111 (e) The secretary shall promptly develop guidance for
112 determining how benchmarks in permits issued pursuant to
113 this article demonstrate the adequacy of stormwater best
114 management practices.



CHAPTER 86

(Com. Sub. for S. B. 360 - By Senator Clements)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2018.]

AN ACT to amend and reenact §22-6-8 of the Code of West Virginia, 1931, as amended, relating to flat well royalty leases generally; modifying the permit issuance prohibition from one-eighth interest of the total amount paid to or received at the well head for oil and gas extracted to not less than one-eighth of the gross proceeds free from any deduction for post-production expenses; and providing that a permit applicant

may file with its application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to tender to the owner of the oil or gas a certain royalty of the gross proceeds, free from certain deductions, received at the first point of sale to an unaffiliated third-party purchaser in an arm's length transaction.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-8. Permits not to be on flat well royalty leases; legislative findings and declarations; permit requirements.

1 (a) The Legislature hereby finds and declares:

2 (1) That a significant portion of the oil and gas
3 underlying this state is subject to development pursuant to
4 leases or other continuing contractual agreements wherein
5 the owners of such oil and gas are paid upon a royalty or
6 rental basis known in the industry as the annual flat well
7 royalty basis, in which the royalty is based solely on the
8 existence of a producing well, and thus is not inherently
9 related to the volume of the oil and gas produced or
10 marketed;

11 (2) That continued exploitation of the natural resources
12 of this state in exchange for such wholly inadequate
13 compensation is unfair, oppressive, works an unjust
14 hardship on the owners of the oil and gas in place, and
15 unreasonably deprives the economy of the State of West
16 Virginia of the just benefit of the natural wealth of this state;

17 (3) That a great portion, if not all, of such leases or other
18 continuing contracts based upon or calling for an annual flat
19 well royalty, have been in existence for a great many years
20 and were entered into at a time when the techniques by
21 which oil and gas are currently extracted, produced or
22 marketed, were not known or contemplated by the parties,
23 nor was it contemplated by the parties that oil and gas would

24 be recovered or extracted or produced or marketed from the
25 depths and horizons currently being developed by the well
26 operators;

27 (4) That while being fully cognizant that the provisions
28 of Section 10, Article I of the United States Constitution and
29 of section 4, article III of the Constitution of West Virginia,
30 proscribe the enactment of any law impairing the obligation
31 of a contract, the Legislature further finds that it is a valid
32 exercise of the police powers of this state and in the interest
33 of the State of West Virginia and in furtherance of the
34 welfare of its citizens, to discourage as far as
35 constitutionally possible the production and marketing of oil
36 and gas located in this state under the type of leases or other
37 continuing contracts described above.

38 (b) In the light of the foregoing findings, the Legislature
39 hereby declares that it is the policy of this state, to the extent
40 possible, to prevent the extraction, production or marketing
41 of oil or gas under a lease or leases or other continuing
42 contract or contracts providing a flat well royalty or any
43 similar provisions for compensation to the owner of the oil
44 and gas in place, which is not inherently related to the
45 volume of oil or gas produced or marketed, and toward these
46 ends, the Legislature further declares that it is the obligation
47 of this state to prohibit the issuance of any permit required
48 by it for the development of oil or gas where the right to
49 develop, extract, produce, or market the same is based upon
50 such leases or other continuing contractual agreements.

51 (c) In addition to any requirements contained in this
52 article with respect to the issuance of any permit required
53 for the drilling, redrilling, deepening, fracturing,
54 stimulating, pressuring, converting, combining, or
55 physically changing to allow the migration of fluid from one
56 formation to another, no such permit shall be hereafter
57 issued unless the lease or leases or other continuing contract
58 or contracts by which the right to extract, produce or market
59 the oil or gas is filed with the application for such permit. In
60 lieu of filing the lease or leases or other continuing contract

61 or contracts, the applicant for a permit described herein may
62 file the following:

63 (1) A brief description of the tract of land including the
64 district and county wherein the tract is located;

65 (2) The identification of all parties to all leases or other
66 continuing contractual agreements by which the right to
67 extract, produce or market the oil or gas is claimed;

68 (3) The book and page number wherein each such lease
69 or contract by which the right to extract, produce or market
70 the oil or gas is recorded; and

71 (4) A brief description of the royalty provisions of each
72 such lease or contract.

73 (d) Unless the provisions of §22-6-8(e) of this code are
74 met, no such permit shall be hereafter issued for the drilling
75 of a new oil or gas well, or for the redrilling, deepening,
76 fracturing, stimulating, pressuring, converting, combining,
77 or physically changing to allow the migration of fluid from
78 one formation to another, of an existing oil or gas
79 production well, where or if the right to extract, produce, or
80 market the oil or gas is based upon a lease or leases or other
81 continuing contract or contracts providing for flat well
82 royalty or any similar provision for compensation to the
83 owner of the oil or gas in place which is not inherently
84 related to the volume of oil and gas so extracted, produced,
85 and marketed.

86 (e) To avoid the permit prohibition of §22-6-8(d) of this
87 code, the applicant may file with such application an
88 affidavit which certifies that the affiant is authorized by the
89 owner of the working interest in the well to state that it shall
90 tender to the owner of the oil or gas in place not less than
91 one eighth of the gross proceeds, free from any deductions
92 for post-production expenses, received at the first point of
93 sale to an unaffiliated third-party purchaser in an arm's
94 length transaction for the oil or gas so extracted, produced

95 or marketed before deducting the amount to be paid to or set
96 aside for the owner of the oil or gas in place, on all such oil
97 or gas to be extracted, produced or marketed from the well.
98 If such affidavit be filed with such application, then such
99 application for permit shall be treated as if such lease or
100 leases or other continuing contract or contracts comply with
101 the provisions of this section.

102 (f) The owner of the oil or gas in place shall have a cause
103 of action to enforce the owner's rights established by this
104 section.

105 (g) The provisions of this section shall not affect or
106 apply to any lease or leases or other continuing contract or
107 contracts for the underground storage of gas or any well
108 utilized in connection therewith or otherwise subject to the
109 provisions of §22-9-1 *et seq.* of this code.

110 (h) The director shall enforce this requirement
111 irrespective of when the lease or other continuing contract
112 was executed.

113 (i) The provisions of this section shall not adversely
114 affect any rights to free gas.



CHAPTER 87

**(Com. Sub. for S. B. 395 - By Senators Trump and
Boso)**

[Passed March 6, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §22B-1-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §22B-2-3 of said code; to amend and reenact §22B-3-3 of said code; and

to amend and reenact §22B-4-3 of said code, all relating to the general provisions for judicial review of final orders of various environmental boards; requiring petition be filed within 30 days of entry of the final order; providing that appeal does not automatically stay any final order or action approved by a board; authorizing the chief or director to employ outside legal counsel without approval of the Attorney General; providing that decisions of the Air Quality Board, Environmental Quality Board, and Surface Mine Board denying an application for a permit, or approving or modifying the terms and conditions of a permit, may be directly appealed to the Supreme Court of Appeals; and providing for exceptions to this right of direct appeal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL POLICY AND PURPOSE.

§22B-1-9. General provisions for judicial review.

1 (a) Any person, or the secretary, as the case may be,
2 adversely affected by an order made and entered by a board
3 after an appeal hearing, held in accordance with the
4 provisions of this chapter, is entitled to judicial review
5 thereof. All of the provisions of §29A-5-4 of this code apply
6 to and govern the review with like effect as if the provisions
7 of §29A-5-4 of this code were set forth in extenso in this
8 section, with the modifications or exceptions set forth in this
9 chapter: *Provided*, That the exceptions set forth in §22B-2-
10 3, §22B-3-3, and §22B-4-3 of this code apply.

11 (b) The filing of a petition of appeal under the
12 provisions of this chapter does not automatically stay or
13 suspend the effectiveness or execution of the order, permit,
14 or official action pending appeal. The board shall file with
15 the clerk of the court wherein the petition for appeal is filed
16 all papers, documents, evidence, and other records
17 comprising the complete record in the case, or certified
18 copies thereof, as were before the board at the time of the
19 entry of the order from which the appeal is taken.

20 (c) Notwithstanding any provisions of this code to the
21 contrary, the secretary may employ in-house legal counsel
22 to perform all legal services for the department and
23 secretary or any director, chief, or division therein in all
24 proceedings made under the provisions of this chapter,
25 including those in any administrative proceeding or before
26 any state or federal court. Additionally, the secretary may
27 call upon the Attorney General for any legal assistance and
28 representation as provided by law.

ARTICLE 2. AIR QUALITY BOARD.

§22B-2-3. Judicial review of Air Quality Board orders.

1 All of the provisions of §22B-1-9 of this code apply to
2 and govern such review with like effect as if the provisions
3 of §22B-1-9 of this code were set forth in extenso in this
4 section, with the following modifications or exceptions:

5 (a) As to cases involving an order denying an
6 application for a permit, or approving or modifying the
7 terms and conditions of a permit, the petition for review
8 shall be filed in the Supreme Court of Appeals within 30
9 days of the board's order: *Provided*, That, if all parties
10 consent to it, the proceedings may continue in the Circuit
11 Court of Kanawha County; and

12 (b) As to all other cases, the petition shall be filed in the
13 circuit court of the county wherein the alleged statutory air
14 pollution complained of originated or in Kanawha County
15 upon agreement between the parties.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-3. Judicial review.

1 All of the provisions of §22B-1-9 of this code apply to
2 and govern such review with like effect as if the provisions
3 of §22B-1-9 of this code were set forth in extenso in this
4 section, with the following modifications or exceptions:

5 (a) As to cases involving an order denying an
6 application for a permit, or approving or modifying the
7 terms and conditions of a permit, the petition shall be filed
8 in the Supreme Court of Appeals within 30 days of the
9 board's order: *Provided*, That, if all parties consent to it, the
10 proceedings may continue in the Circuit Court of Kanawha
11 County;

12 (b) As to cases involving an order revoking or
13 suspending a permit, the petition shall be filed in the circuit
14 court of Kanawha County; and

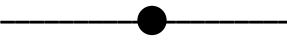
15 (c) As to cases involving an order directing that any and
16 all discharges or deposits of solid waste, sewage, industrial
17 wastes, or other wastes, or the effluent therefrom,
18 determined to be causing pollution be stopped or prevented
19 or else that remedial action be taken, the petition shall be
20 filed in the circuit court of the county in which the
21 establishment is located or in which the pollution occurs.

ARTICLE 4. SURFACE MINE BOARD.

§22B-4-3. Judicial review.

1 All of the provisions of §22B-1-9 of this code apply to
2 and govern such review with like effect as if the provisions
3 of §22B-1-9 of this code were set forth in extenso in this
4 section, with the following modifications or exceptions: (a)
5 As to cases involving an order denying an application for a
6 permit, or approving or modifying the terms and conditions
7 of a permit, the petition shall be filed in the Supreme Court
8 of Appeals within 30 days of the board's order: *Provided*,
9 That, if all parties consent to it, the proceedings may
10 continue in the Circuit Court of Kanawha County;

11 (b) As to all other cases, the petition shall be filed in the
12 Circuit Court of Kanawha County or in the county wherein
13 the surface mining operation is located.



CHAPTER 88

**(Com. Sub. for H. B. 4424 - By Delegates Miley,
Speaker Mr, Shott, Fleischauer, Lane, Rowe,
Hanshaw, Boggs, Hamilton, Caputo and Campbell)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §6B-2-5 of said code, all relating to providing that the West Virginia Governmental Ethics Act applies to public servant volunteers; defining terms; and providing that the requirements of the West Virginia Governmental Ethics Act apply to a person who is granted or vested with powers, privileges or authorities ordinarily reserved to public officials or who performs services, without compensation, on behalf of a public official.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS,
PURPOSES AND INTENT; CONSTRUCTION AND
APPLICATION OF CHAPTER; SEVERABILITY.**

§6B-1-3. Definitions.

- 1 As used in this chapter, unless the context in which used
- 2 clearly requires otherwise:
 - 3 (a) “Review Board” means the Probable Cause Review
 - 4 Board created by §6B-2-2a of this code.
 - 5 (b) “Business” means any entity through which business
 - 6 for-profit is conducted including a corporation, partnership,

7 proprietorship, franchise, association, organization, or self-
8 employed individual.

9 (c) “Compensation” means money, thing of value, or
10 financial benefit. The term “compensation” does not include
11 reimbursement for actual reasonable and necessary
12 expenses incurred in the performance of one’s official
13 duties.

14 (d) “Employee” means any person in the service of
15 another under any contract of hire, whether express or
16 implied, oral, or written, where the employer or an agent of
17 the employer or a public official has the right or power to
18 control and direct such person in the material details of how
19 work is to be performed and who is not responsible for the
20 making of policy nor for recommending official action.

21 (e) “Ethics Commission” or “commission” means the
22 West Virginia Ethics Commission.

23 (f) “Immediate family”, with respect to an individual,
24 means a spouse with whom the individual is living as
25 husband and wife and any dependent child or children,
26 dependent grandchild or grandchildren, and dependent
27 parent or parents.

28 (g) “Ministerial functions” means actions or functions
29 performed by an individual under a given state of facts in a
30 prescribed manner in accordance with a mandate of legal
31 authority, without regard to, or without the exercise of, the
32 individual’s own judgment as to the propriety of the action
33 being taken.

34 (h) “Person” means an individual, corporation, business
35 entity, labor union, association, firm, partnership, limited
36 partnership, committee, club, or other organization or group
37 of persons, irrespective of the denomination given such
38 organization or group.

39 (i) "Political contribution" means and has the same
40 definition as is given that term under the provisions of §3-
41 8-1 *et seq.* of this code.

42 (j) "Public employee" means any full-time or part-time
43 employee of any state, county or municipal governmental
44 body or any political subdivision thereof, including county
45 school boards.

46 (k) "Public official" means any person who is elected
47 to, appointed to, or given the authority to act in any state,
48 county, or municipal office or position, whether
49 compensated or not, and who is responsible for the making
50 of policy or takes official action which is either ministerial
51 or nonministerial, or both, with respect to: (1) Contracting
52 for, or procurement of, goods or services; (2) administering
53 or monitoring grants or subsidies; (3) planning or zoning;
54 (4) inspecting, licensing, regulating, or auditing any person;
55 or (5) any other activity where the official action has an
56 economic impact of greater than a de minimis nature on the
57 interest or interests of any person. The term "public official"
58 includes a public servant volunteer.

59 (l) "Public servant volunteer" means any person who,
60 without compensation, performs services on behalf of a
61 public official and who is granted or vested with powers,
62 privileges, or authorities ordinarily reserved to public
63 officials.

64 (m) "Relative" means spouse, mother, father, sister,
65 brother, son, daughter, grandmother, grandfather,
66 grandchild, mother-in-law, father-in-law, sister-in-law,
67 brother-in-law, son-in-law, or daughter-in-law.

68 (n) "Respondent" means a person who is the subject of
69 an investigation by the commission or against whom a
70 complaint has been filed with the commission.

71 (o) "Thing of value", "other thing of value," or
72 "anything of value" means and includes: (1) Money, bank

73 bills, or notes, United States treasury notes and other bills,
74 bonds or notes issued by lawful authority and intended to
75 pass and circulate as money; (2) goods and chattels; (3)
76 promissory notes, bills of exchange, orders, drafts, warrants,
77 checks, bonds given for the payment of money, or the
78 forbearance of money due or owing; (4) receipts given for
79 the payment of money or other property; (5) any right or
80 chose in action; (6) chattels real or personal or things which
81 savor of realty and are, at the time taken, a part of a freehold,
82 whether they are of the substance or produce thereof or
83 affixed thereto, although there may be no interval between
84 the severing and the taking away thereof; (7) any interest in
85 realty, including, but not limited to, fee simple estates, life
86 estates, estates for a term or period of time, joint tenancies,
87 cotenancies, tenancies in common, partial interests, present
88 or future interests, contingent or vested interests, beneficial
89 interests, leasehold interests, or any other interest or
90 interests in realty of whatsoever nature; (8) any promise of
91 employment, present or future; (9) donation or gift; (10)
92 rendering of services or the payment thereof; (11) any
93 advance or pledge; (12) a promise of present or future
94 interest in any business or contract or other agreement; or
95 (13) every other thing or item, whether tangible or
96 intangible, having economic worth. “Thing of value”,
97 “other thing of value” or “anything of value” shall not
98 include anything which is *de minimis* in nature nor a lawful
99 political contribution reported as required by law.

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION;
POWERS AND DUTIES; DISCLOSURE OF
FINANCIAL INTEREST BY PUBLIC OFFICIALS
AND EMPLOYEES; APPEARANCES BEFORE
PUBLIC AGENCIES; CODE OF CONDUCT FOR
ADMINISTRATIVE LAW JUDGES.**

**§6B-2-5. Ethical standards for elected and appointed officials
and public employees.**

1 (a) *Persons subject to section.* — The provisions of this
2 section apply to all public officials and public employees,

3 whether full or part-time and whether compensated or not,
4 in state, county, municipal governments and their respective
5 boards, agencies, departments, and commissions and in any
6 other regional or local governmental agency, including
7 county school boards.

8 (b) *Use of public office for private gain.* — (1) A public
9 official or public employee may not knowingly and
10 intentionally use his or her office or the prestige of his or
11 her office for his or her own private gain or that of another
12 person. Incidental use of equipment or resources available
13 to a public official or public employee by virtue of his or her
14 position for personal or business purposes resulting in de
15 minimis private gain does not constitute use of public office
16 for private gain under this subsection. The performance of
17 usual and customary duties associated with the office or
18 position or the advancement of public policy goals or
19 constituent services, without compensation, does not
20 constitute the use of prestige of office for private gain.

21 (2) Notwithstanding the general prohibition against use
22 of office for private gain, public officials and public
23 employees may use bonus points acquired through
24 participation in frequent traveler programs while traveling
25 on official government business: *Provided*, That the
26 official's or employee's participation in such program, or
27 acquisition of such points, does not result in additional costs
28 to the government.

29 (3) The Legislature, in enacting this subsection,
30 recognizes that there may be certain public officials or
31 public employees who bring to their respective offices or
32 employment their own unique personal prestige which is
33 based upon their intelligence, education, experience, skills
34 and abilities, or other personal gifts or traits. In many cases,
35 these persons bring a personal prestige to their office or
36 employment which inures to the benefit of the state and its
37 citizens. Those persons may, in fact, be sought by the state
38 to serve in their office or employment because, through their
39 unusual gifts or traits, they bring stature and recognition to

40 their office or employment and to the state itself. While the
41 office or employment held or to be held by those persons
42 may have its own inherent prestige, it would be unfair to
43 those individuals and against the best interests of the
44 citizens of this state to deny those persons the right to hold
45 public office or to be publicly employed on the grounds that
46 they would, in addition to the emoluments of their office or
47 employment, be in a position to benefit financially from the
48 personal prestige which otherwise inheres to them.
49 Accordingly, the commission is directed, by legislative rule,
50 to establish categories of public officials and public
51 employees, identifying them generally by the office or
52 employment held, and offering persons who fit within those
53 categories the opportunity to apply for an exemption from
54 the application of the provisions of this subsection.
55 Exemptions may be granted by the commission, on a case-
56 by-case basis, when it is shown that: (A) The public office
57 held or the public employment engaged in is not such that it
58 would ordinarily be available or offered to a substantial
59 number of the citizens of this state; (B) the office held or the
60 employment engaged in is such that it normally or
61 specifically requires a person who possesses personal
62 prestige; and (C) the person's employment contract or letter
63 of appointment provides or anticipates that the person will
64 gain financially from activities which are not a part of his or
65 her office or employment.

66 (4) A public official or public employee may not show
67 favoritism or grant patronage in the employment or working
68 conditions of his or her relative or a person with whom he
69 or she resides: *Provided*, That as used in this subdivision,
70 "employment or working conditions" shall only apply to
71 government employment: *Provided, however*, That
72 government employment includes only those governmental
73 entities specified in subsection (a) of this section.

74 (c) *Gifts.* — (1) A public official or public employee
75 may not solicit any gift unless the solicitation is for a
76 charitable purpose with no resulting direct pecuniary benefit

77 conferred upon the official or employee or his or her
78 immediate family: *Provided*, That no public official or
79 public employee may solicit for a charitable purpose any
80 gift from any person who is also an official or employee of
81 the state and whose position is subordinate to the soliciting
82 official or employee: *Provided, however*, That nothing
83 herein shall prohibit a candidate for public office from
84 soliciting a lawful political contribution. No official or
85 employee may knowingly accept any gift, directly or
86 indirectly, from a lobbyist or from any person whom the
87 official or employee knows or has reason to know:

88 (A) Is doing or seeking to do business of any kind with
89 his or her agency;

90 (B) Is engaged in activities which are regulated or
91 controlled by his or her agency; or

92 (C) Has financial interests which may be substantially
93 and materially affected, in a manner distinguishable from
94 the public generally, by the performance or nonperformance
95 of his or her official duties.

96 (2) Notwithstanding the provisions of subdivision (1) of
97 this subsection, a person who is a public official or public
98 employee may accept a gift described in this subdivision,
99 and there shall be a presumption that the receipt of such gift
100 does not impair the impartiality and independent judgment
101 of the person. This presumption may be rebutted only by
102 direct objective evidence that the gift did impair the
103 impartiality and independent judgment of the person or that
104 the person knew or had reason to know that the gift was
105 offered with the intent to impair his or her impartiality and
106 independent judgment. The provisions of subdivision (1) of
107 this subsection do not apply to:

108 (A) Meals and beverages;

109 (B) Ceremonial gifts or awards which have insignificant
110 monetary value;

111 (C) Unsolicited gifts of nominal value or trivial items of
112 informational value;

113 (D) Reasonable expenses for food, travel, and lodging
114 of the official or employee for a meeting at which the
115 official or employee participates in a panel or has a speaking
116 engagement;

117 (E) Gifts of tickets or free admission extended to a
118 public official or public employee to attend charitable,
119 cultural, or political events, if the purpose of such gift or
120 admission is a courtesy or ceremony customarily extended
121 to the office;

122 (F) Gifts that are purely private and personal in nature;
123 or

124 (G) Gifts from relatives by blood or marriage, or a
125 member of the same household.

126 (3) The commission shall, through legislative rule
127 promulgated pursuant to chapter 29A of this code, establish
128 guidelines for the acceptance of a reasonable honorarium by
129 public officials and elected officials. The rule promulgated
130 shall be consistent with this section. Any elected public
131 official may accept an honorarium only when:

132 (A) That official is a part-time elected public official;

133 (B) The fee is not related to the official's public position
134 or duties;

135 (C) The fee is for services provided by the public
136 official that are related to the public official's regular,
137 nonpublic trade, profession, occupation, hobby, or
138 avocation; and

139 (D) The honorarium is not provided in exchange for any
140 promise or action on the part of the public official.

141 (4) Nothing in this section shall be construed so as to
142 prohibit the giving of a lawful political contribution as
143 defined by law.

144 (5) The Governor or his designee may, in the name of
145 the State of West Virginia, accept and receive gifts from any
146 public or private source. Any gift so obtained shall become
147 the property of the state and shall, within 30 days of the
148 receipt thereof, be registered with the commission and the
149 Division of Culture and History.

150 (6) Upon prior approval of the Joint Committee on
151 Government and Finance, any member of the Legislature
152 may solicit donations for a regional or national legislative
153 organization conference or other legislative organization
154 function to be held in the state for the purpose of deferring
155 costs to the state for hosting of the conference or function.
156 Legislative organizations are bipartisan regional or national
157 organizations in which the Joint Committee on Government
158 and Finance authorizes payment of dues or other
159 membership fees for the Legislature's participation and
160 which assist this and other State Legislatures and their staff
161 through any of the following:

162 (A) Advancing the effectiveness, independence, and
163 integrity of Legislatures in the states of the United States;

164 (B) Fostering interstate cooperation and facilitating
165 information exchange among State Legislatures;

166 (C) Representing the states and their Legislatures in the
167 American federal system of government;

168 (D) Improving the operations and management of State
169 Legislatures and the effectiveness of legislators and
170 legislative staff, and to encourage the practice of high
171 standards of conduct by legislators and legislative staff;

172 (E) Promoting cooperation between State Legislatures
173 in the United States and Legislatures in other countries.

174 The solicitations may only be made in writing. The
175 legislative organization may act as fiscal agent for the
176 conference and receive all donations. In the alternative, a
177 bona fide banking institution may act as the fiscal agent. The
178 official letterhead of the Legislature may not be used by the
179 legislative member in conjunction with the fund raising or
180 solicitation effort. The legislative organization for which
181 solicitations are being made shall file with the Joint
182 Committee on Government and Finance and with the
183 Secretary of State for publication in the State Register as
184 provided in §29A-2-1 *et seq.* of this code, copies of letters,
185 brochures, and other solicitation documents, along with a
186 complete list of the names and last known addresses of all
187 donors and the amount of donations received. Any
188 solicitation by a legislative member shall contain the
189 following disclaimer:

190 “This solicitation is endorsed by [name of member].
191 This endorsement does not imply support of the soliciting
192 organization, nor of the sponsors who may respond to the
193 solicitation. A copy of all solicitations are on file with the
194 West Virginia Legislature’s Joint Committee on
195 Government and Finance, and with the Secretary of State
196 and are available for public review.”

197 (7) Upon written notice to the commission, any member
198 of the board of Public Works may solicit donations for a
199 regional or national organization conference or other
200 function related to the office of the member to be held in the
201 state for the purpose of deferring costs to the state for
202 hosting of the conference or function. The solicitations may
203 only be made in writing. The organization may act as fiscal
204 agent for the conference and receive all donations. In the
205 alternative, a bona fide banking institution may act as the
206 fiscal agent. The official letterhead of the office of the Board
207 of Public Works member may not be used in conjunction
208 with the fund raising or solicitation effort. The organization
209 for which solicitations are being made shall file with the
210 Joint Committee on Government and Finance, with the

211 Secretary of State for publication in the State Register as
212 provided in §29A-2-1 *et seq.* of this code and with the
213 commission, copies of letters, brochures, and other
214 solicitation documents, along with a complete list of the
215 names and last known addresses of all donors and the
216 amount of donations received. Any solicitation by a member
217 of the board of Public Works shall contain the following
218 disclaimer: “This solicitation is endorsed by (name of
219 member of Board of Public Works.) This endorsement does
220 not imply support of the soliciting organization, nor of the
221 sponsors who may respond to the solicitation. Copies of all
222 solicitations are on file with the West Virginia Legislature’s
223 Joint Committee on Government and Finance, with the
224 West Virginia Secretary of State and with the West Virginia
225 Ethics Commission and are available for public review.”
226 Any moneys in excess of those donations needed for the
227 conference or function shall be deposited in the Capitol
228 Dome and Capitol Improvement Fund established in §5A-
229 4-2 *et seq.* of this code.

230 (d) *Interests in public contracts.* — (1) In addition to the
231 provisions of §61-10-15 of this code, no elected or
232 appointed public official or public employee or member of
233 his or her immediate family or business with which he or
234 she is associated may be a party to or have an interest in the
235 profits or benefits of a contract which the official or
236 employee may have direct authority to enter into, or over
237 which he or she may have control: *Provided*, That nothing
238 herein shall be construed to prevent or make unlawful the
239 employment of any person with any governmental body:
240 *Provided, however*, That nothing herein shall be construed
241 to prohibit a member of the Legislature from entering into a
242 contract with any governmental body, or prohibit a part-
243 time appointed public official from entering into a contract
244 which the part-time appointed public official may have
245 direct authority to enter into or over which he or she may
246 have control when the official has not participated in the
247 review or evaluation thereof, has been recused from
248 deciding or evaluating and has been excused from voting on

249 the contract and has fully disclosed the extent of his or her
250 interest in the contract.

251 (2) In the absence of bribery or a purpose to defraud, an
252 elected or appointed public official or public employee or a
253 member of his or her immediate family or a business with
254 which he or she is associated shall not be considered as
255 having a prohibited financial interest in a public contract
256 when such a person has a limited interest as an owner,
257 shareholder, or creditor of the business which is awarded a
258 public contract. A limited interest for the purposes of this
259 subsection is:

260 (A) An interest which does not exceed \$1,000 in the
261 profits or benefits of the public contract or contracts in a
262 calendar year;

263 (B) An interest as a creditor of a public employee or
264 official who exercises control over the contract, or a
265 member of his or her immediate family, if the amount is less
266 than \$5,000.

267 (3) If a public official or employee has an interest in the
268 profits or benefits of a contract, then he or she may not
269 make, participate in making, or in any way attempt to use
270 his office or employment to influence a government
271 decision affecting his or her financial or limited financial
272 interest. Public officials shall also comply with the voting
273 rules prescribed in subsection (j) of this section.

274 (4) Where the provisions of subdivisions (1) and (2) of
275 this subsection would result in the loss of a quorum in a
276 public body or agency, in excessive cost, undue hardship, or
277 other substantial interference with the operation of a state,
278 county, municipality, county school board, or other
279 governmental agency, the affected governmental body or
280 agency may make written application to the Ethics
281 Commission for an exemption from subdivisions (1) and (2)
282 of this subsection.

283 (e) *Confidential information.* — No present or former
284 public official or employee may knowingly and improperly
285 disclose any confidential information acquired by him or
286 her in the course of his or her official duties nor use such
287 information to further his or her personal interests or the
288 interests of another person.

289 (f) *Prohibited representation.* — No present or former
290 elected or appointed public official or public employee
291 shall, during or after his or her public employment or
292 service, represent a client or act in a representative capacity
293 with or without compensation on behalf of any person in a
294 contested case, rate-making proceeding, license or permit
295 application, regulation filing or other particular matter
296 involving a specific party or parties which arose during his
297 or her period of public service or employment and in which
298 he or she personally and substantially participated in a
299 decision-making, advisory or staff support capacity, unless
300 the appropriate government agency, after consultation,
301 consents to such representation. A staff attorney, accountant
302 or other professional employee who has represented a
303 government agency in a particular matter shall not thereafter
304 represent another client in the same or substantially related
305 matter in which that client's interests are materially adverse
306 to the interests of the government agency, without the
307 consent of the government agency: *Provided*, That this
308 prohibition on representation shall not apply when the client
309 was not directly involved in the particular matter in which
310 the professional employee represented the government
311 agency, but was involved only as a member of a class. The
312 provisions of this subsection shall not apply to legislators
313 who were in office and legislative staff who were employed
314 at the time it originally became effective on July 1, 1989,
315 and those who have since become legislators or legislative
316 staff and those who shall serve hereafter as legislators or
317 legislative staff.

318 (g) *Limitation on practice before a board, agency,*
319 *commission or department.* — Except as otherwise provided

320 in §8A-2-3, §8A-2-4, or §8A-2-5 of this code: (1) No
321 elected or appointed public official and no full-time staff
322 attorney or accountant shall, during his or her public service
323 or public employment or for a period of one year after the
324 termination of his or her public service or public
325 employment with a governmental entity authorized to hear
326 contested cases or promulgate or propose rules, appear in a
327 representative capacity before the governmental entity in
328 which he or she serves or served or is or was employed in
329 the following matters:

330 (A) A contested case involving an administrative
331 sanction, action or refusal to act;

332 (B) To support or oppose a proposed rule;

333 (C) To support or contest the issuance or denial of a
334 license or permit;

335 (D) A rate-making proceeding; and

336 (E) To influence the expenditure of public funds.

337 (2) As used in this subsection, “represent” includes any
338 formal or informal appearance before, or any written or oral
339 communication with, any public agency on behalf of any
340 person: *Provided*, That nothing contained in this subsection
341 shall prohibit, during any period, a former public official or
342 employee from being retained by or employed to represent,
343 assist or act in a representative capacity on behalf of the
344 public agency by which he or she was employed or in which
345 he or she served. Nothing in this subsection shall be
346 construed to prevent a former public official or employee
347 from representing another state, county, municipal, or other
348 governmental entity before the governmental entity in
349 which he or she served or was employed within one year
350 after the termination of his or her employment or service in
351 the entity.

352 (3) A present or former public official or employee may
353 appear at any time in a representative capacity before the

354 Legislature, a county commission, city or town council, or
355 county school board in relation to the consideration of a
356 statute, budget, ordinance, rule, resolution, or enactment.

357 (4) Members and former members of the Legislature
358 and professional employees and former professional
359 employees of the Legislature shall be permitted to appear in
360 a representative capacity on behalf of clients before any
361 governmental agency of the state or of county or municipal
362 governments, including county school boards.

363 (5) An elected or appointed public official, full-time
364 staff attorney or accountant who would be adversely
365 affected by the provisions of this subsection may apply to
366 the Ethics Commission for an exemption from the one year
367 prohibition against appearing in a representative capacity,
368 when the person's education and experience is such that the
369 prohibition would, for all practical purposes, deprive the
370 person of the ability to earn a livelihood in this state outside
371 of the governmental agency. The Ethics Commission shall,
372 by legislative rule, establish general guidelines or standards
373 for granting an exemption or reducing the time period, but
374 shall decide each application on a case-by-case basis.

375 (h) Employment by regulated persons and vendors. —
376 (1) No full-time official or full-time public employee may
377 seek employment with, be employed by, or seek to
378 purchase, sell or lease real or personal property to or from
379 any person who:

380 (A) Had a matter on which he or she took, or a
381 subordinate is known to have taken, regulatory action within
382 the preceding 12 months; or

383 (B) Has a matter before the agency on which he or she
384 is working or a subordinate is known by him or her to be
385 working.

386 (C) Is a vendor to the agency where the official serves
387 or public employee is employed and the official or public

388 employee, or a subordinate of the official or public
389 employee, exercises authority or control over a public
390 contract with such vendor, including, but not limited to:

391 (i) Drafting bid specifications or requests for proposals;

392 (ii) Recommending selection of the vendor;

393 (iii) Conducting inspections or investigations;

394 (iv) Approving the method or manner of payment to the
395 vendor;

396 (v) Providing legal or technical guidance on the
397 formation, implementation or execution of the contract; or

398 (vi) Taking other nonministerial action which may
399 affect the financial interests of the vendor.

400 (2) Within the meaning of this section, the term
401 “employment” includes professional services and other
402 services rendered by the public official or public employee,
403 whether rendered as employee or as an independent
404 contractor; “seek employment” includes responding to
405 unsolicited offers of employment as well as any direct or
406 indirect contact with a potential employer relating to the
407 availability or conditions of employment in furtherance of
408 obtaining employment; and “subordinate” includes only
409 those agency personnel over whom the public official or
410 public employee has supervisory responsibility.

411 (3) A full-time public official or full-time public
412 employee who would be adversely affected by the
413 provisions of this subsection may apply to the Ethics
414 Commission for an exemption from the prohibition
415 contained in subdivision (1) of this subsection.

416 (A) The Ethics Commission shall, by legislative rule,
417 establish general guidelines or standards for granting an
418 exemption, but shall decide each application on a case-by-
419 case basis;

420 (B) A person adversely affected by the restriction on the
421 purchase of personal property may make such purchase
422 after seeking and obtaining approval from the commission
423 or in good faith reliance upon an official guideline
424 promulgated by the commission, written advisory opinions
425 issued by the commission, or a legislative rule.

426 (C) The commission may establish exceptions to the
427 personal property purchase restrictions through the adoption
428 of guidelines, advisory opinions or legislative rule.

429 (4) A full-time public official or full-time public
430 employee may not take personal regulatory action on a
431 matter affecting a person by whom he or she is employed or
432 with whom he or she is seeking employment or has an
433 agreement concerning future employment.

434 (5) A full-time public official or full-time public
435 employee may not personally participate in a decision,
436 approval, disapproval, recommendation, rendering advice,
437 investigation, inspection, or other substantial exercise of
438 nonministerial administrative discretion involving a vendor
439 with whom he or she is seeking employment or has an
440 agreement concerning future employment.

441 (6) A full-time public official or full-time public
442 employee may not receive private compensation for
443 providing information or services that he or she is required
444 to provide in carrying out his or her public job
445 responsibilities.

446 (i) *Members of the Legislature required to vote.* —
447 Members of the Legislature who have asked to be excused
448 from voting or who have made inquiry as to whether they
449 should be excused from voting on a particular matter and
450 who are required by the presiding officer of the House of
451 Delegates or Senate of West Virginia to vote under the rules
452 of the particular house shall not be guilty of any violation of
453 ethics under the provisions of this section for a vote so cast.

454 (j) *Limitations on voting.* — (1) Public officials,
455 excluding members of the Legislature who are governed by
456 subsection (i) of this section, may not vote on a matter:

457 (A) In which they, an immediate family member, or a
458 business with which they or an immediate family member
459 is associated have a financial interest. Business with which
460 they are associated means a business of which the person or
461 an immediate family member is a director, officer, owner,
462 employee, compensated agent, or holder of stock which
463 constitutes five percent or more of the total outstanding
464 stocks of any class.

465 (B) If a public official is employed by a financial
466 institution and his or her primary responsibilities include
467 consumer and commercial lending, the public official may
468 not vote on a matter which directly affects the financial
469 interests of a customer of the financial institution if the
470 public official is directly involved in approving a loan
471 request from the person or business appearing before the
472 governmental body or if the public official has been directly
473 involved in approving a loan for that person or business
474 within the past 12 months: *Provided*, That this limitation
475 only applies if the total amount of the loan or loans exceeds
476 \$15,000.

477 (C) The employment or working conditions of the
478 public official's relative or person with whom the public
479 official resides.

480 (D) The appropriations of public moneys or the
481 awarding of a contract to a nonprofit corporation if the
482 public official or an immediate family member is employed
483 by, or a compensated officer or board member of, the
484 nonprofit: *Provided*, That if the public official or immediate
485 family member is an uncompensated officer or board
486 member of the nonprofit, then the public official shall
487 publicly disclose such relationship prior to a vote on the
488 appropriations of public moneys or award of contract to the
489 nonprofit: *Provided, however*, That for purposes of this

490 paragraph, public disclosure shall mean disclosure of the
491 public official's, or his or her immediate family member's,
492 relationship to the nonprofit (i) on the agenda item relating
493 to the appropriation or award contract, if known at time of
494 agenda, (ii) by the public official at the meeting prior to the
495 vote, and (iii) in the minutes of the meeting.

496 (2) A public official may vote:

497 (A) If the public official, his or her spouse, immediate
498 family members or relatives or business with which they are
499 associated are affected as a member of, and to no greater
500 extent than any other member of a profession, occupation,
501 class of persons or class of businesses. A class shall consist
502 of not fewer than five similarly situated persons or
503 businesses; or

504 (B) If the matter affects a publicly traded company
505 when:

506 (i) The public official, or dependent family members
507 individually or jointly own less than five percent of the
508 issued stock in the publicly traded company and the value
509 of the stocks individually or jointly owned is less than
510 \$10,000; and

511 (ii) Prior to casting a vote the public official discloses
512 his or her interest in the publicly traded company.

513 (3) For a public official's recusal to be effective, it is
514 necessary to excuse him or herself from participating in the
515 discussion and decision-making process by physically
516 removing him or herself from the room during the period,
517 fully disclosing his or her interests, and recusing him or
518 herself from voting on the issue. The recusal shall also be
519 reflected in the meeting minutes.

520 (k) *Limitations on participation in licensing and rate-*
521 *making proceedings.* — No public official or employee may
522 participate within the scope of his or her duties as a public
523 official or employee, except through ministerial functions as

524 defined in §6B-1-3 of this code, in any license or rate-
525 making proceeding that directly affects the license or rates
526 of any person, partnership, trust, business trust, corporation,
527 or association in which the public official or employee or
528 his or her immediate family owns or controls more than 10
529 percent. No public official or public employee may
530 participate within the scope of his or her duties as a public
531 official or public employee, except through ministerial
532 functions as defined §6B-1-3 of this code, in any license or
533 rate-making proceeding that directly affects the license or
534 rates of any person to whom the public official or public
535 employee or his or her immediate family, or a partnership,
536 trust, business trust, corporation or association of which the
537 public official or employee, or his or her immediate family,
538 owns or controls more than 10 percent, has sold goods or
539 services totaling more than \$1,000 during the preceding
540 year, unless the public official or public employee has filed
541 a written statement acknowledging such sale with the public
542 agency and the statement is entered in any public record of
543 the agency's proceedings. This subsection shall not be
544 construed to require the disclosure of clients of attorneys or
545 of patients or clients of persons licensed pursuant to §30-3-
546 1 *et seq.*, §30-8-1 *et seq.*, §30-14-1 *et seq.*, §30-14A-1 *et*
547 *seq.*, §30-15-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*,
548 §30-21-1 *et seq.*, or §30-31-1 *et seq.* of this code.

549 (l) *Certain compensation prohibited.* — (1) A public
550 employee may not receive additional compensation from
551 another publicly-funded state, county, or municipal office
552 or employment for working the same hours, unless:

553 (A) The public employee's compensation from one
554 public employer is reduced by the amount of compensation
555 received from the other public employer;

556 (B) The public employee's compensation from one
557 public employer is reduced on a pro rata basis for any work
558 time missed to perform duties for the other public employer;

559 (C) The public employee uses earned paid vacation,
560 personal or compensatory time or takes unpaid leave from
561 his or her public employment to perform the duties of
562 another public office or employment; or

563 (D) A part-time public employee who does not have
564 regularly scheduled work hours or a public employee who
565 is authorized by one public employer to make up, outside of
566 regularly scheduled work hours, time missed to perform the
567 duties of another public office or employment maintains
568 time records, verified by the public employee and his or her
569 immediate supervisor at least once every pay period,
570 showing the hours that the public employee did, in fact,
571 work for each public employer. The public employer shall
572 submit these time records to the Ethics Commission on a
573 quarterly basis.

574 (2) This section does not prohibit a retired public official
575 or public employee from receiving compensation from a
576 publicly-funded office or employment in addition to any
577 retirement benefits to which the retired public official or
578 public employee is entitled.

579 (m) *Certain expenses prohibited.* — No public official
580 or public employee shall knowingly request or accept from
581 any governmental entity compensation or reimbursement
582 for any expenses actually paid by a lobbyist and required by
583 the provisions of this chapter to be reported, or actually paid
584 by any other person.

585 (n) Any person who is employed as a member of the
586 faculty or staff of a public institution of higher education
587 and who is engaged in teaching, research, consulting, or
588 publication activities in his or her field of expertise with
589 public or private entities and thereby derives private
590 benefits from such activities shall be exempt from the
591 prohibitions contained in subsections (b), (c) and (d) of this
592 section when the activity is approved as a part of an
593 employment contract with the governing board of the
594 institution or has been approved by the employee's

595 department supervisor or the president of the institution by
596 which the faculty or staff member is employed.

597 (o) Except as provided in this section, a person who is a
598 public official or public employee may not solicit private
599 business from a subordinate public official or public
600 employee whom he or she has the authority to direct,
601 supervise or control. A person who is a public official or
602 public employee may solicit private business from a
603 subordinate public official or public employee whom he or
604 she has the authority to direct, supervise or control when:

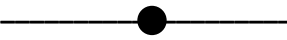
605 (A) The solicitation is a general solicitation directed to
606 the public at large through the mailing or other means of
607 distribution of a letter, pamphlet, handbill, circular, or other
608 written or printed media; or

609 (B) The solicitation is limited to the posting of a notice
610 in a communal work area; or

611 (C) The solicitation is for the sale of property of a kind
612 that the person is not regularly engaged in selling; or

613 (D) The solicitation is made at the location of a private
614 business owned or operated by the person to which the
615 subordinate public official or public employee has come on
616 his or her own initiative.

617 (p) The commission may, by legislative rule
618 promulgated in accordance with chapter 29A of this code,
619 define further exemptions from this section as necessary or
620 appropriate.



CHAPTER 89

(Com. Sub. for H. B. 4473 - By Delegates Sobonya, C. Romine, Westfall, Overington, Ambler, Butler, C. Miller, Rowan, Ward, Householder and Rohrbach)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §6B-2B-1, §6B-2B-2, §6B-2B-3, and §6B-2B-4 of the Code of West Virginia, 1931, as amended, all relating to the use of a public official's name or likeness on items or in materials produced using public funds; defining terms; providing that a public official's name or likeness may be included in certain educational materials and press releases produced using public funds; providing that a public official's name or likeness may appear on an agency's website or social media for certain purposes; and clarifying that items or materials that are paid for by a public official's campaign funds are not subject to restrictions on items or materials produced using public funds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. LIMITATIONS ON A PUBLIC OFFICIAL FROM USING HIS OR HER NAME OR LIKENESS.

§6B-2B-1. Definitions.

- 1 As used in this article:
- 2 (a) "Advertising" means publishing, distributing,
- 3 disseminating, communicating, or displaying information to
- 4 the public through audio, visual, or other media tools with
- 5 the purpose of promoting the public official or a political
- 6 party. "Advertising" may include, but is not limited to,

7 billboard, radio, television, mail, electronic mail,
8 publications, banners, table skirts, magazines, social media,
9 websites, and other forms of publication, dissemination,
10 display, or communication.

11 (b) “Agent” means any volunteer or employee,
12 contractual or permanent, serving at the discretion of a
13 public official or public employee.

14 (c) “Educational materials” means publications, guides,
15 calendars, handouts, pamphlets, reports, or booklets
16 intended to provide information about the public official or
17 governmental office. It includes information or details about
18 the office, services the office provides to the public, updates
19 on laws and services, and other informational items that are
20 intended to educate the public.

21 (d) “Instructional material” means written instructions
22 explaining or detailing steps for completion of a
23 governmental agency document or form.

24 (e) “Likeness” means a photograph, drawing, or other
25 depiction of an individual.

26 (f) “Mass media communication” means
27 communication through audio, visual, or other media tools,
28 including U.S. mail, electronic mail, and social media,
29 intended for general dissemination to the public. Examples
30 include mass mailing by U.S. mail, list-serve emails and
31 streaming clips on websites. It does not include: (i) Regular
32 responses to constituent requests or questions during the
33 normal course of business; or (ii) communications that are
34 authorized or required by law to be publicly disseminated,
35 such as legal notices.

36 (g) “Press release” means a written, audio, or video
37 communication issued by an official or agency to the public
38 or to members and organizations of the news media to report
39 specific but brief information about an event, circumstance,
40 or other happening.

41 (h) “Public employee” means any full-time or part-time
42 employee of any state, or political subdivision of the state,
43 and their respective boards, agencies, departments, and
44 commissions, or in any other regional or local governmental
45 agency.

46 (i) “Public official” means any person who is elected or
47 appointed to any state, county, or municipal office or
48 position, including boards, agencies, departments, and
49 commissions, or in any other regional or local governmental
50 agency.

51 (j) “Public payroll” means payment of public moneys as
52 a wage or salary from the state, or political subdivision of
53 the state, or any other regional or local governmental
54 agency, whether accepted or not.

55 (k) “Social media” means forms of electronic
56 communication through which users create online
57 communities to share information, ideas, personal
58 messages, and other content. It includes web and mobile-
59 based technologies which are used to turn communication
60 to interactive dialogue among organizations, communities,
61 and individuals. Examples include, but are not limited to,
62 Facebook, Myspace, Twitter, and YouTube.

63 (l) “Trinkets” means items of tangible personal property
64 that are not vital or necessary to the duties of the public
65 official’s or public employee’s office, including, but not
66 limited to, the following: magnets, mugs, cups, key chains,
67 pill holders, band-aid dispensers, fans, nail files, matches,
68 and bags.

§6B-2B-2. Limitations on a public official from using his or her name or likeness.

1 (a) *Trinkets*. – Public officials, their agents, or anyone
2 on public payroll may not place the public official’s name
3 or likeness on trinkets paid for with public funds: *Provided*,
4 That when appropriate and reasonable, public officials may

5 expend a minimal amount of public funds for the purchase
6 of pens, pencils, or other markers to be used during
7 ceremonial signings.

8 (b) *Advertising.* – (1) Public officials, their agents, or
9 anyone on public payroll may not use public funds,
10 including funds of the office held by the public official,
11 public employees, or public resources to distribute,
12 disseminate, publish, or display the public official’s name
13 or likeness for the purpose of advertising to the public.

14 (2) Notwithstanding the prohibitions in subdivision (1)
15 of this subsection, the following conduct is not prohibited:

16 (A) A public official’s name and likeness may be used
17 in a public announcement or mass media communication
18 when necessary, reasonable, and appropriate to relay
19 specific public safety, health, or emergency information.

20 (B) A public official’s name and likeness may appear on
21 an agency’s social media and website if it complies with
22 §6B-2B-3 of this code.

23 (3) Banners and table skirts are considered advertising
24 and may not include the public official’s name or likeness.

25 (4) Nothing in this article shall be interpreted as
26 prohibiting public officials from using public funds to
27 communicate with constituents in the normal course of their
28 duties as public officials if the communications do not
29 include any reference to voting in favor of the public official
30 in an election.

31 (c) *Vehicles.* – Public officials, their agents, or any
32 person on public payroll may not use or place the public
33 official’s name or likeness on any publicly owned vehicles.

34 (d) *Educational Materials.* –

35 A public official’s name or likeness may be placed on
36 any educational material, that is paid for with public funds,

37 so long as the primary purpose of the material is to provide
38 information about the processes, operations, structure,
39 functions, or history of an agency, agencies, or branch of
40 government, or to provide lists of contact information or
41 other identifying information about a public official.
42 Educational materials in which the name and likeness of an
43 official may appear include, but are not limited to:
44 directories; reports; reference books; and legislative
45 publications, such as the West Virginia Blue Book and the
46 Legislative Manual.

47 (e) *Press releases.* – Notwithstanding any other
48 provision of law, the name and likeness of a public official
49 may be included in a press release, produced with public
50 funds and which is disseminated by any means, if that press
51 release is intended for a legitimate news or informational
52 purpose and, considered as a whole, does not feature or
53 present the public official in a form, manner, or context
54 which is intended to promote the official. A press release
55 produced with public funds may not request, solicit, or
56 promote voting for any official or political party.

§6B-2B-3. Use of public official’s name or likeness on agency website or social media.

1 (a) A public official’s name and likeness may appear on
2 a public agency’s website and on the agency’s social media
3 accounts or pages in any of the following circumstances:

4 (1) The public official’s name and likeness appears on
5 the agency’s website or social media accounts or pages for
6 the purpose of providing biographical information
7 regarding the public official;

8 (2) The public official’s name and likeness appears in
9 educational materials posted or otherwise shared on the
10 agency’s website or social media accounts or pages, so long
11 as the educational materials comply with the requirements
12 of §6B-2B-2(d) of this code;

13 (3) The public official's name and likeness appears in a
14 press release posted or otherwise shared on the agency's
15 website or social media accounts or pages, so long as the
16 press release complies with the requirements of §6B-2B-
17 2(e) of this code; or

18 (4) The public official's name and likeness appears on
19 the agency's website or social media accounts or pages for
20 any other purpose that is reasonable, incidental, appropriate,
21 and has a primary purpose to promote the agency's mission
22 and services rather than to promote the public official.

23 (b) The requirements of this section do not apply to a
24 public official's personal or non-public agency social media
25 accounts.

26 (c) A public agency's website or social media may not
27 provide links or reference to a public official's or public
28 employee's personal or campaign social media or website.

§6B-2B-4. Exceptions to use of name or likeness.

1 (a) A public official may use his or her name or likeness
2 on any official record or report, letterhead, document, or
3 certificate or instructional material issued in the course of his
4 or her duties as a public official: *Provided*, That other official
5 documents used in the normal course of the agency,
6 including, but not limited to, facsimile cover sheets, press
7 release headers, office signage, and envelopes may include
8 the public official's name: *Provided, however*, That when
9 official documents are reproduced for distribution or
10 dissemination to the public as educational material, the items
11 are subject to the prohibitions in §6B-2B-2(d) of this code.

12 (b) When appropriate and reasonable, the West Virginia
13 Division of Tourism may use a public official's name and
14 likeness on material used for tourism promotion.

15 (c) The prohibitions contained in this article do not
16 apply to any person who is employed as a member of the
17 faculty, staff, administration, or president of a public

18 institution of higher education and who is engaged in
19 teaching, research, consulting, coaching, recruiting, or
20 publication activities: *Provided*, That the activity is
21 approved as a part of an employment contract with the
22 governing board of the institution of higher education or has
23 been approved by the employee’s department supervisor or
24 the president of the institution by which the faculty or staff
25 member is employed.

26 (d) The prohibitions contained in §6B-2B-2 of this code
27 do not apply to items paid for from the public official’s
28 campaign funds.

29 (e) The prohibitions contained in §6B-2B-2 of this code
30 do not apply to items paid for with the public official’s
31 personal money.

32 (f) The prohibitions contained in §6B-2B-2 of this code
33 do not apply to items or materials required by law to contain
34 the public official’s name or likeness.



CHAPTER 90

**(Com. Sub. for S. B. 71 - By Senators Weld, Prezioso
and Cline)**

[Passed February 22, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 6, 2018.]

AN ACT to amend and reenact §59-1-2a of the Code of West
Virginia, 1931, as amended, relating to defining the term
“veteran” as that term pertains to veteran-owned businesses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

1 (a) *Definitions.* – As used in this section:

2 (1) “Annual report fee” means the fee described in §59-
3 1-2a(c) of this code that is to be paid to the Secretary of State
4 each year by corporations, limited partnerships, domestic
5 limited liability companies, and foreign limited liability
6 companies. After June 30, 2008, any reference in this code
7 to a fee paid to the Secretary of State for services as a
8 statutory attorney in fact shall mean the annual report fee
9 described in this section.

10 (2) “Business activity” means all activities engaged in
11 or caused to be engaged in with the object of gain or
12 economic benefit, direct or indirect, but does not mean any
13 of the activities of foreign corporations enumerated in
14 §31D-15-1501(b) of this code, except for the activity of
15 conducting affairs in interstate commerce when activity
16 occurs in this state, nor does it mean any of the activities of
17 foreign limited liability companies enumerated in §31B-10-
18 1003(a) of this code, except for the activity of conducting
19 affairs in interstate commerce when activity occurs in this
20 state.

21 (3) “Corporation” means a “domestic corporation”, a
22 “foreign corporation”, or a “nonprofit corporation”.

23 (4) “Deliver or delivery” means any method of delivery
24 used in conventional commercial practice, including, but
25 not limited to, delivery by hand, mail, commercial delivery,
26 and electronic transmission.

27 (5) “Domestic corporation” means a corporation for
28 profit which is not a foreign corporation incorporated under
29 or subject to chapter 31D of this code.

30 (6) “Domestic limited liability company” means a
31 limited liability company which is not a foreign limited

32 liability company under or subject to chapter 31B of this
33 code.

34 (7) “Foreign corporation” means a for-profit
35 corporation incorporated under a law other than the laws of
36 this state.

37 (8) “Foreign limited liability company” means a limited
38 liability company organized under a law other than the laws
39 of this state.

40 (9) “Limited partnership” means a partnership as
41 defined by §47-9-1 of this code.

42 (10) “Nonprofit corporation” means a nonprofit
43 corporation as defined by §31E-1-150 of this code.

44 (11) “Registration fee” means the fee for the issuance of
45 a certificate relating to the initial registration of a
46 corporation, limited partnership, domestic limited liability
47 company or foreign limited liability company described in
48 §59-1-2(a)(2) of this code. The term “initial registration”
49 also means the date upon which the registration fee is paid.

50 (12) “Veteran” means any person who has served as an
51 active member of the armed forces of the United States, the
52 National Guard, or a reserve component as described in 38
53 U. S. C. §101. Notwithstanding any provision in this code
54 to the contrary, a veteran must be honorably discharged or
55 under honorable conditions as described in 38 U. S. C. §101.

56 (13) “Veteran-owned business” means a business that
57 meets the following criteria:

58 (A) Is at least 51 percent unconditionally owned by one
59 or more veterans; or

60 (B) In the case of a publicly owned business, at least 51
61 percent of the stock is unconditionally owned by one or
62 more veterans.

63 (b) *Required payment of annual report fee and filing of*
64 *annual report.* – After June 30, 2008, no corporation,
65 limited partnership, domestic limited liability company, or
66 foreign limited liability company may engage in any
67 business activity in this state without paying the annual
68 report fee and filing the annual report as required by this
69 section.

70 (c) *Annual report fee.* – After June 30, 2008, each
71 corporation, limited partnership, domestic limited liability
72 company, and foreign limited liability company engaged in
73 or authorized to do business in this state shall pay an annual
74 report fee of \$25 for the services of the Secretary of State as
75 attorney-in-fact for the corporation, limited partnership,
76 domestic limited liability company, or foreign limited
77 liability company and for such other administrative services
78 as may be imposed by law upon the Secretary of State. The
79 fee is due and payable each year after the initial registration
80 of the corporation, limited partnership, domestic limited
81 liability company, or foreign limited liability company with
82 the annual report described in §59-1-2a(d) of this code on
83 or before the dates specified in §59-1-2a(e) of this code. The
84 fee is due and payable each year with the annual report from
85 corporations, limited partnerships, domestic limited liability
86 companies, and foreign limited liability companies that paid
87 the registration fee prior to July 1, 2008, on or before the
88 dates specified in §59-1-2a(e) of this code. The annual
89 report fees received by the Secretary of State pursuant to
90 this subsection shall be deposited by the Secretary of State
91 in the general administrative fees account established by
92 §59-1-2 of this code.

93 (d) *Annual report.* –

94 (1) After June 30, 2008, each corporation, limited
95 partnership, domestic limited liability company, and foreign
96 limited liability company engaged in or authorized to do
97 business in this state shall file an annual report. The report
98 is due each year after the initial registration of the
99 corporation, limited partnership, domestic limited liability

100 company, or foreign limited liability company with the
101 annual report fee described in §59-1-2a(c) of this code on or
102 before the dates specified in §59-1-2a(e) of this code. The
103 report is due each year from corporations, limited
104 partnerships, domestic limited liability companies, and
105 foreign limited liability companies that paid the registration
106 fee prior to July 1, 2008, on or before the dates specified in
107 §59-1-2a(e) of this code.

108 (2) (A) The annual report shall be filed with the
109 Secretary of State on forms provided by the Secretary of
110 State for that purpose. The annual report shall, in the case of
111 corporations, contain: (i) The address of the corporation's
112 principal office; (ii) the names and mailing addresses of its
113 officers and directors; (iii) the name and mailing address of
114 the person on whom notice of process may be served; (iv)
115 the name and address of the corporation's parent
116 corporation and of each subsidiary of the corporation
117 licensed to do business in this state; (v) in the case of limited
118 partnerships, domestic limited liability companies, and
119 foreign limited liability companies, similar information with
120 respect to their principal or controlling interests as
121 determined by the Secretary of State or otherwise required
122 by law to be reported to the Secretary of State; (vi) the
123 county or county code in which the principal office address
124 or mailing address of the company is located; (vii) business
125 class code; and (viii) any other information the Secretary of
126 State considers appropriate.

127 (B) Notwithstanding any other provision of law to the
128 contrary, the Secretary of State shall, upon request of any
129 person, disclose, with respect to corporations: (i) The
130 address of the corporation's principal office; (ii) the names
131 and addresses of its officers and directors; (iii) the name and
132 mailing address of the person on whom notice of process
133 may be served; (iv) the name and address of each subsidiary
134 of the corporation and the corporation's parent corporation;
135 (v) the county or county code in which the principal office
136 address or mailing address of the company is located; and

137 (vi) the business class code. The Secretary of State shall
138 provide similar information with respect to information in
139 its possession relating to limited partnerships, domestic
140 limited liability companies, and foreign limited liability
141 companies, similar information with respect to their
142 principal or controlling interests.

143 (e) *Annual reports and fees due July 1.* – Each domestic
144 and foreign corporation, limited partnership, limited
145 liability company, and foreign limited liability company
146 shall file with the Secretary of State the annual report and
147 pay the annual report fee by July 1 of each year.

148 (f) *Deposit of fees.* – The annual report fees received by
149 the Secretary of State pursuant to this section shall be
150 deposited by the Secretary of State in the general
151 administrative fees account established by §59-1-2 of this
152 code.

153 (g) (1) *Duty to pay.* – It shall be the duty of each
154 corporation, limited partnership, limited liability company,
155 and foreign limited liability company required to pay the
156 annual report fees imposed under this article to remit them
157 with a properly completed annual report to the Secretary of
158 State, and if it fails to do so it shall be subject to the late fees
159 prescribed in §59-1-2a(h) of this code and dissolution or
160 revocation, pursuant to this code: *Provided*, That before
161 dissolution or revocation for failure to pay fees may occur,
162 the Secretary of State shall notify the entity by certified
163 mail, return receipt requested, of its failure to pay, all late
164 fees or bad check fees associated with the failure to pay, and
165 the date upon which dissolution or revocation will occur if
166 all fees are not paid in full. The certified mail required by
167 this subdivision shall be postmarked at least thirty days
168 before the dissolution or revocation date listed in the notice.

169 (2) *Bad check fee.* – If any corporation, limited
170 partnership, limited liability company, or foreign limited
171 liability company submits payment by check or money
172 order for the annual report fee imposed under this article and

173 the check or money order is rejected because there are
174 insufficient funds in the account or the account is closed, the
175 Secretary of State shall assess a bad check fee to the
176 corporation, limited partnership, limited liability company,
177 or foreign limited liability company that is equivalent to the
178 service charge paid by the Secretary of State due to the
179 rejected check or money order. The bad check fee assessed
180 under this subdivision shall be deposited into the account or
181 accounts from which the Secretary of State paid the service
182 charge.

183 (h) *Late fees.* –

184 (1) The following late fees shall be in addition to any
185 other penalties and remedies available elsewhere in this
186 code:

187 (A) *Administrative late fee.* – The Secretary of State
188 shall assess upon each corporation, limited partnership,
189 limited liability company, and foreign limited liability
190 company delinquent in the payment of an annual report fee
191 or the filing of an annual report an administrative late fee in
192 the amount of \$50.

193 (B) *Administrative late fees for nonprofit corporations.*
194 – The Secretary of State shall assess each nonprofit
195 corporation delinquent in the payment of an annual report
196 fee or the filing of an annual report an administrative late
197 fee in the amount of \$25.

198 (2) The Secretary of State shall deposit the first \$25,000
199 of fees collected under this subsection into the General
200 Administrative Fees Account established in §59-1-2(h) of
201 this code and shall deposit any additional fees collected
202 under this section into the General Revenue Fund of the
203 state.

204 (i) *Reports to Tax Commissioner; suspension,*
205 *cancellation or withholding of business registration*
206 *certificate.* –

207 (1) The Secretary of State shall, within 20 days after the
208 close of each month, make a report to the Tax
209 Commissioner for the preceding month, in which he or she
210 shall set out the name of every business entity to which he
211 or she issued a certificate to conduct business in the State of
212 West Virginia during that month. The report shall set out the
213 names and addresses of all corporations, limited
214 partnerships, limited liability companies, and foreign
215 limited liability companies to which he or she issued
216 certificates of change of name or of change of location of
217 principal office, dissolution, withdrawal, or merger. If the
218 Secretary of State fails to make the report, it shall be the
219 duty of the Tax Commissioner to report such failure to the
220 Governor. A writ of mandamus shall lie for correction of
221 such failure.

222 (2) Notwithstanding any other provisions of this code to
223 the contrary, upon receipt of notice from the Secretary of
224 State that a corporation, limited partnership, limited liability
225 company, and foreign limited liability company is more
226 than 30 days delinquent in the payment of annual report fees
227 or in the filing of an annual report required by this section,
228 the Tax Commissioner may suspend, cancel or withhold a
229 business registration certificate issued to or applied for by
230 the delinquent corporation, limited partnership, limited
231 liability company, or foreign limited liability company until
232 the same is paid and filed in the manner provided for the
233 suspension, cancellation or withholding of business
234 registration certificates for other reasons under §11-12-1 *et*
235 *seq.* of this code.

236 (j) *Purchase of data.* – The Secretary of State will
237 provide electronically, for purchase, any data maintained in
238 the Secretary of State’s Business Organizations Database.
239 For the electronic purchase of the entire Business
240 Organizations Database, the cost is \$12,000. For the
241 purchase of the monthly updates of the Business
242 Organizations Database, the cost is \$1,000 per month. The
243 fees received by the Secretary of State pursuant to this

244 subsection shall be deposited by the Secretary of State in the
245 general administrative fees account established by §59-1-2
246 of this code.

247 (k) The Secretary of State is authorized to collect the
248 service fee per transaction, if any, charged for an online
249 service from any customer who purchases data or conducts
250 transactions through an online service.

251 (l) *Rules.* – The Secretary of State may propose rules for
252 legislative approval, in accordance with the provisions of
253 §29A-3-1 *et seq.* of this code, to implement this article.

254 (m) A veteran-owned business, as defined in §59-1-
255 2a(a)(13) of this code, commenced on or after July 1, 2015,
256 is exempt from paying the annual report fee, required by this
257 section, for the first four years after its initial registration:
258 *Provided,* That a veteran-owned business is not exempt
259 from any filing deadlines or other fees required by this
260 section.



CHAPTER 91

**(S. B. 365 - By Senators Weld, Ferns, Unger, Plymale,
Baldwin, Cline and Boso)**

[Passed March 7, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §59-1-2c of the Code of West Virginia, 1931, as amended, relating to the Young Entrepreneur Reinvestment Act; and eliminating sunset date for expiration of fee waivers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2c. Young Entrepreneur Reinvestment Act; certain fees waived.

1 Beginning on July 1, 2016, a person who is under the
2 age of 30 who resides within West Virginia is exempt from
3 paying the fees provided in section two of this article for
4 filing:

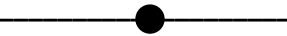
5 (1) Articles of incorporation of a domestic, for profit
6 corporation, for which he or she is an incorporator;

7 (2) Articles of incorporation of a domestic, nonprofit
8 corporation for which he or she is an incorporator;

9 (3) Articles of organization of a domestic limited
10 liability company, for which he or she is a member;

11 (4) Agreement of a domestic general partnership, for
12 which he or she is a partner; or

13 (5) Certificate of a domestic limited partnership, for
14 which he or she is a partner.



CHAPTER 92

(Com. Sub. for S. B. 102 - By Senator Trump)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §39B-2-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §39B-3-101 of said code; and to amend said code by adding thereto a new article, designated §44-5B-1, §44-5B-2, §44-5B-3, §44-5B-4, §44-5B-5, §44-5B-6, §44-5B-7, §44-5B-8, §44-5B-9, §44-5B-10, §44-5B-11, §44-5B-12, §44-5B-13, §44-5B-14, §44-5B-15, §44-5B-16, §44-5B-17, §44-5B-18, and §44-5B-

19, all relating to the Uniform Power of Attorney Act and the West Virginia Uniform Fiduciary Access to Digital Assets Act; providing that an agent under power of attorney may exercise authority over the content of electronic communications sent or received by the principal; clarifying the ability of an agent under a power of attorney to take self-benefitting actions; providing code references and additional language to the statutory form for power of attorney; creating the West Virginia Uniform Fiduciary Access to Digital Assets Act; providing a short title; defining certain terms; setting forth to whom the article applies; providing for user direction for disclosure of assets with or without an online tool; addressing terms of service agreements; setting forth procedure for disclosing digital assets by custodian; allowing custodian to assess reasonable administrative charges; allowing custodian or fiduciary to seek court order when request imposes an undue burden; providing for disclosure of content of electronic communications and other digital assets of deceased users and setting forth required documentation; providing for disclosure of content of electronic communications and digital assets of a principal by custodian and setting forth required documentation; addressing disclosure of digital assets held in trust when the trustee is an original owner or user; addressing disclosure of contents of electronic communications held in trust and other digital assets when trustee is not an original owner or user and setting forth required documentation; addressing disclosure of digital assets to conservator of a protected person and setting forth required documentation; setting forth fiduciary's duties and authority; providing for custodian's compliance and immunity; setting time frame for compliance by custodian; authorizing application for court order for noncompliance; allowing custodian to notify user, deny a request, or receive a court order; providing for uniformity of application and construction of article; addressing relation of article to Electronic Signatures in Global and National Commerce Act; and providing for severability of article.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 39B. UNIFORM POWER OF ATTORNEY
ACT.**

ARTICLE 2. AUTHORITY.

***§39B-2-101. Authority that requires specific grant; grant of general authority.**

1 (a) An agent under a power of attorney may do the
2 following on behalf of the principal or with the principal's
3 property only if the power of attorney expressly grants the
4 agent the authority and exercise of the authority is not
5 otherwise prohibited by another agreement or instrument to
6 which the authority or property is subject to:

7 (1) Create, amend, revoke, or terminate an inter vivos
8 trust;

9 (2) Make a gift;

10 (3) Create or change rights of survivorship;

11 (4) Create or change a beneficiary designation;

12 (5) Delegate authority granted under the power of
13 attorney;

14 (6) Waive the principal's right to be a beneficiary of a
15 joint and survivor annuity, including a survivor benefit
16 under a retirement plan;

17 (7) Exercise fiduciary powers that the principal has
18 authority to delegate;

19 (8) Disclaim property, including a power of
20 appointment; or

21 (9) Exercise authority over the content of electronic
22 communications, as defined in 18 U.S.C. Section 2510(12)
23 sent or received by the principal.

***NOTE:** This section was also amended by H. B. 4320 (Chapter 176), which passed subsequent to the act.

24 (b) Notwithstanding a grant of authority to do an act
25 described in this section, unless the power of attorney
26 otherwise provides, an agent may not exercise authority
27 under a power of attorney to create in the agent, or in an
28 individual to whom the agent owes a legal obligation of
29 support, an interest in the principal's property, whether by
30 gift, right of survivorship, beneficiary designation,
31 disclaimer, or otherwise.

32 (c) Subject to §39B-2-101(a), §39B-2-101(b), §39B-2-
33 101(d), and §39B-2-101(e) of this code, if a power of
34 attorney grants to an agent authority to do all acts that a
35 principal could do, the agent has the general authority
36 described in §39B-2-104 through §39B-2-116 of this code.

37 (d) Unless the power of attorney otherwise provides, a
38 grant of authority to make a gift is subject to the provisions
39 of §39B-2-117 of this code.

40 (e) Subject to §39B-2-101(a), §39B-2-101(b), §39B-2-
41 101(d), and §39B-2-101(e) of this code, if the subjects over
42 which authority is granted in a power of attorney are similar
43 or overlap, the broadest authority controls.

44 (f) Authority granted in a power of attorney is
45 exercisable with respect to property that the principal has
46 when the power of attorney is executed or acquires later,
47 whether or not the property is located in this state and
48 whether or not the authority is exercised or the power of
49 attorney is executed in this state.

50 (g) An act performed by an agent pursuant to a power of
51 attorney has the same effect and inures to the benefit of and
52 binds the principal and the principal's successors in interest
53 as if the principal had performed the act.

ARTICLE 3. STATUTORY FORMS.

§39B-3-101. Statutory form power of attorney.

1 A document substantially in the following form may be
2 used to create a statutory form power of attorney that has
3 the meaning and effect prescribed by this act.

4 STATE OF WEST VIRGINIA

5 STATUTORY FORM POWER OF ATTORNEY

6 IMPORTANT INFORMATION

7 This power of attorney authorizes another person (your
8 agent) to make decisions concerning your property for you
9 (the principal). Your agent will be able to make decisions
10 and act with respect to your property (including your
11 money) whether or not you are able to act for yourself. The
12 meaning of authority over subjects listed on this form is
13 explained in the Uniform Power of Attorney Act, §39B-1-
14 101 *et seq.* of this code.

15 This power of attorney does not authorize the agent to
16 make health care decisions for you.

17 You should select someone you trust to serve as your
18 agent. Unless you specify otherwise, generally the agent's
19 authority will continue until you die or revoke the power of
20 attorney or the agent resigns or is unable to act for you.

21 Your agent is entitled to reasonable compensation
22 unless you state otherwise in the special instructions. This
23 form provides for designation of one agent. If you wish to
24 name more than one agent you may name a coagent in the
25 Special Instructions. Coagents are not required to act
26 together unless you include that requirement in the Special
27 Instructions. If your agent is unable or unwilling to act for
28 you, your power of attorney will end unless you have named
29 a successor agent. You may also name a second successor
30 agent.

31 This power of attorney becomes effective immediately
32 unless you state otherwise in the Special Instructions.

33 If you have questions about the power of attorney or the
34 authority you are granting to your agent, you should seek
35 legal advice before signing this form.

36 DESIGNATION OF AGENT

37 I _____ name the following
38 person as my agent:

39 (Name of Principal)

40 Name _____ of
41 Agent: _____

42 Agent's
43 Address: _____

44 Agent's Telephone Number: _____

45 If my agent is unable or unwilling to act for me, I name
46 as my successor agent:

47 Name of Successor Agent: _____

48 Successor Agent's Address: _____

49 Successor Agent's Telephone Number: _____

50 If my successor agent is unable or unwilling to act for
51 me, I name as my second successor agent:

52 Name of Second Successor Agent: _____

53 Second Successor Agent's Address: _____

54 Second Successor Agent's Telephone Number: _____

55 GRANT OF GENERAL AUTHORITY

56 I grant my agent and any successor agent general
57 authority to act for me with respect to the following subjects
58 as defined in the Uniform Power of Attorney Act, §39B-1-
59 101 *et seq.* of this code:

60 (INITIAL each subject you want to include in the
61 agent's general authority. If you wish to grant general
62 authority over all of the subjects you may initial "All
63 Preceding Subjects" instead of initialing each subject.)

64 Real Property

65 Tangible Personal Property

66 Stocks and Bonds

67 Commodities and Options

68 Banks and Other Financial Institutions

69 Operation of Entity or Business

70 Insurance and Annuities

71 Estates, Trusts, and Other Beneficial Interests

72 Claims and Litigation

73 Personal and Family Maintenance

74 Benefits from Governmental Programs or Civil or
75 Military Service

76 Retirement Plans

77 Taxes

78 All Preceding Subjects

79 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

80 My agent MAY NOT do any of the following specific
81 acts for me UNLESS I have INITIALED the specific
82 authority listed below:

83 (CAUTION: Granting any of the following will give
84 your agent the authority to take actions that could
85 significantly reduce your property or change how your

86 property is distributed at your death. INITIAL ONLY the
87 specific authority you WANT to give your agent.)

88 Create, amend, revoke, or terminate an inter vivos
89 trust

90 Make a gift, subject to the limitations of the West
91 Virginia Uniform Power of Attorney Act and any special
92 instructions in this power of attorney

93 Create or change rights of survivorship

94 Create or change a beneficiary designation

95 Authorize another person to exercise the authority
96 granted under this power of attorney

97 Waive the principal's right to be a beneficiary of
98 a joint and survivor annuity, including a survivor benefit
99 under a retirement plan

100 Exercise fiduciary powers that the principal has
101 authority to delegate

102 Disclaim or refuse an interest in property,
103 including a power of appointment

104 Access the content of electronic communications

105 LIMITATION ON AGENT'S AUTHORITY

106 An agent that is not my ancestor, spouse, or descendant
107 MAY NOT use my property to benefit the agent or a person
108 to whom the agent owes an obligation of support unless I
109 have included that authority in the Special Instructions.

110 SPECIAL INSTRUCTIONS (OPTIONAL)

111 You may give special instructions on the following
112 lines:

113 _____
114 _____
115 _____

116 _____
 117 _____
 118 _____

119 EFFECTIVE DATE

120 This power of attorney is effective immediately unless I
121 have stated otherwise in the special instructions.

122 NOMINATION OF [CONSERVATOR OR
123 GUARDIAN] (OPTIONAL)

124 If it becomes necessary for a court to appoint a
125 [conservator or guardian] of my estate or [guardian] of my
126 person, I nominate the following person(s) for appointment:

127 Name of Nominee for [conservator or guardian] of my
128 estate:

129 _____

130 Nominee’s Address: _____

131 Nominee’s Telephone Number: _____

132 Name of Nominee for [guardian] of my person: _____

133 Nominee’s Address: _____

134 Nominee’s Telephone Number: _____

135 RELIANCE ON THIS POWER OF ATTORNEY

136 Any person, including my agent, may rely upon the
137 validity of this power of attorney or a copy of it unless that
138 person knows it has terminated or is invalid. Unless
139 expressly stated otherwise, this power of attorney is durable
140 and shall remain valid if I become incapacitated.

141 SIGNATURE AND ACKNOWLEDGMENT

142 _____

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143 Your Signature _____ Date _____

144 Your Name Printed _____

145 Your Address _____

146 Your Telephone Number _____

147 State of _____

148 [County] of _____

149 This document was acknowledged before me on _____,

150 (Date)

151 by _____.

152 (Name of Principal)

153 _____ (Seal, if any)

154 Signature of Notary

155 My commission expires: _____

156 [This document prepared by: _____]

157 **IMPORTANT INFORMATION FOR AGENT**

158 **AGENT'S DUTIES**

159 When you accept the authority granted under this power
160 of attorney, a special legal relationship is created between
161 you and the principal. This relationship imposes upon you
162 legal duties that continue until you resign or the power of
163 attorney is terminated or revoked. You must:

164 (1) Do what you know the principal reasonably expects
165 you to do with the principal's property or, if you do not
166 know the principal's expectations, act in the principal's best
167 interest; act in good faith;

168 (2) Do nothing beyond the authority granted in this
169 power of attorney; and

170 (3) Disclose your identity as an agent whenever you act
171 for the principal by writing or printing the name of the
172 principal and signing your own name as “agent” in the
173 following manner:

174 _____ by _____

175 (Principal’s Name) (Your Signature) as Agent

176 Unless the special instructions in this power of attorney
177 state otherwise, you must also:

178 (1) Act loyally for the principal’s benefit;

179 (2) Avoid conflicts that would impair your ability to act
180 in the principal’s best interest;

181 (3) Act with care, competence, and diligence;

182 (4) Keep a record of all receipts, disbursements, and
183 transactions made on behalf of the principal;

184 (5) Cooperate with any person that has authority to
185 make health care decisions for the principal to do what you
186 know the principal reasonably expects or, if you do not
187 know the principal’s expectations, to act in the principal’s
188 best interest; and attempt to preserve the principal’s estate
189 plan if you know the plan and preserving the plan is
190 consistent with the principal’s best interest.

191 **TERMINATION OF AGENT’S AUTHORITY**

192 You must stop acting on behalf of the principal if you
193 learn of any event that terminates this power of attorney or
194 your authority under this power of attorney. Events that
195 terminate a power of attorney or your authority to act under
196 a power of attorney include:

197 (1) Death of the principal;

198 (2) The principal's revocation of the power of attorney
199 or your authority;

200 (3) The occurrence of a termination event stated in the
201 power of attorney;

202 (4) The purpose of the power of attorney is fully
203 accomplished; or

204 (5) If you are married to the principal, a legal action is
205 filed with a court to end your marriage or for your legal
206 separation, unless the Special Instructions in this power of
207 attorney state that such an action will not terminate your
208 authority.

209

LIABILITY OF AGENT

210 The meaning of the authority granted to you is defined
211 in the Uniform Power of Attorney Act, §39B-1-101 *et seq.*
212 of this code. If you violate the Uniform Power of Attorney
213 Act, as set forth in §39B-1-101 *et seq.* of this code, or act
214 outside the authority granted, you may be liable for any
215 damages caused by your violation.

216 If there is anything about this document or your duties
217 that you do not understand, you should seek legal advice.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 5B. WEST VIRGINIA UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.

§44-5B-1. Short title.

1 This article may be cited as the West Virginia Uniform
2 Fiduciary Access to Digital Assets Act.

§44-5B-2. Definitions.

1 In this article:

2 “Account” means an arrangement under a terms-of-
3 service agreement in which a custodian carries, maintains,
4 processes, receives, or stores a digital asset of the user or
5 provides goods or services to the user;

6 “Agent” means an attorney-in-fact granted authority
7 under a durable or nondurable power of attorney;

8 “Carries” means engages in the transmission of an
9 electronic communication;

10 “Catalogue of electronic communications” means
11 information that identifies each person with whom a user
12 has had an electronic communication, the time and date of
13 the communication, and the electronic address of the
14 person;

15 “Conservator” means a person appointed by a court to
16 manage the estate and financial affairs of a protected person.
17 The term includes a limited conservator and temporary
18 conservator;

19 “Content of an electronic communication” means
20 information concerning the substance or meaning of the
21 communication which:

22 (1) Has been sent or received by a user;

23 (2) Is in electronic storage by a custodian providing an
24 electronic communication service to the public or is carried
25 or maintained by a custodian providing a remote computing
26 service to the public; and

27 (3) Is not readily accessible to the public;

28 “Court” means the circuit court of the county having
29 jurisdiction over the fiduciary or designated recipient;

30 “Custodian” means a person that carries, maintains,
31 processes, receives, or stores a digital asset of a user;

32 “Designated recipient” means a person chosen by a user
33 using an online tool to administer digital assets of the user;

34 “Digital asset” means an electronic record in which an
35 individual has a right or interest. The term does not include
36 an underlying asset or liability, unless the asset or liability
37 is itself an electronic record;

38 “Electronic” means relating to technology having
39 electrical, digital, magnetic, wireless, optical,
40 electromagnetic, or similar capabilities;

41 “Electronic communication” has the meaning set forth
42 in 18 U.S.C. § 2510(12);

43 “Electronic communication service” means a custodian
44 that provides to a user the ability to send or receive an
45 electronic communication;

46 “Fiduciary” means an original, additional or successor
47 personal representative, conservator, agent, or trustee;

48 “Information” means data, text, images, videos, sounds,
49 codes, computer programs, software, databases, or the like;

50 “Online tool” means an electronic service provided by a
51 custodian that allows the user, in an agreement distinct from
52 the terms-of-service agreement between the custodian and
53 user, to provide directions for disclosure or nondisclosure of
54 digital assets to a third person;

55 “Person” means an individual, estate, business or
56 nonprofit entity, public corporation, government or
57 governmental subdivision, agency, instrumentality, or other
58 legal entity;

59 “Personal representative” means an executor,
60 administrator, special administrator, or person that performs
61 substantially the same function under law of this state other
62 than this article;

63 “Power of attorney” means a record that grants an agent
64 authority to act in the place of a principal;

65 “Principal” means an individual who grants authority to
66 an agent in a power of attorney;

67 “Protected person” means an individual for whom a
68 conservator has been appointed. The term includes an
69 individual for whom an application for the appointment of
70 a conservator is pending;

71 “Record” means information that is inscribed on a
72 tangible medium or that is stored in an electronic or other
73 medium and is retrievable in perceivable form;

74 “Remote computing service” means a custodian that
75 provides to a user computer-processing services or the
76 storage of digital assets by means of an electronic
77 communications system, as defined in 18 U.S.C. §
78 2510(14);

79 “Terms of service agreement” means an agreement that
80 controls the relationship between a user and a custodian;

81 “Trustee” means a fiduciary with legal title to property
82 under an agreement or declaration that creates a beneficial
83 interest in another. The term includes a successor trustee;

84 “User” means a person that has an account with a
85 custodian; and

86 “Will” includes a codicil, testamentary instrument that
87 only appoints an executor, and instrument that revokes or
88 revises a testamentary instrument.

§44-5B-3. Applicability.

1 (a) This article applies to:

2 (1) A fiduciary acting under a will or power of attorney
3 executed before, on, or after the effective date of this article;

4 (2) A personal representative acting for a decedent who
5 died before, on, or after the effective date of this article;

6 (3) A conservatorship proceeding commenced before,
7 on, or after the effective date of this article; and

8 (4) A trustee acting under a trust created before, on, or
9 after the effective date of this article.

10 (b) This article applies to a custodian if the user resides
11 in this state or resided in this state at the time of the user's
12 death.

13 (c) This article does not apply to a digital asset of an
14 employer used by an employee in the ordinary course of the
15 employer's business.

§44-5B-4. User direction for disclosure of digital assets.

1 (a) A user may use an online tool to direct the custodian
2 to disclose or not to disclose to a designated recipient some
3 or all of the user's digital assets, including the content of
4 electronic communications. If the online tool allows the user
5 to modify or delete a direction at all times, a direction
6 regarding disclosure using an online tool overrides a
7 contrary direction by the user in a will, trust, power of
8 attorney, or other record.

9 (b) If a user has not used an online tool to give direction
10 under §44B-5B-3(a) of this code or if the custodian has not
11 provided an online tool, the user may allow or prohibit in a
12 will, trust, power of attorney, or other record, disclosure to
13 a fiduciary of some or all of the user's digital assets,
14 including the content of electronic communications sent or
15 received by the user.

16 (c) A user's direction under §44-5B-4(a) or §44-5B-4(b)
17 of this code overrides a contrary provision in a terms-of-
18 service agreement that does not require the user to act
19 affirmatively and distinctly from the user's assent to the
20 terms of service.

§44-5B-5. Terms of service agreement.

1 (a) This article does not change or impair a right of a
2 custodian or a user under a terms-of-service agreement to
3 access and use digital assets of the user.

4 (b) This article does not give a fiduciary or a designated
5 recipient any new or expanded rights other than those held
6 by the user for whom, or for whose estate, the fiduciary or
7 designated recipient acts or represents.

8 (c) A fiduciary's or a designated recipient's access to
9 digital assets may be modified or eliminated by a user, by
10 federal law, or by a terms-of-service agreement if the user
11 has not provided direction under §44-5B-4 of this code.

§44-5B-6. Procedure for disclosing digital assets.

1 (a) When disclosing digital assets of a user under this
2 article, the custodian may at its sole discretion:

3 (1) Grant a fiduciary or designated recipient full access
4 to the user's account;

5 (2) Grant a fiduciary or designated recipient partial
6 access to the user's account sufficient to perform the tasks
7 with which the fiduciary or designated recipient is charged;
8 or

9 (3) Provide a fiduciary or designated recipient a copy in
10 a record of any digital asset that, on the date the custodian
11 received the request for disclosure, the user could have
12 accessed if the user were alive and had full capacity and
13 access to the account.

14 (b) A custodian may assess a reasonable administrative
15 charge for the cost of disclosing digital assets under this
16 article.

17 (c) A custodian need not disclose under this article a
18 digital asset deleted by a user.

19 (d) If a user directs or a fiduciary requests a custodian
20 to disclose under this article some, but not all, of the user's
21 digital assets, the custodian need not disclose the assets if
22 segregation of the assets would impose an undue burden on
23 the custodian. If the custodian believes the direction or
24 request imposes an undue burden, the custodian or fiduciary
25 may seek an order from the court to disclose:

26 (1) A subset limited by date of the user's digital assets;

27 (2) All of the user's digital assets to the fiduciary or
28 designated recipient;

29 (3) None of the user's digital assets; or

30 (4) All of the user's digital assets to the court for review
31 in camera.

**§44-5B-7. Disclosure of content of electronic communications
of deceased user.**

1 If a deceased user consented or a court directs disclosure
2 of the contents of electronic communications of the user, the
3 custodian shall disclose to the personal representative of the
4 estate of the user the content of an electronic
5 communication sent or received by the user if the
6 representative gives the custodian:

7 (a) A written request for disclosure in physical or
8 electronic form;

9 (b) A certified copy of the death certificate of the user;

10 (c) A certified copy of the letter of appointment of the
11 representative;

12 (d) Unless the user provided direction using an online
13 tool, a copy of the user's will, trust, power of attorney or
14 other record evidencing the user's consent to disclosure of
15 the content of electronic communications; and

16 (e) If requested by the custodian:

17 (1) A number, username, address, or other unique
18 subscriber or account identifier assigned by the custodian to
19 identify the user's account;

20 (2) Evidence linking the account to the user; or

21 (3) A finding by the court that:

22 (A) The user had a specific account with the custodian,
23 identifiable by the information specified in §44-5B-7(e)(1)
24 of this code;

25 (B) Disclosure of the content of electronic
26 communications of the user would not violate 18 U.S.C. §
27 2701 *et seq.*, 47 U.S.C. § 222, or other applicable law;

28 (C) Unless the user provided direction using an online
29 tool, the user consented to disclosure of the content of
30 electronic communications; or

31 (D) Disclosure of the content of electronic
32 communications of the user is reasonably necessary for
33 administration of the estate.

§44-5B-8. Disclosure of other digital assets of deceased user.

1 Unless the user prohibited disclosure of digital assets or
2 the court directs otherwise, a custodian shall disclose to the
3 personal representative of the estate of a deceased user a
4 catalogue of electronic communications sent or received by
5 the user and digital assets, other than the content of
6 electronic communications of the user, if the personal
7 representative gives the custodian:

8 (a) A written request for disclosure in physical or
9 electronic form;

10 (b) A certified copy of the death certificate of the user;

11 (c) A certified copy of the letter of appointment of the
12 representative; and

13 (d) If requested by the custodian:

14 (1) A number, username, address, or other unique
15 subscriber or account identifier assigned by the custodian to
16 identify the user's account;

17 (2) Evidence linking the account to the user;

18 (3) An affidavit stating that disclosure of the user's
19 digital assets is reasonably necessary for administration of
20 the estate; or

21 (4) A finding by the court that:

22 (A) The user had a specific account with the custodian,
23 identifiable by the information specified in §44-5B-8(d)(1)
24 of this code; or

25 (B) Disclosure of the user's digital assets is reasonably
26 necessary for administration of the estate.

**§44-5B-9. Disclosure of content of electronic communications
of principal.**

1 To the extent a power of attorney expressly grants an
2 agent authority over the content of electronic
3 communications sent or received by the principal and unless
4 directed otherwise by the principal or the court, a custodian
5 shall disclose to the agent the content if the agent gives the
6 custodian:

7 (a) A written request for disclosure in physical or
8 electronic form;

9 (b) An original or copy of the power of attorney
10 expressly granting the agent authority over the content of
11 electronic communications of the principal;

12 (c) A certification by the agent, under penalty of perjury,
13 that the power of attorney is in effect; and

14 (d) If requested by the custodian:

- 15 (1) A number, username, address, or other unique
16 subscriber or account identifier assigned by the custodian to
17 identify the principal's account; or
- 18 (2) Evidence linking the account to the principal.

§44-5B-10. Disclosure of other digital assets of principal.

1 Unless otherwise ordered by the court, directed by the
2 principal, or provided by a power of attorney, a custodian
3 shall disclose to an agent with specific authority over digital
4 assets or general authority to act on behalf of a principal a
5 catalogue of electronic communications sent or received by
6 the principal and digital assets, other than the content of
7 electronic communications, of the principal if the agent
8 gives the custodian:

9 (a) A written request for disclosure in physical or
10 electronic form;

11 (b) An original or a copy of the power of attorney that
12 gives the agent specific authority over digital assets or
13 general authority to act on behalf of the principal;

14 (c) A certification by the agent, under penalty of perjury,
15 that the power of attorney is in effect; and

16 (d) If requested by the custodian:

17 (1) A number, username, address, or other unique
18 subscriber or account identifier assigned by the custodian to
19 identify the principal's account; or

20 (2) Evidence linking the account to the principal.

§44-5B-11. Disclosure of digital assets held in trust when trustee is original user.

1 Unless otherwise ordered by the court or provided in a
2 trust instrument, a custodian shall disclose to a trustee that
3 is an original user of an account any digital asset of the
4 account held in trust, including a catalogue of electronic

5 communications of the trustee and the content of electronic
6 communications.

§44-5B-12. Disclosure of contents of electronic communications held in trust when trustee not original user.

1 Unless otherwise ordered by the court, directed by the
2 user, or provided in a trust instrument, a custodian shall
3 disclose to a trustee that is not an original user of an account
4 the content of an electronic communication sent or received
5 by an original or successor user and carried, maintained,
6 processed, received, or stored by the custodian in the
7 account of the trust if the trustee gives the custodian:

8 (a) A written request for disclosure in physical or
9 electronic form;

10 (b) A certified copy of the trust instrument or a
11 certification of the trust under §44D-10-1013 of this code
12 that includes consent to disclose the content of electronic
13 communications to the trustee;

14 (c) A certification by the trustee, under penalty of
15 perjury, that the trust exists and the trustee is a currently
16 acting trustee of the trust; and

17 (d) If requested by the custodian:

18 (1) A number, username, address, or other unique
19 subscriber or account identifier assigned by the custodian to
20 identify the trust's account; or

21 (2) Evidence linking the account to the trust.

§44-5B-13. Disclosure of other digital assets held in trust when trustee not original user.

1 Unless otherwise ordered by the court, directed by the
2 user, or provided in a trust, a custodian shall disclose, to a
3 trustee that is not an original user of an account, a catalogue
4 of electronic communications sent or received by an

5 original or successor user and stored, carried, or maintained
6 by the custodian in an account of the trust and any digital
7 assets, other than the content of electronic communications,
8 in which the trust has a right or interest if the trustee gives
9 the custodian:

10 (1) A written request for disclosure in physical or
11 electronic form;

12 (2) A certified copy of the trust instrument or a
13 certification of the trust under §44D-10-1013 of this code;

14 (3) A certification by the trustee, under penalty of
15 perjury, that the trust exists and the trustee is a currently
16 acting trustee of the trust; and

17 (4) If requested by the custodian:

18 (A) A number, username, address, or other unique
19 subscriber or account identifier assigned by the custodian to
20 identify the trust's account; or

21 (B) Evidence linking the account to the trust.

**§44-5B-14. Disclosure of digital assets to conservator of
protected person.**

1 (a) After an opportunity for a hearing under §44A-1-1
2 *et seq.* of this code, the court may grant a conservator access
3 to the digital assets of a protected person.

4 (b) Unless otherwise ordered by the court or directed by
5 the user, a custodian shall disclose to a conservator the
6 catalogue of electronic communications sent or received by
7 a protected person and any digital assets, other than the
8 content of electronic communications, in which the
9 protected person has a right or interest if the conservator
10 gives the custodian:

11 (1) A written request for disclosure in physical or
12 electronic form;

13 (2) A certified copy of the court order that gives the
14 conservator authority over the digital assets of the protected
15 person; and

16 (3) If requested by the custodian:

17 (A) A number, username, address, or other unique
18 subscriber or account identifier assigned by the custodian to
19 identify the account of the protected person; or

20 (B) Evidence linking the account to the protected
21 person.

22 (c) A conservator with general authority to manage the
23 assets of a protected person may request a custodian of the
24 digital assets of the protected person to suspend or terminate
25 an account of the protected person for good cause. A request
26 made under this section must be accompanied by a certified
27 copy of the court order giving the conservator authority over
28 the protected person's property.

§44-5B-15. Fiduciary duty and authority.

1 (a) The legal duties imposed on a fiduciary charged with
2 managing tangible property apply to the management of
3 digital assets, including:

4 (1) The duty of care;

5 (2) The duty of loyalty; and

6 (3) The duty of confidentiality.

7 (b) A fiduciary's or designated recipient's authority
8 with respect to a digital asset of a user:

9 (1) Except as otherwise provided in §44-5B-4 of this
10 code, is subject to the applicable terms of service;

11 (2) Is subject to other applicable law, including
12 copyright law;

13 (3) In the case of a fiduciary, is limited by the scope of
14 the fiduciary's duties; and

15 (4) May not be used to impersonate the user.

16 (c) A fiduciary with authority over the property of a
17 decedent, protected person, principal, or settlor has the right
18 to access any digital asset in which the decedent, protected
19 person, principal, or settlor had a right or interest and that is
20 not held by a custodian or subject to a terms-of-service
21 agreement.

22 (d) A fiduciary acting within the scope of the fiduciary's
23 duties is an authorized user of the property of the decedent,
24 protected person, principal, or settlor for the purpose of
25 applicable computer fraud and unauthorized computer
26 access laws, including the provisions of §61-3C-1 *et seq.* of
27 this code.

28 (e) A fiduciary with authority over the tangible, personal
29 property of a decedent, protected person, principal, or
30 settlor:

31 (1) Has the right to access the property and any digital
32 asset stored in it; and

33 (2) Is an authorized user for the purpose of computer
34 fraud and unauthorized computer access laws, including the
35 provisions of §61-3C-1 *et seq.* of this code.

36 (f) A custodian may disclose information in an account
37 to a fiduciary of the user when the information is required
38 to terminate an account used to access digital assets licensed
39 to the user.

40 (g) A fiduciary of a user may request a custodian to
41 terminate the user's account. A request for termination must
42 be in writing, in either physical or electronic form, and
43 accompanied by:

44 (1) If the user is deceased, a certified copy of the death
45 certificate of the user;

46 (2) A certified copy of the letter of appointment of the
47 representative, court order, power of attorney, or trust
48 instrument giving the fiduciary authority over the account;
49 and

50 (3) If requested by the custodian:

51 (A) A number, username, address, or other unique
52 subscriber or account identifier assigned by the custodian to
53 identify the user's account;

54 (B) Evidence linking the account to the user; or

55 (C) A finding by the court that the user had a specific
56 account with the custodian, identifiable by the information
57 specified in §44-5B-15(g)(1) of this code.

§44-5B-16. Custodian compliance and immunity.

1 (a) Not later than 60 days after receipt of the information
2 required under §44-5B-7 through §44-5B-15 of this code, a
3 custodian shall comply with a request under this article from
4 a fiduciary or designated recipient to disclose digital assets
5 or terminate an account. If the custodian fails to comply, the
6 fiduciary or designated recipient may apply to the court for
7 an order directing compliance.

8 (b) An order under §44-5B-16(a) of this code directing
9 compliance must contain a finding that compliance is not in
10 violation of 18 U.S.C. §2702.

11 (c) A custodian may notify the user that a request for
12 disclosure or to terminate an account was made under this
13 article.

14 (d) A custodian may deny a request under §44-5B-1 *et*
15 *seq.* of this code from a fiduciary or designated recipient for
16 disclosure of digital assets or to terminate an account if the

17 custodian is aware of any lawful access to the account
18 following the receipt of the fiduciary's request.

19 (e) This article does not limit a custodian's ability to
20 obtain or require a fiduciary or designated recipient
21 requesting disclosure or termination under §44-5B-1 *et seq.*
22 of this code to obtain a court order which:

23 (1) Specifies that an account belongs to the protected
24 person or principal;

25 (2) Specifies that there is sufficient consent from the
26 protected person or principal to support the requested
27 disclosure; and

28 (3) Contains a finding required by law other than this
29 article.

30 (f) A custodian and its officers, employees, and agents
31 are immune from liability for an act or omission done in
32 good faith in compliance with this article.

§44-5B-17. 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.

§44-5B-18. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits, or 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).

§44-5B-19. Severability.

1 If any provision of §44-5B-1 *et seq.* of this code or its
2 application to any person or circumstance is held invalid,
3 the invalidity does not affect other provisions or
4 applications of this article which can be given effect without
5 the invalid provision or application, and to this end the
6 provisions of this article are severable.



CHAPTER 93

**(Com. Sub. for S. B. 133 - By Senators Gaunch, Blair,
Swope, Baldwin, Jeffries, Boso and Ojeda)**

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-3c, relating to exempting certain contracts related to recovery from a declared state of emergency from purchasing requirements; clarifying exemption from purchasing requirements for certain contracts entered into during a declared state of emergency; exempting from purchasing requirements renewals of certain contracts entered into during a declared state of emergency; clarifying that with respect to the renewal of certain contracts entered into during a declared state of emergency, recovery does not include permanent reconstruction after the initial state of emergency has ended; exempting from purchasing requirements the purchase of goods or services from the federal government or an agency thereof if the purchase of those goods and services is directly and solely related to the recovery from a declared state of emergency; requiring the Director of the Division of Homeland Security and Emergency Management to certify eligibility for exemption; setting forth record-keeping

requirements; and defining the term “directly and solely related”.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3c. Exemptions from purchasing requirements for contracts entered into as part of recovery from a declared state of emergency.

1 (a) The provisions of this article do not apply to
2 contracts entered into during a state of emergency declared
3 by the Governor pursuant to §15-5-6 of this code, so long as
4 the contract is directly and solely related to the recovery
5 from the declared state of emergency.

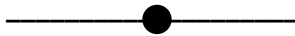
6 (b) The provisions of this article do not apply to the
7 renewal of a contract entered into during a state of
8 emergency declared pursuant to §15-5-6 of this code, if the
9 contract is directly and solely related to the recovery from
10 the declared state of emergency during which the contract
11 was initially entered. For purposes of this subsection,
12 recovery does not include permanent reconstruction after
13 the initial state of emergency has ended.

14 (c) The provisions of this article do not apply to the
15 purchase of goods or services from the federal government,
16 or an agency thereof, if the purchase of those goods and
17 services is directly and solely related to the recovery from a
18 state of emergency declared pursuant to §15-5-6 of this
19 code.

20 (d) To qualify for the exemption contained in this
21 section, the Director of the Division of Homeland Security
22 and Emergency Management must certify that the contract
23 or purchase is directly and solely related to the recovery
24 from a declared state of emergency and attach a copy of the
25 proclamation issued by the Governor’s office to the
26 certification. Such certifications shall be maintained by the
27 Division of Homeland Security and Emergency

28 Management until the contracts or purchase agreements
29 have been fully executed.

30 (e) For purposes of this section, “directly and solely
31 related” means that the goods or services being purchased
32 or contracted for will be used for recovery from the state of
33 emergency only, and will not be used for any other purpose.



CHAPTER 94

**(Com. Sub. for S. B. 271 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §5A-2-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5A-2B-1, §5A-2B-2, §5A-2B-3, and §5A-2B-4, all relating to creating the Shared Services Section within the Finance Division of the Department of Administration; authorizing the appointment of a deputy director; setting qualifications for the deputy director; authorizing the hiring of necessary personnel; setting minimum services to be provided by Shared Services Section; authorizing reasonable fees to be charged; requiring development of cost-performance assessment; providing for reporting of certain information by spending units to the Shared Services Section; providing for reports to the Governor and Joint Committee on Government and Finance; providing legislative and emergency rule-making authority; requiring certain spending units to enter into agreement with Shared Services Section for provision of accounting and financial services; permitting certain spending units to enter into agreement with Shared Services Section for provision of

accounting and financial services; providing for probationary period and corrective action plan for certain spending units; granting deputy director authority to decline to enter into agreement for provision of services under certain circumstances; authorizing spending unit to cancel agreement with Shared Services Section under certain circumstances; and creating a new special revenue fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. FINANCE DIVISION.

§5A-2-1. Finance Division created; director; sections; powers and duties.

1 (a) The Finance Division of the Department of
2 Administration is continued. The Finance Division shall be
3 under the supervision and control of a director, who shall be
4 appointed by the secretary. There shall be in the Finance
5 Division a Shared Services Section and a Financial
6 Accounting and Reporting Section.

7 (b) The Shared Services Section shall have the duties
8 conferred upon it by this article, §5A-2B-1 *et seq.* of this
9 code, and by the secretary, including, but not limited to,
10 general financial accounting, payroll, accounts payable, and
11 accounts receivable for the spending units that have entered
12 into agreements with the Shared Services Section.

13 (c) The Financial Accounting and Reporting Section
14 shall establish and maintain the centralized accounting
15 system required by §5A-2-24 of this code and issue annual
16 general purpose financial statements in accordance with
17 generally accepted accounting principles and with this
18 article.

ARTICLE 2B. SHARED SERVICES.

§5A-2B-1. Shared Services Section created; purpose; deputy director.

1 (a) There is hereby created within the Finance Division
2 the Shared Services Section for the purpose of establishing
3 centralized accounting and financial reporting services for
4 state spending units.

5 (b) The Shared Services Section shall be under the
6 supervision of a deputy director, who shall be appointed by
7 the Secretary of the Department of Administration and who
8 shall, at a minimum, have:

9 (1) A bachelor's degree from an accredited four-year
10 college or university;

11 (2) Six years of full-time experience in finance or
12 accounting, with two years of experience as an
13 administrator or supervisor; and

14 (3) Knowledge of generally accepted accounting
15 principles and budgeting.

16 (c) The Shared Services Section is authorized to employ
17 necessary personnel, including, but not limited to,
18 accountants, auditors, and procurement officers, to
19 discharge the duties of this article.

20 (d) The Shared Services Section shall provide, at a
21 minimum, accounting, financial reporting, and budgeting
22 services to spending units who enter into agreements
23 pursuant to §5A-2B-3 of this code. The deputy director may
24 charge a reasonable fee to spending units for the accounting
25 and financial reporting services provided to agencies.

§5A-2B-2. Cost analysis and reporting.

1 (a) On or before July 1, 2018, the Department of
2 Administration shall develop a cost-performance
3 assessment for use by each state spending unit to measure
4 costs of that spending unit providing its own accounting and
5 financial reporting services.

6 (b) Beginning April 1, 2019, and each year thereafter,
7 all state spending units shall report annually to the Shared
8 Services Section information related to costs of providing
9 accounting and financial reporting services based upon the
10 metrics identified by the Shared Services Section in the
11 cost-performance assessment. The deputy director shall
12 evaluate the cost information provided by spending units to
13 determine if the same services could be provided by the
14 Shared Services Section at a lower cost and in a more
15 efficient manner.

16 (c) On or before July 1, 2019, the deputy director shall
17 report to the Governor and the Joint Committee on
18 Government and Finance the results of the cost-
19 performance assessment documenting the amount each state
20 spending unit incurs for accounting services, and make
21 recommendations for providing the services through the
22 Shared Services Section.

23 (d) The deputy director shall report annually, on or
24 before December 31 of each year, to the Governor and the
25 Joint Committee on Government and Finance the cost
26 savings and efficiencies resulting from providing
27 accounting and financial reporting services by the Shared
28 Services Section.

29 (e) The Department of Administration is authorized to
30 promulgate legislative rules, including emergency rules, to
31 develop the assessment, any forms necessary for reporting
32 costs, and any other information necessary pursuant to
33 §29A-3-1 *et seq.* of this code.

§5A-2B-3. Applicability and exemptions.

1 (a) Those spending units with a cost-performance
2 assessment greater than the baseline cost set by the Shared
3 Services Section, as determined by the provisions set forth
4 in §5A-2B-2 of this code, shall enter into an agreement with
5 the Shared Services Section for the provision of accounting
6 and financial services.

7 (b) Any spending unit seeking accounting and financial
8 reporting services may voluntarily request an agreement for
9 the provision of accounting and financial reporting services
10 by the Shared Services Section.

11 (c) Those spending units with one full-time equivalent
12 position or less dedicated to providing accounting and
13 financial reporting services shall enter into an agreement with
14 the deputy director of the Shared Services Section for the
15 provision of accounting and financial reporting services,
16 provided the deputy director determines the implementation of
17 the agreement would be feasible and documents that the
18 agreement will result in cost savings or efficiencies to the state.

19 (d) Those spending units that fail to provide any
20 required report or information to the Department of
21 Administration necessary for the completion of any required
22 federal report, including the single audit required by the
23 Single Audit Act of 1984, P.L. 98-502, and the Single Audit
24 Act Amendments of 1996, P.L. 104-156, as well as any
25 subsequent amendments, by the deadlines established by the
26 Department of Administration will be given a one-year
27 probationary period with a plan of corrective action defined
28 by the Department of Administration.

29 (1) The plan of corrective action shall include defined
30 benchmarks for completing all reports or information
31 necessary for the consolidated annual financial report by the
32 deadline in the next fiscal year.

33 (2) If a spending unit fails to meet established deadlines
34 by the end of the probationary period, the spending unit
35 shall, at the deputy director's discretion, enter into an
36 agreement for the provision of accounting and financial
37 reporting services by the Shared Services Section.

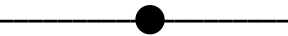
38 (e) The deputy director may decline to enter into an
39 agreement under this section only upon a determination that
40 the complexities of providing accounting, financial
41 reporting, and budgeting services to the spending unit
42 exceed the expertise of the Shared Services Section and that

43 developing that expertise would outweigh any potential cost
44 savings to the state.

45 (f) When a spending unit has entered into an agreement
46 with the Shared Services Section for the provision of
47 accounting and financial reporting services pursuant to
48 subsection (a) of this section, the spending unit may cancel the
49 agreement at the end of the fiscal year when documentation
50 showing the spending unit can provide the services at a lower
51 cost to the state is approved by the deputy director.

**§5A-2B-4. Special revenue fund; payments into fund;
disbursements.**

1 There is created in the State Treasury a special revenue
2 fund designated the Shared Services Section Fund. The fund
3 consists of appropriations by the Legislature, funds received
4 for services provided pursuant to this article, and any gifts,
5 grants, or donations received. Expenditures from the fund shall
6 be made by the deputy director for the purposes set forth in this
7 article, and are not authorized from collections, but are to be
8 made only in accordance with appropriation from the
9 Legislature and in §12-3-1 *et seq.* of this code, and upon the
10 fulfillment of the provisions of §11-2B-1 *et seq.* of this code.



CHAPTER 95

**(S. B. 282 - By Senators Gaunch, Baldwin, Blair,
Jeffries, Swope, Boso and Cline)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended, relating to exempting the State Conservation Committee and the Conservation Agency from the Purchasing Division requirements for contracts related to

natural disaster recovery activities and joint funding agreements with the United States Geological Survey.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3. Powers and duties of Director of Purchasing.

1 The director, under the direction and supervision of the
2 secretary, is the executive officer of the Purchasing Division
3 and has the power and duty to:

4 (1) Direct the activities and employees of the
5 Purchasing Division;

6 (2) Ensure that the purchase of or contract for
7 commodities and services are based, whenever possible, on
8 competitive bid;

9 (3) Purchase or contract for, in the name of the state, the
10 commodities, services, and printing required by the
11 spending units of the state government;

12 (4) Apply and enforce standard specifications
13 established in accordance with §5A-3-5 of this code as
14 hereinafter provided;

15 (5) Transfer to or between spending units or sell
16 commodities that are surplus, obsolete, or unused as
17 hereinafter provided;

18 (6) Have charge of central storerooms for the supply of
19 spending units as the director considers advisable;

20 (7) Establish and maintain a laboratory for the testing of
21 commodities and make use of existing facilities in state
22 institutions for that purpose as hereinafter provided as the
23 director considers advisable;

24 (8) Suspend the right and privilege of a vendor to bid on
25 state purchases when the director has evidence that the

26 vendor has violated any of the provisions of the purchasing
27 law or the rules and regulations of the director;

28 (9) Examine the provisions and terms of every contract
29 entered into for and on behalf of the State of West Virginia
30 that impose any obligation upon the state to pay any sums
31 of money for commodities or services and approve the
32 contract as to such provisions and terms; and the duty of
33 examination and approval herein set forth does not
34 supersede the responsibility and duty of the Attorney
35 General to approve the contracts as to form: *Provided*, That
36 the provisions of this subdivision do not apply in any respect
37 whatever to construction or repair contracts entered into by
38 the Division of Highways of the Department of
39 Transportation or to construction or reclamation contracts
40 entered into by the Department of Environmental
41 Protection: *Provided, however*, That the provisions of this
42 subdivision do not apply in any respect whatsoever to
43 contracts entered into by the University of West Virginia
44 Board of Trustees or by the board of directors of the state
45 college system, except to the extent that such boards request
46 the facilities and services of the director under the
47 provisions of this subdivision: *Provided further*, That the
48 provisions of this subdivision do not apply to the West
49 Virginia State Police and the West Virginia Office of
50 Laboratory Services: *And provided further*, That the
51 provisions of this subdivision shall not apply to contracts for
52 any natural disaster recovery activities entered into by the
53 West Virginia State Conservation Committee or the West
54 Virginia Conservation Agency;

55 (10) Assure that the specifications and descriptions in
56 all solicitations are prepared so as to provide all potential
57 suppliers-vendors who can meet the requirements of the
58 state an opportunity to bid and to assure that the
59 specifications and descriptions do not favor a particular
60 brand or vendor. If the director determines that any such
61 specifications or descriptions as written favor a particular
62 brand or vendor or if it is decided, either before or after the

63 bids are opened, that a commodity or service having
 64 different specifications or quality or in different quantity
 65 can be bought, the director may rewrite the solicitation and
 66 the matter shall be rebid; and

67 (11) Issue a notice to cease and desist to a spending unit
 68 when the director has credible evidence that a spending unit
 69 has violated competitive bidding or other requirements
 70 established by this article and the rules promulgated
 71 hereunder. Failure to abide by the notice may result in
 72 penalties set forth in §5A-3-17 of this code.



CHAPTER 96

**(Com. Sub. for S. B. 283 - By Senators Carmichael
 (Mr. President) and Prezioso)
 [By Request of the Executive]**

[Passed March 10, 2018; in effect ninety days from passage.]
 [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §5A-3-10b, §5A-3-10c, §5A-3-10e, §5A-3-33d, §5A-3-33f, §5A-3-37, and §5A-3-45 of said code; to amend said code by adding thereto a new section, designated §5A-3-61; to amend and reenact §5G-1-3 and §5G-1-4 of said code; to amend and reenact §6D-1-1 of said code; and to amend and reenact §18B-5-4 of said code, all relating generally to procurement by state agencies; defining terms; authorizing competitive bidding of certain open-ended repair and maintenance contracts; modifying use and consideration of alternates in solicitations; prohibiting alternates from being accepted out of order; modifying criteria to be considered in best value procurement awards; eliminating sole source procurement; establishing direct award procurement requirements; establishing

prequalification agreements and their requirements and procedures; authorizing agency delegated prequalification bidding and its procedure; increasing certain cost limits from \$50,000 to \$1 million; authorizing awarding contracts without competitive bidding if certain requirements are met; eliminating master contracts and direct ordering process; expanding the scope of those who may be debarred; eliminating preferences for resident vendors, vendors employing state residents, and veteran residents; establishing the concept of “reciprocal preference” for an in-state vendor over an out-of-state vendor from any state that gives or requires a preference to bidders from that state and setting forth its requirements; providing certain preferences for purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects; modifying the value determination of certain motor vehicles that are to be sold; permitting funds from sale of surplus property be deposited in alternate fund if original fund no longer exists; permitting spending units to use a standardization process to purchase commodities and setting forth its requirements; permitting an architectural or engineering firm to be selected without bidding if certain conditions exist; increasing the cost of projects under which Division of Highways is permitted to procure services of architectural and engineering firms under certain provisions; increasing certain contract limits from \$100,000 to \$1 million for purposes of disclosure; modifying provisions requiring disclosure of interested parties; requiring certain reporting; removing preference requirements for higher education; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

**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 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

1 (a) This section and the requirements in this section may
2 be referred to as the West Virginia Fairness in Competitive
3 Bidding Act.

4 (b) As used in this section:

5 (1) “Lowest qualified responsible bidder” means the
6 bidder that bids the lowest price and that meets, at a
7 minimum, all the following requirements in connection with
8 the bidder’s response to the bid solicitation. The bidder shall
9 certify that it:

10 (A) Is ready, able, and willing to timely furnish the labor
11 and materials required to complete the contract;

12 (B) Is in compliance with all applicable laws of the State
13 of West Virginia; and

14 (C) Has supplied a valid bid bond or other surety
15 authorized or approved by the contracting public entity.

16 (2) “The state and its subdivisions” means the State of
17 West Virginia, every political subdivision thereof, every
18 administrative entity that includes such a subdivision, all
19 municipalities, and all county boards of education.

20 (3) “State spending unit” means a department, agency,
21 or institution of the state government for which an
22 appropriation is requested, or to which an appropriation is
23 made by the Legislature.

24 (4) “Alternates” means any additive options or
25 alternative designs included in a solicitation for competitive

26 bids that are different from and priced separately from what
27 is included in a base bid.

28 (5) "Construction project" means a specifically
29 identified scope of work involving the act, trade, or process
30 of building, erecting, constructing, adding, repairing,
31 remodeling, rehabilitating, reconstructing, altering,
32 converting, improving, expanding, or demolishing of a
33 building, structure, facility, road, or highway. Repair and
34 maintenance of existing public improvements that are
35 recurring or ongoing in nature and that are not fully
36 identified or known at any one time shall be considered a
37 construction project and procured according to this article
38 on an open-ended basis, so long as the work to be performed
39 under the contract falls into a generally accepted single
40 class, or type, and bidders are notified of the open-ended
41 nature of the work in the solicitation: *Provided*, That no
42 open-ended repair or maintenance contract may exceed
43 \$500,000.

44 (c) The state and its subdivisions shall, except as
45 provided in this section, solicit competitive bids for every
46 construction project exceeding \$25,000 in total cost.

47 (1) If a solicitation contains a request for any alternates,
48 the alternates shall be listed numerically in the order of
49 preference in the solicitation.

50 (2) A vendor who has been debarred pursuant to §5A-3-
51 33b through §5A-3-33f of this code, may not bid on or be
52 awarded a contract under this section.

53 (d) All bids submitted pursuant to this chapter shall
54 include a valid bid bond or other surety as approved by the
55 State of West Virginia or its subdivisions.

56 (e) Following the solicitation of bids, the construction
57 contract shall be awarded to the lowest qualified responsible
58 bidder who shall furnish a sufficient performance and

59 payment bond. The state and its subdivisions may reject all
60 bids and solicit new bids on the project.

61 (f) Any solicitation of bids shall include no more than
62 five alternates. Alternates, if accepted, shall be accepted in
63 the order in which they are listed on the bid form. Any
64 unaccepted alternate contained within a bid shall expire 90
65 days after the date of the opening of bids for review.

66 Determination of the lowest qualified responsible
67 bidder shall be based on the sum of the base bid and any
68 alternates accepted.

69 (g) The apparent low bidder on a contract valued at
70 more than \$250,000 for the construction, alteration,
71 decoration, painting, or improvement of a new or existing
72 building or structure with a state spending unit shall submit
73 a list of all subcontractors who will perform more than
74 \$25,000 worth of work on the project including labor and
75 materials. This section does not apply to other construction
76 projects such as highway, mine reclamation, water, or sewer
77 projects. The list shall include the names of the bidders and
78 the license numbers as required by §21-11-1 *et seq.* of this
79 code. This information shall be provided to the state
80 spending unit within one business day of the opening of bids
81 for review prior to the awarding of a construction contract.
82 If the apparent low bidder fails to submit the subcontractor
83 list, the spending unit shall promptly request by telephone
84 and electronic mail that the low bidder and second low
85 bidder provide the subcontractor list within one business
86 day of the request. Failure to submit the subcontractor list
87 within one business day of receiving the request shall result
88 in disqualification of the bid. A subcontractor list may not
89 be required if the bidder provides notice in the bid
90 submission or in response to a request for a subcontractor
91 list that no subcontractors who will perform more than
92 \$25,000 worth of work will be used to complete the project.

93 (h) Written approval must be obtained from the state
94 spending unit before any subcontractor substitution is
95 permitted. Substitutions are not permitted unless:

96 (1) The subcontractor listed in the original bid has filed
97 for bankruptcy;

98 (2) The state spending unit refuses to approve a
99 subcontractor in the original bid because the subcontractor
100 is under a debarment pursuant to §5A-3-33d of this code or
101 a suspension under §5A-3-32 of this code; or

102 (3) The contractor certifies in writing that the
103 subcontractor listed in the original bill fails, is unable, or
104 refuses to perform the subcontract.

105 (i) The contracting public entity may not award the
106 contract to a bidder which fails to meet the minimum
107 requirements set out in this section. As to a prospective low
108 bidder which the contracting public entity determines not to
109 have met one or more of the requirements of this section or
110 other requirements as determined by the public entity in the
111 written bid solicitation, prior to the time a contract award is
112 made, the contracting public entity shall document in
113 writing and in reasonable detail the basis for the
114 determination and shall place the writing in the bid file.
115 After the award of a bid under this section, the bid file of the
116 contracting public agency and all bids submitted in response
117 to the bid solicitation shall be open and available for public
118 inspection.

119 (j) The contracting public entity shall not award a
120 contract pursuant to this section to any bidder that is known
121 to be in default on any monetary obligation owed to the state
122 or a political subdivision of the state, including, but not
123 limited to, obligations related to payroll taxes, property
124 taxes, sales and use taxes, fire service fees, or other fines or
125 fees. Any governmental entity may submit to the Division
126 of Purchasing information which identifies vendors that
127 qualify as being in default on a monetary obligation to the

128 entity. The contracting public entity shall take reasonable
129 steps to verify whether the lowest qualified bidder is in
130 default pursuant to this subsection prior to awarding a
131 contract.

132 (k) A public official or other person who individually or
133 together with others knowingly makes an award of a
134 contract under this section in violation of the procedures and
135 requirements of this section is subject to the penalties set
136 forth in §5A-3-29 of this code.

137 (l) No officer or employee of this state or of a public
138 agency, public authority, public corporation, or other public
139 entity and no person acting or purporting to act on behalf of
140 an officer or employee or public entity may require that a
141 performance bond, payment bond, or surety bond required
142 or permitted by this section be obtained from a particular
143 surety company, agent, broker, or producer.

144 (m) All bids shall be open in accordance with the
145 provisions of §5-22-2 of this code, except design-build
146 projects which are governed by §5-22A-1 *et seq.* of this
147 code and are exempt from these provisions.

148 (n) Nothing in this section applies to:

149 (1) Work performed on construction or repair projects
150 by regular full-time employees of the state or its
151 subdivisions;

152 (2) Prevent students enrolled in vocational educational
153 schools from being utilized in construction or repair projects
154 when the use is a part of the student's training program;

155 (3) Emergency repairs to building components, systems,
156 and public infrastructure. For the purpose of this
157 subdivision, the term "emergency repairs" means repairs
158 that if not made immediately will seriously impair the use
159 of building components, systems, and public infrastructure
160 or cause danger to persons using the building components,
161 systems, and public infrastructure; and

162 (4) A situation where the state or subdivision thereof
163 reaches an agreement with volunteers, or a volunteer group,
164 in which the governmental body will provide construction
165 or repair materials, architectural, engineering, technical, or
166 other professional services, and the volunteers will provide
167 the necessary labor without charge to, or liability upon, the
168 governmental body.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10b. Best value procurement.

1 (a) The director may utilize best value procurement to
2 enter into a contract when he or she determines in writing
3 that it is advantageous to the state.

4 (b) A solicitation for bids under best value procurement
5 shall be made in the same manner as provided in §5A-3-10
6 of this code.

7 (c) Best value procurement awards shall be based on
8 criteria set forth in the solicitation and information
9 contained in the proposals submitted in response to the
10 solicitation. Those criteria include, but are not limited to,
11 price and the total cost of acquiring, operating, maintaining,
12 and supporting a commodity or service over its projected
13 lifetime, as well as technical criteria. The technical criteria
14 may include, but are not limited to, the evaluated technical
15 merit of the bidder's bid or proposal, the bidder's past
16 performance, the degree to which a proposal exceeds other
17 proposals in technical merit, the utility of any novel or
18 unrequested items in the proposal, and the evaluated
19 probability of performing the requirements stated in the
20 solicitation on time, with high quality, and in a manner that
21 accomplishes the business objectives set forth in the
22 solicitation.

23 (d) The award must be made to the highest scoring
24 responsive and responsible bidder whose bid is determined,

25 in writing, to be most advantageous to the state, taking into
26 consideration all evaluation factors set forth in the best
27 value solicitation.

28 (e) The director may not use best value procurement to
29 enter into government construction contracts, including, but
30 not limited to, those set forth in §5-22-1 *et seq.* of this code.

§5A-3-10c. Direct award procurement.

1 (a) The director may make a direct award of a contract
2 without competitive bidding if:

3 (1) The spending unit requests a direct award in writing;

4 (2) The spending unit provides written justification
5 showing that the direct award is in the best interest of the
6 state;

7 (3) The spending unit provides written confirmation that
8 competition is not available because there is no other source
9 for the commodity or service, or that no other source would
10 be willing or able to replace the existing source without a
11 detrimental effect on the spending unit, the existence of a
12 detrimental effect being determined by the director in his or
13 her sole discretion;

14 (4) The director publicly advertises a notice of intent to
15 make a direct award without competition in the state's
16 official bid notification system, as well as any other public
17 advertisement that the director deems appropriate, for no
18 less than 10 business days; and

19 (5) No other vendor expresses an interest in providing
20 the commodity or service in question.

21 (b) If a vendor expresses an interest in providing the
22 commodity or service described in the notice of intent to
23 make a direct award, then the spending unit must convert
24 the direct award to a competitive bid, unless the director
25 determines that the interest expressed by a vendor is

26 unreasonable. The competitive bid may, at the discretion of
27 the director, be either a request for quotation or request for
28 proposal.

29 (c) The notice of intent to make a direct award shall
30 contain the following information:

31 (1) A description of the commodity or service for which
32 a direct award will be made;

33 (2) A time period by which delivery must be made or
34 performance must occur;

35 (3) The price that will be paid for the commodity or
36 service;

37 (4) Any limitations that a competing vendor would need
38 to satisfy;

39 (5) An invitation to all vendors interested in providing
40 the commodity or service to make that interest known; and

41 (6) Contact information for the director or his or her
42 designee, and instructions to submit a statement of interest
43 to the director or his or her designee.

44 (d) The director may refuse a spending unit's request to
45 utilize a direct award procurement if the commodities or
46 services have previously been obtained through competitive
47 bidding.

48 (e) On or before December 1, 2018, and annually
49 thereafter, the director shall report to the Governor and the
50 Joint Committee on Government and Finance on the
51 spending units that have requested a direct award for their
52 commodities or services, the type of commodity or service,
53 and results of the direct award process.

§5A-3-10e. Prequalification agreement; agency- delegated bidding.

1 (a) Subject to the limitations of this section, the director
2 may permit spending units to procure commodities from a

3 preapproved vendor through a prequalification agreement
4 and delegated prequalification bidding if the director
5 determines the process is fair, economical, and in the best
6 interests of the state.

7 (b) *Definitions.* — For purposes of this section:

8 (1) “Information technology” means hardware and
9 software related to electronic processing, and storage,
10 retrieval, transmittal, and manipulation of data.

11 (2) “Prequalification agreement” means an agreement,
12 having a term of no more than three years, between the
13 Purchasing Division and at least two prequalified vendors
14 authorizing a spending unit to purchase a commodity on a
15 recurrent basis through the delegated prequalification
16 bidding process defined in the prequalification agreement.

17 (3) “Prequalified vendor” means a “vendor”, as that
18 term is defined in §5A-1-1 of this code, that has entered into
19 a prequalification agreement with the Purchasing Division
20 and may participate in the delegated prequalification
21 bidding subject to the terms and conditions of the
22 prequalification agreement.

23 (4) “Delegated prequalification bidding” means the
24 competitive bidding process whereby the prequalified
25 vendors that are parties to a prequalification agreement may
26 submit sealed bids directly to spending units to provide a
27 commodity identified in the prequalification agreement
28 subject to the limitations set forth in this section.

29 (c) *Prequalification agreement.* —

30 (1) For each prequalification agreement, the director
31 shall set forth the requirements, technical or otherwise,
32 under which a vendor may be qualified to supply a
33 commodity through the delegated prequalification bidding.
34 For each prequalification agreement, the director shall
35 follow the notice and advertising requirements set forth in
36 §5A-3-10 of this code.

37 (2) A prequalification agreement may authorize the
38 delegated prequalification bidding for only one type of
39 commodity.

40 (3) A vendor may submit information to the director to
41 establish that it meets the requirements set forth in the
42 prequalification agreement.

43 (4) If the director determines that a vendor meets the
44 requirements set forth in the prequalification agreement, the
45 vendor may enter into the prequalification agreement as a
46 prequalified vendor.

47 (d) *Delegated prequalification bidding procedures.* —

48 (1) A spending unit may commence the delegated
49 prequalification bidding process by issuing a request for a
50 commodity identified in the prequalification agreement
51 stating in the request the quantity of the commodity to be
52 procured.

53 (2) The prequalified vendor that submits the lowest bid
54 in response to the request shall be awarded the procurement.

55 (3) The delegated prequalification bidding may not be
56 utilized for any request for commodities anticipated to cost
57 more than \$1 million, unless approved in writing by the
58 Director of Purchasing. The state may not issue a series of
59 orders each anticipated to cost less than \$1 million to
60 circumvent the monetary limitation in this subsection. The
61 limit expressed herein applies to each delegated
62 prequalification bid conducted pursuant to the
63 prequalification agreement and not to total spending under
64 the prequalification agreement.

65 (e) *Rule-making authority.* — The Director of the
66 Purchasing Division shall propose rules for legislative
67 approval in accordance with the provisions of §29A-3-1 *et*
68 *seq.* of this code to implement this section, including, but
69 not limited to, provisions to establish procedures for the
70 solicitation and authorization of prequalification

71 agreements, prequalification of vendors, and
72 implementation of delegated prequalification bidding.

§5A-3-33d. Grounds for debarment.

1 (a) Grounds for debarment are:

2 (1) Conviction of an offense involving fraud or a felony
3 offense related to obtaining or attempting to obtain a public
4 contract or subcontract;

5 (2) Conviction of any federal or state antitrust statute
6 relating to the submission of offers;

7 (3) Conviction of an offense involving embezzlement,
8 theft, forgery, bribery, falsification, or destruction of
9 records, making false statements, or receiving stolen
10 property related to the performance of a contract;

11 (4) Conviction of a felony offense demonstrating a lack
12 of business integrity or business honesty that affects the
13 present responsibility of the vendor or subcontractor;

14 (5) Default on obligations owed to the state, including,
15 but not limited to, obligations owed to the workers'
16 compensation funds, as defined in §23-2C-1 *et seq.* of this
17 code, and obligations under the West Virginia
18 Unemployment Compensation Act and West Virginia state
19 tax and revenue laws. For purposes of this subdivision, a
20 vendor is in default when, after due notice, the vendor fails
21 to submit a required payment, interest thereon, or penalty,
22 and has not entered into a repayment agreement with the
23 appropriate agency of the state or has entered into a
24 repayment agreement but does not remain in compliance
25 with its obligations under the repayment agreement. In the
26 case of a vendor granted protection by order of a federal
27 bankruptcy court or a vendor granted an exemption under
28 any rule of the Bureau of Employment Programs or the
29 Insurance Commission, the director may waive debarment
30 under §5A-3-33f of this code: *Provided*, That in no event
31 may debarment be waived with respect to any vendor who

32 has not paid all current state obligations for at least the four
33 most recent calendar quarters, excluding the current
34 calendar quarter, or with respect to any vendor who is in
35 default on a repayment agreement with an agency of the
36 state;

37 (6) The vendor is not in good standing with a licensing
38 board, in that the vendor is not licensed when licensure is
39 required by the law of this state, or the vendor has been
40 found to be in violation of an applicable licensing law after
41 notice, opportunity to be heard, and other due process
42 required by law;

43 (7) The vendor is an active and knowing participant in
44 dividing or planning procurements to circumvent the
45 \$25,000 threshold requiring a sealed bid or otherwise
46 avoiding the use of a sealed bid;

47 (8) Violation of the terms of a public contract or
48 subcontract for:

49 (A) Willful failure to substantially perform in
50 accordance with the terms of one or more public contracts;

51 (B) Performance in violation of standards established by
52 law or generally accepted standards of the trade or
53 profession amounting to intentionally deficient or grossly
54 negligent performance on one or more public contracts;

55 (C) Use of substandard materials on one or more public
56 contracts or defects in construction in one or more public
57 construction projects amounting to intentionally deficient or
58 grossly negligent performance, even if discovery of the
59 defect is subsequent to acceptance of a construction project
60 and expiration of any warranty thereunder; or

61 (D) A repeated pattern or practice of failure to perform
62 so serious and compelling as to justify debarment; or

63 (9) Any other cause of a serious and compelling nature
64 amounting to knowing and willful misconduct of the vendor

65 that demonstrates a wanton indifference to the interests of
66 the public and that caused, or that had a substantial
67 likelihood of causing, serious harm to the public.

68 (b) For the purposes of this section, the term
69 “conviction” includes, but may not be limited to, the
70 entering of a deferred prosecution agreement or a plea of
71 guilty or nolo contendere, including pleading to a lesser or
72 related offense in exchange for some form of prosecutorial
73 leniency.

§5A-3-33f. Effects of debarment.

1 (a) Unless the director determines in writing that there
2 is a compelling reason to do otherwise, the state and its
3 subdivisions may not solicit offers from, award contracts to,
4 nor consent to subcontract with a debarred vendor during
5 the debarment period.

6 (b) The contracting officer may not exercise an option
7 to renew or otherwise extend a current contract with a
8 debarred vendor, nor a contract which is being performed in
9 any part by a debarred subcontractor, unless the director
10 approves the action in writing, based on compelling reasons
11 for exercise of the option or extension.

12 (c) The debarment decision may extend to all
13 commodities and services of the vendor, or may be limited
14 to specific commodities or services, as the director
15 specifically finds, in the debarment procedure under §5A-3-
16 33e of this code, to be in the public interest based on the
17 substantial record.

18 (d) The director may extend the debarment to include a
19 related party of the vendor. The director shall follow the
20 same procedure, and afford the affiliate like notice, hearing,
21 and other rights, for extending the debarment to the affiliate
22 as provided for under §5A-3-33e of this code for the
23 debarment of the vendor. For purposes of this section, a
24 “related party” may include:

25 (1) Spouses, parents, children, siblings, grandparents, or
26 grandchildren of a debarred vendor or individual;

27 (2) Any individual or entity that partially or completely
28 owns, controls, or influences, or is partially or completely
29 owned, controlled, or influenced by the actions of a
30 debarred vendor or individual;

31 (3) Entities that are related under common ownership or
32 control with a debarred vendor; or

33 (4) A business entity or individual that has contracted
34 with or employed a debarred vendor or individual to
35 perform work on one or more public contracts.

36 (e) The director may reduce the period or extent of
37 debarment, upon the vendor's request supported by
38 documentation, for the following reasons:

39 (1) Newly discovered material evidence;

40 (2) Reversal of the conviction or judgment upon which
41 debarment was based;

42 (3) Elimination of the causes for which the debarment
43 was imposed; or

44 (4) Other good cause shown, including evidence that the
45 vendor has become responsible.

46 (f) The director may extend the debarment period for an
47 additional period if the director determines that the
48 extension is necessary to protect the interests of the state.
49 Upon the expiration of a debarment period, the director shall
50 extend the debarment period for any vendor who has not
51 paid all current state obligations for at least the four most
52 recent calendar quarters, exempting the current calendar
53 quarter, and for any vendor who is in default on a repayment
54 agreement with an agency of the state, until such time as the
55 cause for the extended debarment is removed. If the director
56 extends the debarment period, the director shall follow the

57 same procedures, and afford the vendor like notice, hearing,
58 and other rights for extending the debarment, as provided
59 for debarment under §5A-3-33e of this code.

60 (g) A debarment under this article may be waived by the
61 director with respect to a particular contract if the director
62 determines the debarment of the vendor would severely
63 disrupt the operation of a governmental entity to the
64 detriment of the general public or would not be in the public
65 interest.

§5A-3-37. Reciprocal preference; preference for resident vendors for certain contracts.

1 (a) For purposes of this section, a vendor shall be
2 deemed to be a resident of this state if such vendor:

3 (1) Is registered in accordance with §11-12-1 *et seq.* of
4 this code to transact business within the State of West
5 Virginia;

6 (2) Maintains its headquarters or principal place of
7 business in the state;

8 (3) Has actually paid, and not just applied to pay,
9 personal property taxes imposed by chapter 11 of this code
10 on equipment used in the regular course of supplying
11 services or commodities of the general type offered; and

12 (4) Has actually paid, and not just applied to pay, all
13 required business taxes imposed by chapter 11 of this code.

14 (b) Except as provided in §5A-3-37(c) of this code, in
15 any instance that a purchase of commodities or printing by
16 the director or by a state spending unit is required under the
17 provisions of this article to be made upon competitive bids,
18 preference shall only be given to resident vendors of West
19 Virginia against a nonresident vendor from any state that
20 gives or requires a preference to bidders from that state. The
21 amount of the preference shall be equal to the amount of the

22 preference given or required by the state of the nonresident
23 vendor for that particular supply.

24 (c)(1) In any instance that a purchase of motor vehicles
25 or construction and maintenance equipment and machinery
26 used in highway and other infrastructure projects by the
27 director or by a state department is required under the
28 provisions of this article to be made upon competitive bids,
29 the successful bid shall be determined as provided in this
30 subsection.

31 (2) For purposes of this subsection, a successful bid
32 shall be determined and accepted as follows:

33 (A) From an individual resident vendor who has resided
34 in West Virginia continuously for the four years
35 immediately preceding the date on which the bid is
36 submitted or from a partnership, association, corporation
37 resident vendor, or from a corporation nonresident vendor
38 which has an affiliate or subsidiary which employs a
39 minimum of 100 state residents and which has maintained
40 its headquarters or principal place of business within West
41 Virginia continuously for four years immediately preceding
42 the date on which the bid is submitted, if the vendor's bid
43 does not exceed the lowest qualified bid from a nonresident
44 vendor by more than two and one-half percent of the latter
45 bid, and if the vendor has made written claim for the
46 preference at the time the bid was submitted: *Provided*, That
47 for purposes of this paragraph, any partnership, association,
48 or corporation resident vendor of this state which does not
49 meet the requirements of this paragraph solely because of
50 the continuous four-year residence requirement, shall be
51 considered to meet the requirement if at least 80 percent of
52 the ownership interest of the resident vendor is held by
53 another individual, partnership, association, or corporation
54 resident vendor who otherwise meets the requirements of
55 this paragraph, including the continuous four-year residency
56 requirement: *Provided, however*, That the Purchasing
57 Division shall promulgate rules relating to attribution of

58 ownership among several resident vendors for purposes of
59 determining the 80 percent ownership requirement; or

60 (B) From a resident vendor, if, for purposes of
61 producing or distributing the motor vehicles or the
62 construction and maintenance equipment and machinery
63 used in highway and other infrastructure projects which are
64 the subject of the vendor's bid and continuously over the
65 entire term of the contract, on average at least 75 percent of
66 the vendor's employees are residents of West Virginia who
67 have resided in the state continuously for the two
68 immediately preceding years, and the vendor's bid does not
69 exceed the lowest qualified bid from a nonresident vendor
70 by more than two and one-half percent of the latter bid, and
71 if the vendor has certified the residency requirements of this
72 paragraph and made written claim for the preference, at the
73 time the bid was submitted; or

74 (C) From a nonresident vendor, which employs a
75 minimum of 100 state residents or a nonresident vendor
76 which has an affiliate or subsidiary which maintains its
77 headquarters or principal place of business within West
78 Virginia and which employs a minimum of 100 state
79 residents, if, for purposes of producing or distributing the
80 motor vehicles or the construction and maintenance
81 equipment and machinery used in highway and other
82 infrastructure projects which are the subject of the vendor's
83 bid and continuously over the entire term of the contract, on
84 average at least 75 percent of the vendor's employees or the
85 vendor's affiliate's or subsidiary's employees are residents
86 of West Virginia who have resided in the state continuously
87 for the two immediately preceding years and the vendor's
88 bid does not exceed the lowest qualified bid from a
89 nonresident vendor by more than two and one-half percent
90 of the latter bid, and if the vendor has certified the residency
91 requirements of this paragraph and made written claim for
92 the preference, at the time the bid was submitted; or

93 (D) From a vendor who meets either the requirements
94 of both §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(B) of this

95 code or §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(C) of this
96 code, if the bid does not exceed the lowest qualified bid
97 from a nonresident vendor by more than five percent of the
98 latter bid, and if the vendor has certified the residency
99 requirements above and made written claim for the
100 preference at the time the bid was submitted; or

101 (E) From an individual resident vendor who is a veteran
102 of the United States armed forces, the reserves or the
103 National Guard and has resided in West Virginia
104 continuously for the four years immediately preceding the
105 date on which the bid is submitted, if the vendor's bid does
106 not exceed the lowest qualified bid from a nonresident
107 vendor by more than three and one-half percent of the latter
108 bid, and if the vendor has made written claim for the
109 preference at the time the bid was submitted; or

110 (F) From a resident vendor who is a veteran of the
111 United States armed forces, the reserves or the National
112 Guard, if, for purposes of producing or distributing motor
113 vehicles or construction and maintenance equipment and
114 machinery used in highway and other infrastructure projects
115 which are the subject of the vendor's bid and continuously
116 over the entire term of the contract, on average at least 75
117 percent of the vendor's employees are residents of West
118 Virginia who have resided in the state continuously for the
119 two immediately preceding years and the vendor's bid does
120 not exceed the lowest qualified bid from a nonresident
121 vendor by more than three and one-half percent of the latter
122 bid, and if the vendor has certified the residency
123 requirements of this paragraph and made written claim for
124 the preference, at the time the bid was submitted; or

125 (G) Notwithstanding any provisions of §5A-3-
126 37(c)(2)(A), §5A-3-37(c)(2)(B), §5A-3-37(c)(2)(C), §5A-
127 3-37(c)(2)(D), §5A-3-37(c)(2)(E), or §5A-3-37(c)(2)(F) of
128 this code to the contrary, if any nonresident vendor that is
129 bidding on the purchase of motor vehicles or construction
130 and maintenance equipment and machinery used in highway
131 and other infrastructure projects by the director or by a state

132 department is also certified as a small-, women-, or
133 minority-owned business pursuant to §5A-3-59, the
134 nonresident vendor shall be provided the same preference
135 made available to any resident vendor under the provisions
136 of this subdivision.

137 (3) If any of the requirements or provisions set forth in
138 this section jeopardize the receipt of federal funds, then the
139 requirement or provisions are void and of no force and effect
140 for that specific project.

141 (4) The Purchasing Division shall promulgate any rules
142 necessary to: (A) Determine that vendors have met the
143 residence requirements described in this section; (B)
144 establish the procedure for vendors to certify the residency
145 requirements at the time of submitting their bids; (C)
146 establish a procedure to audit bids which make a claim for
147 preference permitted by this section and to reject
148 noncomplying bids; and (D) otherwise accomplish the
149 objectives of this subsection.

150 (d) If the Purchasing Division determines under any
151 audit procedure that a vendor who received a preference
152 under this section fails to continue to meet the requirements
153 for the preference at any time during the term of the contract
154 for which the preference was received the Purchasing
155 Division may: (1) Reject the vendor's bid; or (2) assess a
156 penalty against the vendor of not more than five percent of
157 the vendor's bid on the contract.

158 (e) Political subdivisions of the state including county
159 boards of education may grant the same preferences to any
160 vendor of this state who has made a written claim for the
161 preference at the time a bid is submitted, but for the
162 purposes of this subsection, in determining the lowest bid,
163 any political subdivision shall exclude from the bid the
164 amount of business occupation taxes which must be paid by
165 a resident vendor to any municipality within the county
166 comprising or located within the political subdivision as a
167 result of being awarded the contract which is the object of

168 the bid; in the case of a bid received by a municipality, the
169 municipality shall exclude only the business and occupation
170 taxes as will be paid to the municipality: *Provided*, That
171 prior to soliciting any competitive bids, any political
172 subdivision may, by majority vote of all its members in a
173 public meeting where all the votes are recorded, elect not to
174 exclude from the bid the amount of business and occupation
175 taxes as provided in this subsection.

§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.

1 (a) The state agency for surplus property has the
2 exclusive power and authority to make disposition of
3 commodities or expendable commodities now owned or in
4 the future acquired by the state when the commodities are
5 or become obsolete or unusable or are not being used or
6 should be replaced.

7 (b) The agency shall determine what commodities or
8 expendable commodities should be disposed of and make
9 disposition in the manner which will be most advantageous
10 to the state. The disposition may include:

11 (1) Transferring the particular commodities or
12 expendable commodities between departments;

13 (2) Selling the commodities to county commissions,
14 county boards of education, municipalities, public service
15 districts, county building commissions, airport authorities,
16 parks and recreation commissions, nonprofit domestic
17 corporations qualified as tax exempt under Section
18 501(c)(3) of the Internal Revenue Code of 1986, as
19 amended, or volunteer fire departments in this state when
20 the volunteer fire departments have been held exempt from
21 taxation under Section 501(c) of the Internal Revenue Code
22 1986, as amended;

23 (3) Trading in the commodities as a part payment on the
24 purchase of new commodities;

25 (4) Cannibalizing the commodities pursuant to
26 procedures established under §5A-3-45(g) of this code;

27 (5) Properly disposing of the commodities as waste;

28 (6) Selling the commodities to the general public at the
29 posted price or to the highest bidder by means of public
30 auctions or sealed bids, after having first advertised the
31 time, terms, and place of the sale as a Class II legal
32 advertisement in compliance with the provisions of §59-3-1
33 *et seq.* of this code. The publication area for the publication
34 is the county in which the sale is to be conducted. The sale
35 may also be advertised in other advertising media that the
36 agency considers advisable. The agency may sell to the
37 highest bidder or to any one or more of the highest bidders,
38 if there is more than one, or, if the best interest of the state
39 will be served, reject all bids; or

40 (7) Selling the commodities to the highest bidder by
41 means of an Internet auction site approved by the director,
42 as set forth in a legislative rule pursuant to the provisions of
43 chapter 29A of this code.

44 (c) Upon the sale to the general public or transfer of
45 commodities or expendable commodities between
46 departments, or upon the sale of commodities or expendable
47 commodities to an eligible organization, the agency shall set
48 the price to be paid by the receiving eligible organization,
49 with due consideration given to current market prices.

50 (d) The agency may sell expendable, obsolete, or
51 unused motor vehicles owned by the state to an eligible
52 organization, other than volunteer fire departments. In
53 addition, the agency may sell expendable, obsolete, or
54 unused motor vehicles owned by the state with a gross
55 weight in excess of 4,000 pounds to an eligible volunteer
56 fire department. The agency, with due consideration given
57 to fair market value as determined by an independent
58 automotive pricing guide, shall set the price at a fair market
59 price to be paid by the receiving eligible organization for

60 motor vehicles sold pursuant to this provision. The fair
61 market value shall be based on a thorough inspection of the
62 vehicle by an employee of the agency who shall consider
63 the mileage of the vehicle and the condition of the body,
64 engine, and tires as indicators of its fair market value. If no
65 fair market value is available, the agency shall set the price
66 to be paid by the receiving eligible organization with due
67 consideration given to current market prices. The duly
68 authorized representative of the eligible organization, for
69 whom the motor vehicle or other similar surplus equipment
70 is purchased or otherwise obtained, shall cause ownership
71 and proper title to the motor vehicle to be vested only in the
72 official name of the authorized governing body for whom
73 the purchase or transfer was made. The ownership or title,
74 or both, shall remain in the possession of that governing
75 body and be nontransferable for a period of not less than one
76 year from the date of the purchase or transfer. Resale or
77 transfer of ownership of the motor vehicle or equipment
78 prior to an elapsed period of one year may be made only by
79 reason of certified unserviceability.

80 (e) The agency shall report to the Legislative Auditor,
81 semiannually, all sales of commodities or expendable
82 commodities made during the preceding six months to
83 eligible organizations. The report shall include a description
84 of the commodities sold, the price paid by the eligible
85 organization which received the commodities, and to whom
86 each commodity was sold.

87 (f) The proceeds of the sales or transfers shall be
88 deposited in the State Treasury to the credit on a pro rata
89 basis of the fund or funds out of which the purchase of the
90 particular commodities or expendable commodities was
91 made: *Provided*, That the agency may charge and assess
92 fees reasonably related to the costs of care and handling with
93 respect to the transfer, warehousing, sale, and distribution
94 of state property disposed of or sold pursuant to the
95 provisions of this section. Notwithstanding §5A-3-45(e) of
96 this code, if the fund or funds out of which the purchase was

97 made no longer exist, the spending unit may designate an
98 alternate fund within which the proceeds must be deposited.

99 (g)(1) For purposes of this section, “cannibalization”
100 means the removal of parts from one commodity to use in
101 the creation or repair of another commodity.

102 (2) The Director of the Purchasing Division shall
103 propose for promulgation legislative rules to establish
104 procedures that permit the cannibalization of a commodity
105 when it is in the best interests of the state. The procedures
106 shall require the approval of the director prior to the
107 cannibalization of the commodity under such circumstances
108 as the procedures may prescribe.

109 (3)(A) Under circumstances prescribed by the
110 procedures, state agencies shall be required to submit a
111 form, in writing or electronically, that, at a minimum, elicits
112 the following information for the commodity the agency is
113 requesting to cannibalize:

114 (i) The commodity identification number;

115 (ii) The commodity’s acquisition date;

116 (iii) The commodity’s acquisition cost;

117 (iv) A description of the commodity;

118 (v) Whether the commodity is operable and, if so, how
119 well it operates;

120 (vi) How the agency will dispose of the remaining parts
121 of the commodity; and

122 (vii) Who will cannibalize the commodity and how the
123 person is qualified to remove and reinstall the parts.

124 (B) If the agency has immediate plans to use the
125 cannibalized parts, the form shall elicit the following
126 information for the commodity or commodities that will
127 receive the cannibalized part or parts:

- 128 (i) The commodity identification number;
- 129 (ii) The commodity's acquisition date;
- 130 (iii) The commodity's acquisition cost;
- 131 (iv) A description of the commodity;
- 132 (v) Whether the commodity is operable;
- 133 (vi) Whether the part restores the commodity to an
134 operable condition; and
- 135 (vii) The cost of the parts and labor to restore the
136 commodity to an operable condition without
137 cannibalization.
- 138 (C) If the agency intends to retain the cannibalized parts
139 for future use, it shall provide information justifying its
140 request.
- 141 (D) The procedures shall provide for the disposal of the
142 residual components of cannibalized property.
- 143 (h)(1) The Director of the Purchasing Division shall
144 propose for promulgation legislative rules to establish
145 procedures that allow state agencies to dispose of
146 commodities in a landfill, or by other lawful means of waste
147 disposal, if the value of the commodity is less than the
148 benefit that may be realized by the state by disposing of the
149 commodity using another method authorized in this section.
150 The procedures shall specify circumstances where the state
151 agency for surplus property shall inspect the condition of
152 the commodity prior to authorizing the disposal and those
153 circumstances when the inspection is not necessary prior to
154 the authorization.
- 155 (2) Whenever a state agency requests permission to
156 dispose of a commodity in a landfill, or by other lawful
157 means of waste disposal, the state agency for surplus
158 property has the right to take possession of the commodity

159 and to dispose of the commodity using any other method
160 authorized in this section.

161 (3) If the state agency for surplus property determines,
162 within 15 days of receiving a commodity, that disposing of
163 the commodity in a landfill or by other lawful means of
164 waste disposal would be more beneficial to the state than
165 disposing of the commodity using any other method
166 authorized in this section, the cost of the disposal is the
167 responsibility of the agency from which it received the
168 commodity.

§5A-3-61. Standardization.

1 (a) Notwithstanding any provision in this article to the
2 contrary, a spending unit may utilize the process described
3 in this section to standardize purchases of commodities used
4 by the spending unit on a repeated basis. Such
5 standardization may result in a determination that only a
6 specific brand name for the commodity in question will be
7 used.

8 (b) Standardization is limited to commodities that
9 represent a core function of the spending unit's mission;
10 would yield a savings of time and money if standardized;
11 and either require testing or evaluation to determine
12 accuracy or consistency or require interoperability in a
13 larger system or network. Savings of time and money must
14 be shown without considering the traditional procurement
15 process or the standardization process.

16 (c) Any standardization established under this section
17 shall be valid for no more than four years. Upon expiration,
18 the spending unit establishing the standardization may
19 either take no action, which would allow the standardization
20 to end, or undertake the process outlined in this section to
21 establish a new standard.

22 (d) A spending unit desiring to establish a standard must
23 use the following procedure:

24 (1) The head of the spending unit must identify the
25 commodity to be standardized and request approval from
26 the director to establish a standard. The head of the spending
27 unit shall provide to the director written certification and
28 supporting evidence verifying that the requirements for
29 standardization have been met.

30 (2) The spending unit must identify the individual or
31 individuals that will be evaluating the commodity for
32 standardization. Each individual must certify that he or she
33 has no conflict of interest and can evaluate the information
34 used to standardize without favoritism or bias. At least one
35 individual involved in the standardization evaluation must
36 be the spending unit's procurement officer. If the spending
37 unit has no procurement officer, the individual responsible
38 for the spending unit's procurement must participate in the
39 evaluation.

40 (3) The spending unit must advertise the intent to
41 standardize as a request for information in the system used
42 at that time to solicit competitive bids. The spending unit
43 should also identify all known entities that would have an
44 interest in providing a commodity for evaluation and ensure
45 that they receive notice of the request for information. The
46 request for information must be advertised and allow for
47 responses for no less than 30 calendar days. The request for
48 information must notify the vendor community of the
49 following:

50 (A) That the spending unit is attempting to standardize
51 state procurements for the commodity in question;

52 (B) That any entity interested in having its products
53 considered for standardization should provide information
54 on the benefits and drawbacks of that entity's products;

55 (C) Any evaluation criteria that the spending unit will
56 use in the standardization decision;

57 (D) The date and time by which documentation must be
58 provided; and

59 (E) The approximate date and time by which a decision
60 will be made.

61 (4) If the spending unit desires to conduct product
62 testing, it must notify vendors in the request for information
63 and establish a time period during which tests will be
64 performed. Vendors may provide commodities for
65 demonstration, testing, and evaluation so long as such items
66 are provided at no cost and no risk to the state. A written
67 record describing the nature of the testing performed and a
68 written record of the results of that testing shall be produced
69 pursuant to any testing conducted on all the commodities
70 being considered. The written record of testing and results
71 shall be provided to the Purchasing Division and preserved.

72 (5) The spending unit will evaluate the information
73 received in response to the request for information,
74 information the spending unit has obtained from its own
75 research, the results of any product testing, and anything
76 else the spending unit finds relevant to establish a pending
77 standardization.

78 (6) The spending unit must advertise the pending
79 standardization as a request for information in the system
80 used at that time to solicit competitive bids for a minimum
81 of 15 calendar days. The request for information must notify
82 the vendor community and any vendor who has participated
83 in the standardization evaluation process of the following:

84 (A) The pending decision to standardize, including any
85 brand name that has been tentatively selected the standard;

86 (B) The rationale for the selection made in the pending
87 standardization;

88 (C) That comments may be submitted for review for a
89 period of 15 calendar days from the date of the
90 advertisement;

91 (D) The date and time by which a final decision will be
92 made, which will be no less than three days after the
93 comment period has ended; and

94 (E) The location where the final decision will be posted.

95 (7) The spending unit must review the comments
96 submitted in response to the pending standardization
97 advertisement and make any adjustments that it deems
98 necessary.

99 (8) The head of the spending unit shall notify the
100 director of a selection of the standard commodity, and the
101 director shall post the results of the standardization decision
102 on the Purchasing Division's website. The spending unit
103 shall also specifically notify any vendor who participated in
104 the standardization evaluation process of the results in
105 writing, within five business days of the final
106 standardization selection.

107 (e) Any vendor that participated in the standardization
108 process may appeal the standardization decision to the head
109 of the spending unit. The head of the spending unit shall
110 consider the appeal in accordance with the administrative
111 procedures established in chapter 29A of this code.

112 (f) Once a standard has been established, the Purchasing
113 Division is authorized to solicit competitive bids on behalf
114 of the spending unit in the form of a request for quotation
115 for the standardized commodity.

116 (g) The director may develop any necessary forms and
117 reporting templates for use in standardization approval,
118 testing, reporting, or any other forms necessary to carry out
119 the provisions of this section. Such forms and reports shall
120 be maintained by the Purchasing Division.

**CHAPTER 5G. PROCUREMENT OF ARCHITECT-
ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.**

**ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER
SERVICES.**

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost \$250,000 or more.

1 In the procurement of architectural and engineering
2 services for projects estimated to cost \$250,000 or more, the
3 director of purchasing shall encourage firms engaged in the
4 lawful practice of the profession to submit an expression of
5 interest, which shall include a statement of qualifications
6 and performance data, and may include anticipated concepts
7 and proposed methods of approach to the project. All jobs
8 shall be announced by public notice published as a Class II
9 legal advertisement in compliance with the provisions of
10 §59-3-1 *et seq.* of this code. A committee of three to five
11 representatives of the agency initiating the request shall
12 evaluate the statements of qualifications and performance
13 data and other material submitted by interested firms and
14 select three firms which, in their opinion, are best qualified
15 to perform the desired service: *Provided*, That if such
16 circumstances exist, such that seeking competition could
17 result in a compromise to public safety, significantly
18 increase costs, or an extended interruption of essential
19 services, the agency may, with the prior approval of the
20 director of purchasing, select a firm on the basis of previous
21 satisfactory performance and knowledge of the agency's
22 facilities and needs: *Provided, however*, That on projects
23 funded, wholly or in part, by School Building Authority
24 moneys, in accordance with §18-9D-15 and §18-9D-16 of
25 this code, two of said three firms shall have had offices
26 within this state for a period of at least one year prior to
27 submitting an expression of interest regarding a project
28 funded by School Building Authority moneys. Interviews
29 with each firm selected shall be conducted and the
30 committee shall conduct discussions regarding anticipated
31 concepts and proposed methods of approach to the
32 assignment. The committee shall then rank, in order of
33 preference, no less than three professional firms deemed to
34 be the most highly qualified to provide the services
35 required, and shall commence scope of service and price

36 negotiations with the highest qualified professional firm for
37 architectural or engineering services or both. Should the
38 agency be unable to negotiate a satisfactory contract with
39 the professional firm considered to be the most qualified, at
40 a fee determined to be fair and reasonable, price
41 negotiations with the firm of second choice shall
42 commence. Failing accord with the second most qualified
43 professional firm, the committee shall undertake price
44 negotiations with the third most qualified professional firm.
45 Should the agency be unable to negotiate a satisfactory
46 contract with any of the selected professional firms, it shall
47 select additional professional firms in order of their
48 competence and qualifications and it shall continue
49 negotiations in accordance with this section until an
50 agreement is reached: *Provided further*, That county boards
51 of education may either elect to start the selection process
52 over in the original order of preference, or it may select
53 additional professional firms in order of their competence
54 and qualifications, and it shall continue negotiations in
55 accordance with this section until an agreement is reached:
56 *And provided further*, That for any water or wastewater
57 construction project the engineering design and
58 construction inspection costs may not exceed the amount
59 calculated pursuant to the compensation curves for
60 consulting engineering services based upon project
61 construction costs published by the American Society of
62 Civil Engineers manual of practice, unless granted a
63 variance by the Infrastructure and Jobs Development
64 Council established pursuant to §31-15A-1 *et seq.* of this
65 code.

§5G-1-4. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost less than \$250,000; division of highways procurements.

- 1 (a) In the procurement of architectural and engineering
- 2 services for projects estimated to cost less than \$250,000,
- 3 competition shall be sought by the agency. The agency shall
- 4 conduct discussions with three or more professional firms

5 solicited on the basis of known or submitted qualifications
6 for the assignment prior to the awarding of any contract:
7 *Provided*, That if a judgment is made that special
8 circumstances exist and that seeking competition is not
9 practical, the agency may, with the prior approval of the
10 director of purchasing, select a firm on the basis of previous
11 satisfactory performance and knowledge of the agency's
12 facilities and needs. After selection, the agency and firm
13 shall develop the scope of services required and negotiate a
14 contract.

15 (b) The Division of Highways may procure the services
16 of architectural and engineering firms under the provisions
17 of this section in an amount not to exceed \$750,000 for the
18 services per project.

19 Chapter 6d. public contracts.

20 article 1. disclosure of interested parties.

§6D-1-1. Definitions.

1 For purposes of this article:

2 (a) "Applicable contract" means a contract of a state
3 agency that has an actual or estimated value of at least \$1
4 million: *Provided*, That this shall include a series of related
5 contracts or orders in which the cumulative total exceeds \$1
6 million.

7 (b) "Business entity" means any entity recognized by
8 law through which business is conducted, including, but not
9 limited to, a sole proprietorship, partnership, limited
10 liability company, or corporation. For purposes of this
11 article, "business entity" does not include publicly traded
12 companies listed on a national or international stock
13 exchange.

14 (c) "Disclosure" shall mean a form prescribed and
15 approved by the Ethics Commission pursuant to §6D-1-3 of
16 this code.

17 (d) “Interested party” or “interested parties” means: (1)
18 A business entity performing work or service pursuant to,
19 or in furtherance of, the applicable contract, including sub-
20 contractors; (2) any person who has an ownership interest
21 equal to or greater than 25 percent in the business entity
22 performing work or service pursuant to, or in furtherance of,
23 the applicable contract; and (3) the person or business
24 entity, if any, that served as a compensated broker or
25 intermediary to actively facilitate the applicable contract or
26 negotiated the terms of the applicable contract with the state
27 agency: *Provided*, That §6D-1-1(d)(3) of this code shall not
28 include persons or business entities performing legal
29 services related to the negotiation or drafting of the
30 applicable contract.

31 (e) “State agency” means a board, commission, office,
32 department, or other agency in the executive, judicial, or
33 legislative branch of state government, including publicly
34 funded institutions of higher education: *Provided*, That for
35 purposes of this article, the West Virginia Investment
36 Management Board shall not be deemed a state agency nor
37 subject to the requirements of this article.

38 **CHAPTER 18B. HIGHER EDUCATION.**

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services, and printing.

1 (a) The council, commission, and each governing board
2 shall purchase or acquire all materials, supplies, equipment,
3 services, and printing required for their respective needs:
4 *Provided*, That the governing boards under the jurisdiction
5 of the commission, including the exempted schools, are
6 subject to §18B-5-4(d) of this code.

7 (b) The commission and council jointly shall adopt rules
8 governing and controlling acquisitions and purchases in
9 accordance with this section: *Provided*, That these rules do

10 not apply to the exempted schools and the governing boards
11 of the exempted schools shall adopt their own rules
12 consistent with this section: *Provided, however,* That the
13 joint rules shall provide for appropriate deference to the
14 value judgments of governing boards under the jurisdiction
15 of the commission. The rules shall ensure that the following
16 procedures are followed:

17 (1) No person is precluded from participating and
18 making sales thereof to the council, commission, or
19 governing board except as otherwise provided in §18B-5-5
20 of this code. Providing consulting services such as strategic
21 planning services does not preclude or inhibit the governing
22 boards, council, or commission from considering a qualified
23 bid or response for delivery of a product or a commodity
24 from the individual providing the services;

25 (2) Specifications are established and prescribed for
26 materials, supplies, equipment, services, and printing to be
27 purchased;

28 (3) Purchase order, requisition, or other forms as may
29 be required are adopted and prescribed;

30 (4) Purchases and acquisitions in such quantities, at such
31 times and under contract, are negotiated for and made in the
32 open market or through other accepted methods of
33 governmental purchasing as may be practicable in
34 accordance with general law;

35 (5) Bids are advertised on all purchases exceeding
36 \$50,000 and made by means of sealed or electronically
37 submitted bids and competitive bidding or advantageous
38 purchases effected through other accepted governmental
39 methods and practices. Competitive bids are not required for
40 purchases of \$50,000 or less;

41 (6) Notices for acquisitions and purchases for which
42 competitive bids are being solicited are posted either in the
43 purchasing office of the specified institution involved in the

44 purchase or by electronic means available to the public at
45 least five days prior to making the purchases. The rules shall
46 ensure that the notice is available to the public during
47 business hours;

48 (7) Purchases are made in the open market;

49 (8) Vendors are notified of bid solicitation and
50 emergency purchasing; and

51 (9) No fewer than three bids are obtained when bidding
52 is required, except if fewer than three bids are submitted, an
53 award may be made from among those received.

54 (c) When a state institution of higher education submits
55 a contract, agreement, or other document to the Attorney
56 General for approval as to form as required by this chapter,
57 the following conditions apply:

58 (1) "Form" means compliance with the Constitution and
59 statutes of the State of West Virginia;

60 (2) The Attorney General does not have the authority to
61 reject a contract, agreement, or other document based on the
62 substantive provisions in the contract, agreement, or
63 document or any extrinsic matter as long as it complies with
64 the Constitution and statutes of this state;

65 (3) Within 15 days of receipt, the Attorney General shall
66 notify the appropriate state institution of higher education in
67 writing that the contract, agreement, or other document is
68 approved or disapproved as to form. If the contract,
69 agreement, or other document is disapproved as to form, the
70 notice of disapproval shall identify each defect that supports
71 the disapproval; and

72 (4) If the state institution elects to challenge the
73 disapproval by filing a writ of mandamus or other action and
74 prevails, then the Attorney General shall pay reasonable
75 attorney fees and costs incurred.

76 (d) Pursuant to this subsection, the governing boards
77 under the jurisdiction of the commission, including the
78 exempted schools, respectively, may carry out the following
79 actions:

80 (1) Purchase or acquire all materials, supplies,
81 equipment, services, and printing required for the governing
82 board without approval from the commission or the Vice
83 Chancellor for Administration and may issue checks in
84 advance to cover postage as provided in §18B-5-4(f) of this
85 code;

86 (2) Purchase from cooperative buying groups, consortia,
87 the federal government or from federal government
88 contracts, or from West Virginia public institution of higher
89 education contracts, if the materials, supplies, services,
90 equipment, or printing to be purchased is available from
91 these groups and if this would be the most financially
92 advantageous manner of making the purchase;

93 (3) Select and acquire by contract or lease all grounds,
94 buildings, office space, or other space, and capital
95 improvements, including equipment, if the rental is
96 necessarily required by the governing board; and

97 (4) Use purchase cards.

98 (e) The governing boards shall adopt sufficient
99 accounting and auditing procedures and promulgate and
100 adopt appropriate rules subject to §18B-1-6 of this code to
101 govern and control acquisitions, purchases, leases, and other
102 instruments for grounds, buildings, office, or other space,
103 and capital improvements, including equipment, or lease-
104 purchase agreements.

105 (f) The council, commission, or each governing board
106 may issue a check in advance to a company supplying
107 postage meters for postage used by that board, the council,
108 or commission and by the state institutions of higher
109 education under their jurisdiction.

110 (g) When a purchase is to be made by bid, any or all bids
111 may be rejected. However, all purchases based on
112 advertised bid requests shall be awarded to the lowest
113 responsible bidder taking into consideration the qualities of
114 the articles to be supplied, their conformity with
115 specifications, their suitability to the requirements of the
116 governing boards, council, or commission and delivery
117 terms.

118 (h) The governing boards, council, and commission
119 shall maintain a purchase file, which shall be a public record
120 and open for public inspection.

121 (1) After the award of the order or contract, the
122 governing boards, council, and commission shall indicate
123 upon the successful bid the following information:

124 (A) Designation as the successful bid;

125 (B) The reason any bids were rejected; and

126 (C) The reason for rejection, if the mathematical low
127 vendor was not awarded the order or contract.

128 (2) A record in the purchase file may not be destroyed
129 without the written consent of the Legislative Auditor.
130 Those files in which the original documentation has been
131 held for at least one year and in which the original
132 documents have been reproduced and archived on
133 microfilm or other equivalent method of duplication may be
134 destroyed without the written consent of the Legislative
135 Auditor.

136 (3) All files, no matter the storage method, shall be open
137 for inspection by the Legislative Auditor upon request.

138 (i) The commission and council, also jointly, shall
139 promulgate rules to prescribe qualifications to be met by any
140 person who is to be employed as a buyer at a state college
141 and university or community and technical college pursuant
142 to this section. These rules shall require that a person may

143 not be employed as a buyer unless that person, at the time
144 of employment, has one of the following qualifications:

145 (1) Is a graduate of an accredited college or university;
146 or

147 (2) Has at least four years' experience in purchasing for
148 any unit of government or for any business, commercial, or
149 industrial enterprise.

150 (j) Any person making purchases and acquisitions
151 pursuant to this section shall execute a bond in the penalty
152 of \$50,000, payable to the State of West Virginia, with a
153 corporate bonding or surety company authorized to do
154 business in this state as surety thereon, in form prescribed
155 by the Attorney General and conditioned upon the faithful
156 performance of all duties in accordance with this section and
157 sections five through eight, inclusive, of this article and the
158 rules of the governing board and the council and
159 commission. In lieu of separate bonds for these buyers, a
160 blanket surety bond may be obtained. The bond shall be
161 filed with the Secretary of State and the cost of the bond
162 shall be paid from funds appropriated to the applicable
163 governing board or the council or commission.

164 (k) All purchases and acquisitions shall be made in
165 consideration and within limits of available appropriations
166 and funds and in accordance with applicable provisions of
167 §5A-2-1 *et seq.* of this code relating to expenditure
168 schedules and quarterly allotments of funds.
169 Notwithstanding any other provision of this code to the
170 contrary, only those purchases exceeding the dollar amount
171 for competitive sealed bids in this section are required to be
172 encumbered. Such purchases may be entered into the state's
173 centralized accounting system by the staff of the
174 commission, council, or governing boards to satisfy the
175 requirements of §5A-2-1 *et seq.* of this code to determine
176 whether the amount of the purchase is within the quarterly
177 allotment of the commission, council, or governing board,
178 is in accordance with the approved expenditure schedule

179 and otherwise conforms to the article: *Provided*, That,
180 notwithstanding the foregoing provisions of this subsection
181 or any other provision of this code to the contrary, purchases
182 by exempted schools are not required to be encumbered.

183 (l) The governing boards, council, or commission may
184 make requisitions upon the State Auditor for a sum to be
185 known as an advance allowance account, not to exceed five
186 percent of the total of the appropriations for the governing
187 board, council, or commission, and the State Auditor shall
188 draw a warrant upon the Treasurer for those accounts. All
189 advance allowance accounts shall be accounted for by the
190 applicable governing board or the council or commission
191 once every 30 days or more often if required by the State
192 Auditor.

193 (m) Contracts entered into pursuant to this section shall
194 be signed by the applicable governing board or the council
195 or commission in the name of the state and shall be
196 approved as to form by the Attorney General. A contract
197 which requires approval as to form by the Attorney General
198 is considered approved if the Attorney General has not
199 responded within 15 days of presentation of the contract. A
200 contract or a change order for that contract and
201 notwithstanding any other provision of this code to the
202 contrary, associated documents such as performance and
203 labor/material payments, bonds, and certificates of
204 insurance which use terms and conditions or standardized
205 forms previously approved by the Attorney General and do
206 not make substantive changes in the terms and conditions of
207 the contract do not require approval as to form by the
208 Attorney General. The Attorney General shall make a list of
209 those changes which he or she considers to be substantive
210 and the list, and any changes to the list, shall be published
211 in the State Register. A contract that exceeds the dollar
212 amount requiring competitive sealed bids in this section
213 shall be filed with the State Auditor. If requested to do so,
214 the governing boards, council, or commission shall make all
215 contracts available for inspection by the State Auditor. The

216 governing board, council, or commission, as appropriate,
217 shall prescribe the amount of deposit or bond to be
218 submitted with a bid or contract, if any, and the amount of
219 deposit or bond to be given for the faithful performance of
220 a contract.

221 (n) If the governing board, council, or commission
222 purchases or contracts for materials, supplies, equipment,
223 services, and printing contrary to §18B-5-4 through §18B-
224 5-7 of this code or the rules pursuant to this article, the
225 purchase or contract is void and of no effect.

226 (o) A governing board or the council, or commission, as
227 appropriate, may request the director of purchasing to make
228 available the facilities and services of that department to the
229 governing boards, council, or commission in the purchase
230 and acquisition of materials, supplies, equipment, services,
231 and printing. The director of purchasing shall cooperate
232 with that governing board, council, or commission, as
233 appropriate, in all such purchases and acquisitions upon that
234 request.

235 (p) Each governing board or the council, or commission,
236 as appropriate, may permit affiliated organizations, state
237 institutions of higher education, or private institutions of
238 higher education to join as purchasers on purchase contracts
239 for materials, supplies, services, and equipment entered into
240 by that governing board or the council, or commission. An
241 affiliated organization, state institution of higher education,
242 or private institution desiring to join as purchaser on
243 purchase contracts shall file with that governing board or
244 the council or commission, as appropriate, an affidavit
245 signed by the president or designee of the affiliated
246 organization, state institution of higher education, or private
247 institution requesting that it be authorized to join as
248 purchaser on purchase contracts of that governing board or
249 the council, or commission, as appropriate. The affiliated
250 organization, state institution of higher education, or private
251 institution shall agree that it is bound by such terms and
252 conditions as that governing board or the council, or

253 commission may prescribe and that it will be responsible for
254 payment directly to the vendor under each purchase
255 contract.

256 (q) Notwithstanding any other provision of this code to
257 the contrary, the governing boards, council, and
258 commission, as appropriate, may make purchases from
259 cooperative buying groups, consortia, the federal
260 government or from federal government contracts if the
261 materials, supplies, services, equipment, or printing to be
262 purchased is available from that source, and purchasing
263 from that source would be the most financially
264 advantageous manner of making the purchase.

265 (r) An independent performance audit of all purchasing
266 functions and duties which are performed at any state
267 institution of higher education shall be performed at least
268 once in each three-year period. The Joint Committee on
269 Government and Finance shall require a performance audit
270 and the governing boards, council, and commission, as
271 appropriate, are responsible for paying the cost of the audit
272 from funds appropriated to the governing boards, council,
273 or commission.

274 (1) The governing board shall provide for independent
275 performance audits of all purchasing functions and duties on
276 its campus at least once in each three-year period.

277 (2) Each audit shall be inclusive of the entire time period
278 that has elapsed since the date of the preceding audit.

279 (3) Copies of all appropriate documents relating to any
280 audit performed by a governing board shall be furnished to
281 the Joint Committee on Government and Finance and the
282 Legislative Oversight Commission on Education
283 Accountability within 30 days of the date the audit report is
284 completed.

285 (s) The governing boards shall require each institution
286 under their respective jurisdictions to notify and inform

287 every vendor doing business with that institution of §5A-3-
288 54 of this code, also known as the Prompt Pay Act of 1990.

289 (t) Consultant services, such as strategic planning
290 services, do not preclude or inhibit the governing boards,
291 council, or commission from considering any qualified bid
292 or response for delivery of a product or a commodity
293 because of the rendering of those consultant services.

294 (u) Purchasing card use may be expanded by the
295 council, commission, and state institutions of higher
296 education pursuant to this subsection.

297 (1) The council and commission jointly shall establish
298 procedures to be implemented by the council, commission,
299 and any state college and university or community and
300 technical college using purchasing cards. The governing
301 boards of the exempted schools shall establish procedures
302 to be implemented by their respective institutions. The
303 procedures shall ensure that each meets the following
304 conditions:

305 (A) Appropriate use of the purchasing card system;

306 (B) Full compliance of §12-3-1 *et seq.* of this code
307 relating to the purchasing card program; and

308 (C) Sufficient accounting and auditing procedures for
309 all purchasing card transactions.

310 (2) Notwithstanding any other provision of this code to
311 the contrary, the council, commission, and any institution
312 authorized pursuant to §18B-5-4(u)(3) of this code may use
313 purchasing cards for the following purposes:

314 (A) Payment of travel expenses directly related to the
315 job duties of the traveling employee, including, but not
316 limited to, fuel and food; and

317 (B) Payment of any routine, regularly scheduled
318 payment, including, but not limited to, utility payments and
319 real property rental fees.

320 (3) The commission and council each shall evaluate the
321 capacity of each state college and university and community
322 and technical college under its jurisdiction for complying
323 with the procedures established pursuant to §18B-5-4(u)(2)
324 of this code. The commission and council each shall
325 authorize expanded use of purchasing cards pursuant to that
326 subdivision for any state college and university and
327 community and technical college it determines has the
328 capacity to comply.

●

CHAPTER 97

**(Com. Sub. for S. B. 336 - By Senators Ferns, Weld,
Boso, Baldwin, Blair and Cline)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-2-12a, relating generally to application forms prescribed by the Commissioner of the West Virginia Division of Motor Vehicles; providing that the commissioner shall prescribe and provide suitable forms of application which provide certain applicants the ability to make a contribution to the West Virginia Department of Veterans Assistance; providing that the contributions be added, as appropriate, to the regular fee charged; providing that contributions be used exclusively for stated purposes; providing that the department shall determine the total amount collected and report the amount to the State Treasurer; providing that the State Treasurer shall transfer the amount collected to the West Virginia Department of

Veterans Assistance; providing that the West Virginia Department of Veterans Assistance shall reimburse the division for the actual costs incurred by the division in administering the requirements of this section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-12a. Commissioner of Motor Vehicles — commissioner shall prescribe forms providing for veteran contributions.

1 (a) Notwithstanding §17A-2-12 of this code, the
2 commissioner shall prescribe and provide suitable forms of
3 application which provide the following applicants the
4 ability to make a contribution of \$3, \$5, or \$10 to the West
5 Virginia Department of Veterans Assistance:

6 (1) Applicants for original or renewal driver's licenses
7 or identification cards; and

8 (2) Applicants for a renewal of a vehicle registration.

9 (b) A contribution under §17A-2-12a(a) of this code
10 shall be added, as appropriate, to the regular fee for:

11 (1) An original or renewal driver's license or
12 identification card; and

13 (2) A renewal of a vehicle registration.

14 (c) Contributions under §17A-2-12a(a) of this code
15 shall be used exclusively for purposes set forth in §9A-1-1
16 *et seq.* of this code.

17 (d) The division shall determine on a monthly basis the
18 total amount collected under this section and report and
19 transfer said amount to the State Treasurer. The State
20 Treasurer shall transfer the amount collected under this
21 section to the West Virginia Department of Veterans
22 Assistance.

23 (e) The West Virginia Department of Veterans
24 Assistance shall reimburse the Motor Vehicle Fees Fund for
25 the actual costs incurred by the division in the
26 administration of this section.



CHAPTER 98

(S. B. 339 - By Senators Gaunch and Blair)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §5-16D-1, §5-16D-3, §5-16D-4, and §5-16D-6 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Retirement Health Benefit Trust Fund within the Public Employees Insurance Agency; modifying definitions to provide flexibility for compliance with the Governmental Accounting Standards Board guidance; defining new terms; and allowing the current allocation process for unfunded liability to continue.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16D. WEST VIRGINIA RETIREMENT HEALTH BENEFIT TRUST FUND.

§5-16D-1. Definitions.

1 As used in this article, the term:

2 (a) “Actuarial cost method” means a method for
3 determining the actuarial present value of the obligations
4 and administrative expenses of the fund and for developing
5 an actuarially equivalent allocation of the value to time
6 periods, usually in the form of a normal cost and a total other
7 post-employment benefits liability. Acceptable actuarial
8 methods are the aggregate, attained age, entry age, frozen

9 attained age, frozen entry age, and projected unit credit
10 methods.

11 (b) “Actuarially sound” means that calculated
12 contributions to the fund are sufficient to pay the full
13 actuarial cost of the fund. The full actuarial cost includes
14 both the normal cost of providing for fund obligations as
15 they accrue in the future and the cost of amortizing the
16 unfunded total other post-employment benefits liability
17 over a period of no more than 30 years.

18 (c) “Actuarial present value of total projected benefits”
19 means the present value, at the valuation date, of the cost to
20 finance benefits payable in the future, discounted to reflect
21 the expected effects of the time value of money and the
22 probability of payment.

23 (d) “Actuarial assumptions” means assumptions
24 regarding the occurrence of future events affecting the fund
25 such as mortality, withdrawal, disability, and retirement;
26 changes in compensation and offered post-employment
27 benefits; rates of investment earnings and other asset
28 appreciation or depreciation; procedures used to determine
29 the actuarial value of assets; and other relevant items.

30 (e) “Actuarial valuation” means the determination, as of
31 a valuation date, of the normal cost, total other post-
32 employment benefits liability, actuarial value of assets, and
33 related actuarial present values for the fund.

34 (f) “Administrative expenses” means all expenses
35 incurred in the operation of the fund, including all
36 investment expenses.

37 (g) “Board” means the Public Employees Insurance
38 Agency Finance Board created in §5-16-4 of this code.

39 (h) “Collective net other post-employment benefits
40 liability” means for any actuarial valuation, the excess of the
41 plan’s total other post-employment benefits liability over

42 the actuarial value of the assets of the fund under an
43 actuarial cost method used by the fund for funding purposes.

44 (i) “Cost-sharing multiple employer plan” means a
45 single plan with pooling (cost-sharing) arrangements for the
46 participating employers. All risk, rewards, and costs,
47 including benefit costs, are shared and not attributed
48 individually to the employers. A single actuarial valuation
49 covers all plan members and the same contribution rate
50 applies for each employer.

51 (j) “Covered health care expenses” means all actual
52 health care expenses paid by the health plan on behalf of
53 fund beneficiaries. Actual health care expenses include
54 claims payments to providers and premiums paid to
55 intermediary entities and health care providers by the health
56 plan.

57 (k) “Employer” means any employer as defined by §5-
58 16-2 of this code which has or will have retired employees
59 in any Public Employees Insurance Agency health plan.

60 (l) “Fund” means the West Virginia Retiree Health
61 Benefit Trust Fund established under this article.

62 (m) “Fund beneficiaries” means all persons receiving
63 post-employment health care benefits through the health
64 plan.

65 (n) “Health plan” means the health insurance plan or
66 plans established under §5-16-1 *et seq.* of this code.

67 (o) “Minimum annual employer payment” means the
68 annual amount paid by employers which, when combined
69 with the retirees’ contributions on their premiums that year,
70 provide sufficient funds such that the annual finance plan of
71 the finance board will cover all projected retiree covered
72 health care expenses and related administrative costs for
73 that year. The finance board shall develop the minimum
74 annual employer payment as part of its financial plan each
75 year as addressed in §5-16-5 of this code.

76 (p) "Normal cost" means that portion of the actuarial
77 present value of the fund obligations and expenses which is
78 allocated to a valuation year by the actuarial cost method
79 used for the fund.

80 (q) "Obligations" means the administrative expenses of
81 the fund and the cost of covered health care expenses
82 incurred on behalf of fund beneficiaries.

83 (r) "Other post-employment benefits" or "retiree post-
84 employment health care benefits" means those benefits as
85 addressed by governmental accounting standards board
86 statement no. 43 or any subsequent governmental standards
87 board statement that may be applicable to the fund.

88 (s) "Plan for other post-employment benefits" means the
89 fiscal funding plan for retiree post-employment health care
90 benefits as it relates to governmental accounting standards
91 board statement no. 43 or any subsequent governmental
92 accounting standards board statements that may be
93 applicable to the fund.

94 (t) "Proportionate share" means the portion of the
95 collective net other post-employment benefits liability that
96 is attributed to, and the responsibility of, a particular
97 employer.

98 (u) "Retiree" means retired employee as defined by §5-
99 16-2 of this code.

100 (v) "Retirement system" or "system" means the West
101 Virginia Consolidated Public Retirement Board created and
102 established by §5-10-1 *et seq.* of this code and includes any
103 retirement systems or funds administered or overseen by the
104 Consolidated Public Retirement Board.

105 (w) "Total other post-employment benefits liability"
106 means that portion, as determined by a particular actuarial
107 cost method, of the actuarial present value of fund
108 obligations and administrative expenses which is not
109 provided by future normal costs.

§5-16D-3. Operation of trust fund.

1 (a) Responsibility for the rules and policies for the
2 proper operation of the fund is vested in the board.

3 (b) The board shall adopt actuarial assumptions as it
4 deems necessary and prudent.

5 (c) The board shall determine the contribution rates in
6 an actuarially sound manner and each employer's
7 proportionate share sufficient to maintain the fund in
8 accordance with the state plan for other post-employment
9 benefits.

10 (d) The board may promulgate, in accordance with
11 §29A-1-1 *et seq.* of this code, any rules it finds necessary to
12 properly administer the fund. The board may promulgate
13 emergency rules pursuant to the provisions of §29A-3-15 of
14 this code.

15 (e) The Public Employees Insurance Agency shall
16 furnish reports to the board at each of the board's regularly
17 scheduled meetings. The reports shall contain the most
18 recent information reasonably available to the Public
19 Employees Insurance Agency reflecting the obligations of
20 the fund, earnings on investments, and such other
21 information as the board deems necessary and appropriate.

22 (f) The Secretary of the Department of Administration,
23 as chair of the board, shall cause to be employed within the
24 Public Employees Insurance Agency such personnel as may
25 be needed to carry out the provisions of this article. The pro
26 rata share of the costs to the Public Employees Insurance
27 Agency of operating the fund shall be part of the
28 administrative costs of the fund and shall be reimbursed to
29 the Public Employees Insurance Agency.

30 (g) The Public Employees Insurance Agency, on the
31 board's behalf, shall be responsible for the day-to-day
32 operation of the fund and may employ or contract for the

33 services of actuaries and other professionals as required to
34 carry out the duties established by this article.

35 (h) The board shall contract with the West Virginia
36 Investment Management Board for any necessary services
37 with respect to fund investments.

38 (i) The Public Employees Insurance Agency, on the
39 board's behalf, shall maintain all necessary records
40 regarding the fund in accordance with generally accepted
41 accounting principles.

42 (j) The Public Employees Insurance Agency, on the
43 board's behalf, shall collect all moneys due to the fund and
44 shall pay current post-employment health care costs and any
45 administrative expenses necessary and appropriate for the
46 operation of the fund from the fund. The fund's assets shall
47 be maintained and accounted for in state funds. The state
48 funds shall be: (1) The Other Post-Employment Benefit
49 Contribution Accumulation Fund; (2) the Other Post-
50 Employment Benefit Investment Fund; and (3) the Other
51 Post-Employment Benefit Expense Fund. These funds will
52 be maintained by the Public Employees Insurance Agency
53 on the board's behalf.

54 (k) The Public Employees Insurance Agency, on the
55 board's behalf, shall prepare an annual report of fund
56 activities. The report shall include, but not be limited to,
57 independently audited financial statements in accordance
58 with generally accepted accounting principles. The financial
59 statements must be independently audited in accordance
60 with auditing standards generally accepted in the United
61 States and the standards applicable to financial audits
62 contained in government auditing standards as issued by the
63 Comptroller General of the United States.

64 (l) Notwithstanding any other provision of law to the
65 contrary, the Public Employees Insurance Agency shall be
66 entitled to request and receive any information that it deems
67 necessary and appropriate from any relevant retirement
68 system in order that the provisions of this article may be
69 carried out.

§5-16D-4. Actuary.

1 (a) The actuary employed or retained by the Public
2 Employees Insurance Agency shall provide technical advice
3 to the Public Employees Insurance Agency and to the board
4 regarding the operation of the fund.

5 (b) Using the actuarial assumptions most recently
6 adopted by the board, the actuary shall, on a biannual basis,
7 or as frequently as the board or generally accepted
8 accounting principles deems necessary, set actuarial
9 valuations of normal cost, actuarial liability, actuarial value
10 of assets, and related actuarial present values for the state
11 plan for other post-employment benefits.

§5-16D-6. Mandatory employer contributions.

1 (a) The board shall annually set the minimum annual
2 employer payment sufficient to maintain the fund in an
3 actuarially sound manner in accordance with generally
4 accepted accounting principles and the annual finance plan.

5 (b) The board shall annually allocate to the respective
6 employers the employer's proportionate share of the
7 collective net other post-employment liability as determined
8 by the actuarial valuation in accordance with generally
9 accepted accounting principles.

10 (c) Employers shall make annual contributions to the
11 fund in, at least, the amount of the minimum annual
12 employer payment rates established by the board.

13 (d) The Public Employees Insurance Agency shall bill
14 each employer for the minimum annual employer payment.
15 The Public Employees Insurance Agency shall annually
16 collect the minimum annual employer payment. Any
17 employer's proportionate share of the collective net other
18 post-employment amount not satisfied by the respective
19 employer shall remain the liability of that employer until
20 fully paid or otherwise amortized.

CHAPTER 99

**(S. B. 350 - By Senators Ferns, Trump, Maynard,
Jeffries, Baldwin and Plymale)**

[Passed March 5, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §29-22A-5 of the Code of West Virginia, 1931, as amended, relating to the elimination of a requirement that the Lottery Commission file racetrack video lottery game rules with the Secretary of State; and requiring the Secretary of State to post a notice on its website that the rules for video lottery games that have been approved by the Lottery Commission are available for review at the office of the commission and provide relevant contact information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-5. Video lottery terminal requirements; application for approval of a video lottery terminal; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.

- 1 (a) Video lottery terminals registered with and approved
- 2 by the commission for use at licensed racetracks may offer
- 3 video lottery games regulated, controlled, and owned and
- 4 operated by the commission in accordance with the
- 5 provisions of this section: *Provided*, That the Secretary of
- 6 State shall post on the secretary's website that the rules for
- 7 video lottery games that have been approved by the
- 8 commission are available for review at the office of the
- 9 commission and provide relevant contact information.

10 (b) A manufacturer may not sell or lease a video lottery
11 terminal for placement at a licensed racetrack in this state
12 unless the terminal has been approved by the commission.
13 Only manufacturers with permits may apply for approval of
14 a video lottery terminal or associated equipment. The
15 manufacturer shall submit two copies of terminal
16 illustrations, schematics, block diagrams, circuit analysis,
17 technical and operation manuals, and any other information
18 requested by the commission for the purpose of analyzing
19 and testing the video lottery terminal or associated
20 equipment.

21 (c) The commission may require that two working
22 models of a video lottery terminal be transported to the
23 location designated by the commission for testing,
24 examination, and analysis.

25 (1) The manufacturer shall pay all costs of testing,
26 examination, analysis, and transportation of such video
27 lottery terminal models. The testing, examination, and
28 analysis of any video lottery terminal model may require
29 dismantling of the terminal and some tests may result in
30 damage or destruction to one or more electronic
31 components of such terminal model. The commission may
32 require that the manufacturer provide specialized equipment
33 or pay for the services of an independent technical expert to
34 test the terminal.

35 (2) The manufacturer shall pay the cost of transportation
36 of two video lottery terminals to lottery headquarters. The
37 commission shall conduct an acceptance test to determine
38 terminal functions and central system compatibility. If the
39 video lottery terminal fails the acceptance test conducted by
40 the commission, the manufacturer shall make all
41 modifications required by the commission.

42 (d) After each test has been completed, the commission
43 shall provide the terminal manufacturer with a report
44 containing findings, conclusions, and pass/fail results. The
45 report may contain recommendations for video lottery

46 terminal modification to bring the terminal into
47 compliance with the provisions of this article. Prior to
48 approving a particular terminal model, the commission
49 may require a trial period not in excess of 60 days for a
50 licensed racetrack to test the terminal. During the trial
51 period, the manufacturer may not make any modifications
52 to the terminal model unless such modifications are
53 approved by the commission.

54 (e) The video lottery terminal manufacturer and licensed
55 racetrack are jointly responsible for the assembly and
56 installation of all video lottery terminals and associated
57 equipment. The manufacturer and licensed racetrack shall
58 not change the assembly or operational functions of a
59 terminal licensed for placement in West Virginia unless a
60 request for modification of an existing video terminal
61 prototype is approved by the commission. The request must
62 contain a detailed description of the type of change, the
63 reasons for the change, and technical documentation of the
64 change.

65 (f) Each video lottery terminal approved for placement
66 at a licensed racetrack must conform to the exact
67 specifications of the video lottery terminal prototype tested
68 and approved by the commission. If any video lottery
69 terminal or any video lottery terminal modification, which
70 has not been approved by the commission, is supplied by a
71 manufacturer and operated by a licensed racetrack, the
72 commission shall seize and destroy all of that licensed
73 racetrack's and manufacturer's noncomplying video lottery
74 terminals and shall suspend the license and permit of the
75 licensed racetrack and manufacturer.

●

CHAPTER 100

(S. B. 411 - By Senators Takubo and Maroney)

[Passed March 8, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §16-1-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-17-4 of said code, all relating to removing the Commissioner of the Bureau of Public Health from the membership of the State Board of Sanitarians.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-7. Duties and powers of the commissioner; service on advisory councils; boards and commissions; authority to designate a representative to serve in his or her place on certain boards and commissions.

1 (a) Effective July 1, 2012, the commissioner serves on
2 the West Virginia Board of Medicine, provided in §30-3-1
3 *et seq.* of this code.

4 (b) Effective July 1, 2012, the commissioner serves on
5 the following advisory councils, boards, and commissions:

6 (1) The Advisory Committee on Cancer (Cancer
7 Registry);

8 (2) The Air Quality Board;

9 (3) The Appalachian States Low-level Radioactive
10 Waste Commission;

- 11 (4) The Child Fatality Review Team;
- 12 (5) The Childhood Immunization Advisory Committee;
- 13 (6) The Early Intervention Coordinating Council;
- 14 (7) The Interagency Council on Osteoporosis;
- 15 (8) The Sewage Advisory Board;
- 16 (9) The State Emergency Response Commission;
- 17 (10) The State Groundwater Coordinating Committee;
- 18 (11) The Water Development Authority;
- 19 (12) The West Virginia Commission for the Deaf and
20 Hard of Hearing;
- 21 (13) The West Virginia Infrastructure and Jobs
22 Development Council; and
- 23 (14) Any other advisory council, board, or commission
24 as assigned by the secretary except for business,
25 professional, or occupational licensing boards.

26 (c) Notwithstanding any other provision of this code to
27 the contrary, the commissioner may, at his or her discretion,
28 designate in writing, a representative to serve in his or her
29 stead at the meetings and in the duties of all boards and
30 commissions on which the commissioner is designated as
31 an ex officio member. The appropriately designated
32 representative or proxy acts with the full power and
33 authority of the commissioner in voting, acting upon matters
34 concerning the public health and welfare, and other business
35 that is properly the duty of any board or commission. The
36 representative serves as proxy at the commissioner's will
37 and pleasure. The provisions of this section do not apply to
38 the West Virginia Board of Medicine, the Air Quality
39 Board, or other board, commission, or body on which the
40 commissioner is designated by this code as chairman ex
41 officio, secretary ex officio, or a board, commission, or

42 body on which the commissioner is designated by this code
43 as being that person whose signature must appear on
44 licenses, minutes, or other documents necessary to carry out
45 the intents and purposes of the board, commission, or body.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 17. SANITARIANS.

§30-17-4. State Board of Sanitarians.

1 (a) The Board of Registration for Sanitarians is
2 continued and commencing July 1, 2010, shall be known as
3 the State Board of Sanitarians. Any member of the board,
4 except one registered sanitarian, in office on July 1, 2010,
5 may continue to serve until his or her successor has been
6 appointed and qualified.

7 (b) Prior to July 1, 2010, the Governor, by and with the
8 advice and consent of the Senate, shall appoint one certified
9 sanitarian to replace one registered sanitarian.

10 (c) Commencing July 1, 2010, the board shall consist of
11 the following seven voting members with staggered terms:

12 (1) Four members who are registered sanitarians;

13 (2) One member who has a certificate as a sanitarian at
14 the time of the appointment: *Provided*, That if the member
15 becomes a registered sanitarian during his or her
16 appointment term, then the person may not be reappointed
17 as the certified sanitarian member, but may be reappointed
18 as a registered sanitarian member; and

19 (3) Two citizen members who are not licensed, certified,
20 or permitted under the provisions of this article, and who do
21 not perform any services related to the practice of the
22 professions regulated under the provisions of this article.

23 (d) Each member must be appointed by the Governor,
24 by and with the advice and consent of the Senate, and must
25 be a resident of this state during the appointment term.

26 (e) The term of each board member is five years.

27 (f) No member may serve more than two consecutive
28 full terms and any member having served two full terms
29 may not be appointed for one year after completion of his or
30 her second full term. A member shall continue to serve until
31 his or her successor has been appointed and qualified.

32 (g) Each licensed or certified member shall have been
33 engaged in the practice of environmental health science or
34 public health sanitation for at least five years immediately
35 preceding the appointment.

36 (h) Each licensed or certified member shall maintain an
37 active license or certificate with the board during his or her
38 term.

39 (i) The Governor may remove any member from the
40 board for neglect of duty, incompetency, or official
41 misconduct.

42 (j) A licensed or certified member of the board
43 immediately and automatically forfeits membership to the
44 board if his or her license or certificate to practice is
45 suspended or revoked.

46 (k) A member of the board immediately and
47 automatically forfeits membership to the board if he or she
48 is convicted of a felony under the laws of any jurisdiction or
49 becomes a nonresident of this state.

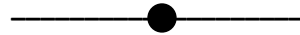
50 (l) The board shall designate one of its members as
51 chairperson who serves at the will of the board.

52 (m) Each member of the board is entitled to receive
53 compensation and expense reimbursement in accordance
54 with §30-1-11 of this code.

55 (n) A majority of the members of the board shall
56 constitute a quorum.

57 (o) The board shall hold at least two annual meetings.
58 Other meetings may be held at the call of the chairperson,
59 or upon the written request of two members, at such time
60 and place as designated in the call or request.

61 (p) Prior to commencing his or her duties as a member
62 of the board, each member shall take and subscribe to the
63 oath required by section five, article IV of the Constitution
64 of this state.



CHAPTER 101

**(Com. Sub. for S. B. 415 - By Senators Ferns, Blair,
Maroney, Trump, Weld, Woelfel, Stollings, and
Takubo)**

[Passed March 3, 2018; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-22D-1, §29-22D-2, §29-22D-3, §29-22D-4, §29-22D-5, §29-22D-6, §29-22D-7, §29-22D-8, §29-22D-9, §29-22D-10, §29-22D-11, §29-22D-12, §29-22D-13, §29-22D-14, §29-22D-15, §29-22D-16, §29-22D-17, §29-22D-18, §29-22D-19, §29-22D-20, §29-22D-21, §29-22D-22, §29-22D-23, and §29-22D-24, all relating to permitting wagering on the results of certain professional or collegiate sports or athletic events and other events authorized as West Virginia Lottery sports wagering activities, after a federal law against such wagering is no longer in effect; providing legislative findings; defining terms; detailing duties and powers of the West Virginia Lottery Commission; providing rule-making authority and emergency rule-making authority; requiring commission to levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross sports wagering receipts and deposit them into the West Virginia Lottery Sports Wagering

Fund; limiting sports wagering to existing racetrack casinos and the casino in a historic resort hotel; providing for four types of licenses to be issued related to sports betting; establishing license requirements and prohibitions; authorizing licensing fees; requiring adoption and posting of house rules; defining duties of an operator conducting sports wagering; requiring the posting of betting limits; authorizing sports wagering agreements with other governments; providing powers and duties of commission and operators; limiting certain activities of employees; authorizing the West Virginia Lottery to levy and collect a privilege tax in the amount of 10 percent of adjusted gross sports wagering receipts; requiring reports and submission of taxes; providing for certain carry over and carry back allowances; clarifying that tax is in lieu of certain other taxes; providing that certain expenditures related to sports wagering are facility modernization improvements eligible for recoupment; providing that credits are not allowed against the privilege tax; creating the West Virginia Lottery Sports Wagering Fund; authorizing the West Virginia Lottery to collect an administrative allowance from gross sports wagering receipts; providing for distribution of moneys deposited in the West Virginia Lottery Sports Wagering Fund; authorizing certain agreements between the West Virginia Lottery and law enforcement; imposing civil penalties for certain violations, and exception; prohibiting unauthorized sports wagering in this state; establishing crimes related to unauthorized sports wagering and imposing criminal penalties; establishing crimes related to authorized sports wagering and imposing criminal penalties; preempting provisions from state and local law; and establishing certain exemptions from federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.

§29-22D-1. Short title.

- 1 This article shall be known and may be cited as the West
- 2 Virginia Lottery Sports Wagering Act.

§29-22D-2. State authorization of sports wagering at licensed racetrack facilities and historic resort hotel; legislative findings and declarations.

1 (a) *Operation of West Virginia Lottery sports wagering.*
2 — Notwithstanding any provision of law to the contrary, the
3 operation of sports wagering and ancillary activities are
4 only lawful when conducted in accordance with the
5 provisions of this article and rules of the commission.

6 (b) *Legislative findings.* —

7 (1) The Legislature finds that the operation of the four
8 racetracks and the historic resort hotel in this state play a
9 critical role in the economy of this state, and such
10 constitutional lotteries are rightfully authorized as state
11 enterprises consistent with the rights and powers granted to
12 the states under the Tenth Amendment of the United States
13 Constitution. The federal government is a government of
14 limited and enumerated powers, and powers not delegated
15 to the United States by the Constitution nor prohibited by it
16 to the states are reserved for the states and its respective
17 citizens.

18 (2) The Legislature finds that section 36, article VI of
19 the Constitution of the State of West Virginia grants the
20 state the exclusive right to lawfully own and operate a
21 lottery in this state. Authorization of wagering on any
22 constitutional lottery within West Virginia is within the
23 state's sovereign rights as a state to act in the best interest
24 of its citizens.

25 (3) The Legislature finds that it is in the best interests of
26 the State of West Virginia for the state to operate a lottery
27 in the form of sports wagering and that it is the intent of the
28 Legislature to authorize sports wagering when federal law
29 is enacted or repealed, or a federal court decision is issued
30 that permits a state to regulate sports wagering, as such
31 power is reserved to the states.

32 (4) The Legislature finds that illegal sports wagering
33 channels operating throughout the United States pose a
34 critical threat to the safety and welfare of the citizens of
35 West Virginia and that creating civil and criminal penalties
36 to prosecute illegal operators, while transferring this black
37 market demand into a secure and highly regulated
38 environment, will protect the public and positively benefit
39 state revenues and the state's economy.

40 (5) The Legislature finds that in order to protect
41 residents of this state who wager on sports or other events
42 and to capture revenues and create jobs generated from
43 sports wagering, it is in the best interests of this state and its
44 citizens to regulate this activity by authorizing and
45 establishing a secure, responsible, fair, and legal system of
46 sports wagering immediately, when the federal ban on
47 sports wagering is lifted.

48 (6) The Legislature finds that the most effective and
49 efficient manner in which the state can operate and regulate
50 the forms of lottery authorized by the provisions of this
51 article is to limit the number of authorized operators to those
52 who are licensed, pursuant to the provisions of §29-22A-1
53 *et seq.* of this code, and to facilities licensed to operate video
54 lottery terminals, pursuant to the provisions of §29-25-1 *et*
55 *seq.* of this code.

56 (7) The Legislature finds that the granting of licenses
57 pursuant to the provisions of this article, while maintaining
58 all ownership rights and exercising control through strict
59 regulation of all West Virginia Lottery sports wagering
60 authorized by the provisions of this article, constitutes an
61 appropriate exercise by the Legislature of the power granted
62 it by the provisions of section 36, article VI of the
63 Constitution of the State of West Virginia.

64 (8) The Legislature finds that the operation of West
65 Virginia Lottery sports wagering at racetracks, licensed
66 pursuant to the provisions of §29-22A-1 *et seq.* of this code,
67 and at a historic resort hotel, licensed pursuant the

68 provisions of §29-25-1 *et seq.* of this code, serves to protect,
69 preserve, promote, and enhance the tourism industry of the
70 state as well as the general fiscal wellbeing of the state and
71 its subdivisions.

§29-22D-3. Definitions.

1 For the purposes of this article, the following terms have
2 the meanings ascribed to them in this section:

3 (1) “Adjusted gross sports wagering receipts” means an
4 operator’s gross sports wagering receipts from West
5 Virginia Lottery sports wagering, less winnings paid to
6 wagerers in such games.

7 (2) “Collegiate sport or athletic event” means a sport or
8 athletic event offered or sponsored by, or played in
9 connection with, a public or private institution that offers
10 educational services beyond the secondary level.

11 (3) “Commission” or “State Lottery Commission”
12 means the West Virginia Lottery Commission, created by
13 §29-22-1 *et seq.* of this code.

14 (4) “Director” means the Director of the West Virginia
15 State Lottery Commission, appointed pursuant to §29-22-6
16 of this code.

17 (5) “Gaming equipment” or “sports wagering
18 equipment” means any mechanical, electronic or other
19 device, mechanism, or equipment, and related supplies used
20 or consumed in the operation of West Virginia Lottery
21 sports wagering at a licensed gaming facility including, but
22 not limited to, a kiosk installed to accept sports wagers.

23 (6) “Gaming facility” means a designated area on the
24 premises of an existing historic resort hotel, licensed under
25 §29-25-1 *et seq.* of this code, to operate video lottery and
26 table games or the facility of an entity authorized to operate
27 racetrack video lottery machines, pursuant to §29-22A-1 *et*
28 *seq.* of this code.

29 (7) “Government” means any governmental unit of a
30 national, state, or local body exercising governmental
31 functions, other than the United States Government.

32 (8) “Gross sports wagering receipts” means the total
33 gross receipts received by a licensed gaming facility from
34 sports wagering.

35 (9) “License” means any license, applied for or issued
36 by the commission under this article, including, but not
37 limited to:

38 (A) A license to act as agent of the commission in
39 operating West Virginia Lottery sports wagering at a
40 licensed gaming facility (operator license or West Virginia
41 Lottery sports wagering license);

42 (B) A license to supply a gaming facility, licensed under
43 this article, to operate sports wagering with sports wagering
44 equipment or services necessary for the operation of sports
45 wagering (supplier license);

46 (C) A license to be employed at a racetrack or gaming
47 facility, licensed under this article, to operate West Virginia
48 Lottery sports wagering when the employee works in a
49 designated gaming area that has sports wagering or
50 performs duties in furtherance of or associated with the
51 operation of sports wagering at the licensed gaming facility
52 (occupational license); or

53 (D) A license to provide management services under a
54 contract to a gaming facility, licensed under this article, to
55 operate sports wagering (management services provider
56 license).

57 (10) “Licensed gaming facility” means a designated
58 area on the premises of an existing historic resort hotel,
59 pursuant to §29-25-1 *et seq.* of this code, or the facility of
60 an entity authorized to operate racetrack video lottery
61 machines, pursuant to §29-22A-1 *et seq.* of this code,

62 licensed under this article, to conduct West Virginia Lottery
63 sports wagering.

64 (11) "Lottery" means the public gaming systems or
65 games regulated, controlled, owned, and operated by the
66 State Lottery Commission in the manner provided by
67 general law, as provided in this article, §29-22-1 *et seq.*,
68 §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*,
69 and §29-25-1 *et seq.* of this code.

70 (12) "National criminal history background check
71 system" means the criminal history record system
72 maintained by the Federal Bureau of Investigation, based on
73 fingerprint identification or any other method of positive
74 identification.

75 (13) "Operator" means a licensed gaming facility which
76 has elected to operate a sports pool and other authorized
77 West Virginia Lottery sports wagering activities.

78 (14) "Professional sport or athletic event" means an
79 event at which two or more persons participate in sports or
80 athletic events and receive compensation in excess of actual
81 expenses for their participation in such event.

82 (15) "Sports event" or "sporting event" means any
83 professional sport or athletic event, any collegiate sport or
84 athletic event, motor race event, or any other special event
85 authorized by the commission under this article.

86 (16) "Sports pool" means the business of accepting
87 wagers on any sports event by any system or method of
88 wagering.

89 (17) "Sports wagering account" means a financial
90 record established by a licensed gaming facility for an
91 individual patron in which the patron may deposit and
92 withdraw funds for sports wagering and other authorized
93 purchases, and to which the licensed gaming facility may
94 credit winnings or other amounts due to that patron or
95 authorized by that patron.

96 (18) “Sports wagering agreement” means a written
97 agreement between the commission and one or more other
98 governments whereby persons who are physically located in
99 a signatory jurisdiction may participate in sports wagering
100 conducted by one or more operators licensed by the
101 signatory governments.

102 (19) “Sports wagering fund” means the special fund in
103 the State Treasury, created in §29-22D-17 of this code.

104 (20) “Supplier” means a person that requires a supplier
105 license to provide a sports wagering licensee with goods or
106 services to be used in connection with operation of West
107 Virginia Lottery sports wagering.

108 (21) “Wager” means a sum of money or thing of value
109 risked on an uncertain occurrence.

110 (22) “West Virginia Lottery sports wagering” or “sports
111 wagering” means the business of accepting wagers on
112 sporting events and other events, the individual
113 performance statistics of athletes in a sporting event or other
114 events, or a combination of any of the same by any system
115 or method of wagering approved by the commission
116 including, but not limited to, mobile applications and other
117 digital platforms that utilize communications technology to
118 accept wagers originating within this state. The term
119 includes, but is not limited to, exchange wagering, parlays,
120 over-under, moneyline, pools, and straight bets. The term
121 does not include:

122 (A) Pari-mutuel betting on the outcome of horse or dog
123 races, authorized by §19-23-12a and §19-23-12d of this
124 code;

125 (B) Lottery games of the West Virginia State Lottery,
126 authorized by §29-22-1 *et seq.* of this code;

127 (C) Racetrack video lottery, authorized by §29-22A-1 *et*
128 *seq.* of this code;

129 (D) Limited video lottery, authorized by §29-22B-1 *et*
130 *seq.* of this code;

131 (E) Racetrack table games, authorized by §29-22C-1 *et*
132 *seq.* of this code;

133 (F) Video lottery and table games, authorized by §29-
134 25-1 *et seq.* of this code; and

135 (G) Daily Fantasy Sports (DFS).

136 (23) “West Virginia Lottery sports wagering license”
137 means authorization granted under this article by the
138 commission to a gaming facility that is already licensed
139 under §29-22A-1 *et seq.* or §29-25-1 *et seq.* of this code,
140 which permits the gaming facility as an agent of the
141 commission to operate West Virginia Lottery sports
142 wagering in one or more designated areas or in one or more
143 buildings owned by the licensed gaming facility on the
144 grounds where video lottery is conducted by the licensee or
145 through any other authorized platform developed by the
146 gaming facility. This term is synonymous with “operator’s
147 license.”

§29-22D-4. Commission duties and powers.

1 (a) In addition to the duties set forth elsewhere in this
2 article, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et*
3 *seq.*, §29-22C-1 *et seq.*, and §29-25-1 *et seq.* of this code,
4 the commission shall have the authority to regulate sports
5 pools and the conduct of sports wagering under this article.

6 (b) The commission shall examine the regulations
7 implemented in other states where sports wagering is
8 conducted and shall, as far as practicable, adopt a similar
9 regulatory framework through promulgation of rules and
10 regulations.

11 (c) The commission has the authority, pursuant to §29A-
12 1-1, *et seq.* and §29A-3-1, *et seq.* of this code, to promulgate
13 or otherwise enact any legislative, interpretive, and

14 procedural rules the commission considers necessary for the
15 successful implementation, administration, and
16 enforcement of this article. Rules proposed by the
17 commission before December 1, 2018, may be promulgated
18 as emergency rules pursuant to §29A-3-15 of this code.

19 (1) Regulations promulgated by the commission may
20 include, but are not limited to, those governing the
21 acceptance of wagers on a sports event or a series of sports
22 events; maximum wagers which may be accepted by an
23 operator from any one patron on any one sports event; type
24 of wagering tickets which may be used; method of issuing
25 tickets; method of accounting to be used by operators; types
26 of records which shall be kept; use of credit and checks by
27 patrons; type of system for wagering; protections for
28 patrons placing wagers; and promotion of social
29 responsibility, responsible gaming, and inclusion of the
30 statement, "If you or someone you know has a gambling
31 problem and wants help, call 1-800 GAMBLER," in every
32 designated area approved for sports wagering and on any
33 mobile application or other digital platform used to place
34 wagers.

35 (2) The commission shall establish minimum internal
36 control standards (MICS) and approve minimum internal
37 control standards proposed by licensed operators for
38 administration of sports wagering operations, wagering
39 equipment and systems, or other items used to conduct
40 sports wagering, as well as maintenance of financial records
41 and other required records.

42 (d) The commission shall determine the eligibility of a
43 person to hold or continue to hold a license, shall issue all
44 licenses, and shall maintain a record of all licenses issued
45 under this article. The commission may accept applications,
46 evaluate qualifications of applicants, and undertake initial
47 review of licenses prior to promulgation of emergency rules
48 upon the effective date of this article.

49 (e) The commission shall levy and collect all fees,
50 surcharges, civil penalties, and weekly tax on adjusted gross
51 sports wagering receipts imposed by this article, and deposit
52 all moneys into the sports wagering fund, except as
53 otherwise provided under this article.

54 (f) The commission may sue to enforce any provision of
55 this article or any rule of the commission by civil action or
56 petition for injunctive relief.

57 (g) The commission may hold hearings, administer
58 oaths, and issue subpoenas or subpoenas duces tecum:
59 *Provided*, That all hearings shall be conducted pursuant to
60 the provisions of the State Administrative Procedures Act,
61 §29A-2-1, *et seq.* of this code and the Lottery
62 Administrative Appeal Procedures, W.Va. CSR §179-2-1,
63 *et seq.*

64 (h) The commission may exercise any other powers
65 necessary to effectuate the provisions of this article and the
66 rules of the commission.

§29-22D-5. Licenses required.

1 (a) The commission shall not grant a license required
2 under this article to any applicant until the commission has
3 published the notice in the State Register, as required by
4 §29-22D-15(f) of this code.

5 (b) No person may engage in any activity in connection
6 with West Virginia Lottery sports wagering in this state
7 unless all necessary licenses have been obtained in
8 accordance with this article and rules of the commission.
9 Four types of licenses: (1) Operator; (2) supplier; (3)
10 management services provider; and (4) occupational—are
11 issued pursuant to this article, and no person or entity may
12 engage in any sports wagering operation or activity without
13 first obtaining the appropriate license.

14 (c) The commission may not grant a license until it
15 determines that each person who has control of the applicant

16 meets all qualifications for licensure. The following persons
17 are considered to have control of an applicant:

18 (1) Each person associated with a corporate applicant,
19 including any corporate holding company, parent company,
20 or subsidiary company of the applicant who has the ability
21 to control the activities of the corporate applicant or elect a
22 majority of the board of directors of that corporation; this
23 does not include any bank or other licensed lending
24 institution which holds a mortgage or other lien acquired in
25 the ordinary course of business;

26 (2) Each person associated with a non-corporate
27 applicant who directly or indirectly holds a beneficial or
28 proprietary interest in the applicant's business operation, or
29 who the commission otherwise determines has the ability to
30 control the applicant; and

31 (3) Key personnel of an applicant, including any
32 executive, employee, or agent, having the power to exercise
33 significant influence over decisions concerning any part of
34 the applicant's business operation.

35 (d) *License application requirements.* — All applicants
36 for any license issued under this article shall submit an
37 application to the commission in the form the commission
38 requires and submit fingerprints for a national criminal
39 records check by the Criminal Identification Bureau of the
40 West Virginia State Police and the Federal Bureau of
41 Investigation. The fingerprints shall be furnished by all
42 persons required to be named in the application and shall be
43 accompanied by a signed authorization for the release of
44 information by the Criminal Investigation Bureau and the
45 Federal Bureau of Investigation. The commission may
46 require additional background checks on licensees when
47 they apply for annual license renewal, and any applicant
48 convicted of any disqualifying offense shall not be licensed.

49 (e) Each sports wagering licensee, licensed supplier, or
50 a licensed management services provider shall display the

51 license conspicuously in its place of business or have the
52 license available for inspection by any agent of the
53 commission or any law-enforcement agency.

54 (f) Each holder of an occupational license shall carry the
55 license and have some indicia of licensure prominently
56 displayed on his or her person when present in a licensed
57 gaming facility at all times, in accordance with the rules of
58 the commission.

59 (g) Each person licensed under this article shall give the
60 commission written notice within 30 days of any change to
61 any information provided in the licensee's application for a
62 license or renewal.

63 (h) No commission employee may be an applicant for
64 any license issued under this article nor may any employee
65 of any such licensee directly or indirectly hold an ownership
66 or a financial interest in any West Virginia Lottery sports
67 wagering license.

§29-22D-6. Operator license; West Virginia sports wagering operators.

1 (a) In addition to the casino games permitted pursuant
2 to the provisions of §29-22A-1 *et seq.*, §29-22C-1 *et seq.*,
3 and §29-25-1 *et seq.* of this code, a licensed gaming facility
4 may operate West Virginia Lottery sports wagering upon
5 the approval of the commission, and the commission shall
6 have the general responsibility for the implementation of
7 this article and all other duties specified in §29-22-1 *et seq.*,
8 §29-22A-1 *et seq.*, §29-22C-1 *et seq.*, and §29-25-1 *et seq.*
9 of this code, the provisions of this article, and applicable
10 regulations.

11 (b) All sports wagering authorized by this article shall
12 be West Virginia Lottery games owned by the State of West
13 Virginia. An operator license granted by the commission
14 pursuant to this article grants licensees lawful authority to
15 conduct West Virginia Lottery sports wagering within the

16 terms and conditions of the license and any regulations
17 promulgated under this article.

18 (c) *Sports wagering licenses.* — The commission may
19 issue up to five licenses to operate West Virginia Lottery
20 sports wagering in accordance with the provisions of this
21 article. No more than five licenses to operate a gaming
22 facility with West Virginia Lottery sports wagering shall be
23 permitted in this state.

24 (d) *Grant of license.* — Upon application by a gaming
25 facility and payment of a \$100,000 application fee, the
26 commission shall immediately grant a West Virginia
27 Lottery sports wagering license to an operator that provides
28 for the right to conduct West Virginia Lottery sports
29 wagering: *Provided*, That the applicant must hold a valid
30 racetrack video lottery license issued by the commission,
31 pursuant to §29-22A-1 *et seq.* of this code, or a valid license
32 to operate a gaming facility, issued by the commission
33 pursuant to §29-25-1 *et seq.* of this code, and otherwise meet
34 the requirements for licensure under the provisions of this
35 article and the rules of the commission. This license shall be
36 issued for a five-year period, and may be renewed for five-
37 year periods upon payment of a \$100,000 renewal fee, as
38 long as an operator continues to meet all qualification
39 requirements.

40 (e) *Location.* — A West Virginia Lottery sports
41 wagering license authorizes the operation of West Virginia
42 Lottery sports wagering at locations and through any mobile
43 application or other digital platforms approved by the
44 commission.

45 (f) *Management service contracts.* —

46 (1) *Approval.* — A West Virginia Lottery sports
47 wagering licensee may not enter into any management
48 services contract that would permit any person other than
49 the licensee to act as the commission's agent in operating
50 West Virginia Lottery sports wagering unless the

51 management service contract: (A) Is with a person licensed
52 under this article to provide management services; (B) is in
53 writing; and (C) has been approved by the commission.

54 (2) *Material change.* — The West Virginia Lottery
55 sports wagering licensee shall submit any material change
56 in a management services contract, previously approved by
57 the commission, to the commission for its approval or
58 rejection before the material change may take effect.

59 (3) *Other commission approvals and licenses.* — The
60 duties and responsibilities of a management services
61 provider under a management services contract may not be
62 assigned, delegated, subcontracted, or transferred to a third
63 party without the prior approval of the commission. Third
64 parties must be licensed as a management services provider
65 under this article before providing services.

66 (g) *Expiration date and renewal.* —

67 (1) A licensed operator shall submit to the commission
68 such documentation or information as the commission may
69 require demonstrating to the satisfaction of the director that
70 the licensee continues to meet the requirements of the law
71 and regulations. Required documentation or information
72 shall be submitted no later than five years after issuance of
73 an operator license and every five years thereafter, or within
74 lesser periods based on circumstances specified by the
75 commission.

76 (2) If the licensee fails to apply to renew its license
77 issued pursuant to §29-22A-1 *et seq.* or §29-25-1 *et seq.* of
78 this code prior to expiration, the commission shall renew its
79 license under this article at the time the expired license is
80 renewed as long as the licensee was operating in compliance
81 with applicable requirements in the preceding license year.

82 (h) *Surety bond.* — A West Virginia Lottery sports
83 wagering licensee shall execute a surety bond in an amount
84 and in the form approved by the commission, to be given to

85 the state, to guarantee the licensee faithfully makes all
86 payments in accordance with the provisions of this article
87 and rules promulgated by the commission.

88 (i) *Audits.* — Upon application for a license and
89 annually thereafter, a West Virginia Lottery sports wagering
90 licensee shall submit to the commission an annual audit of
91 the financial transactions and condition of the licensee's
92 total operations prepared by a certified public accountant in
93 accordance with generally accepted accounting principles
94 and applicable federal and state laws.

95 (j) *Commission office space.* — A West Virginia Lottery
96 sports wagering licensee shall provide suitable office space
97 at the sports wagering facility, at no cost, for the
98 commission to perform the duties required of it by this
99 article and the rules of the commission.

100 (k) *Facility qualifications.* — A West Virginia Lottery
101 sports wagering licensee shall demonstrate that its gaming
102 facility with West Virginia Lottery sports wagering will: (1)
103 Be accessible to disabled individuals, in accordance with
104 applicable federal and state laws; (2) be licensed in
105 accordance with this article, and all other applicable federal,
106 state, and local laws; and (3) meet any other qualifications
107 specified in rules adopted by the commission.
108 Notwithstanding any provision of this code or any rules
109 promulgated by the Alcohol Beverage Control
110 Commissioner to the contrary, vacation of the premises after
111 service of beverages ceases is not required for any licensed
112 gaming facility.

§29-22D-7. Management services providers; license requirements.

1 (a) *License.* — The holder of a license to operate West
2 Virginia Lottery sports wagering may contract with an
3 entity to conduct that operation in accordance with the
4 regulations of the commission. That entity shall obtain a
5 license as a management services provider prior to the
6 execution of any such contract, and such license shall be

7 issued pursuant to the provisions of this article and any
8 regulations promulgated by the commission.

9 (b) *License qualifications and fee.* — Each applicant for
10 a management services provider license shall meet all
11 requirements for licensure and pay a nonrefundable license
12 and application fee of \$1,000. The commission may adopt
13 rules establishing additional requirements for an authorized
14 management services provider. The commission may accept
15 licensing by another jurisdiction, that it specifically
16 determines to have similar licensing requirements, as
17 evidence the applicant meets authorized management
18 services provider licensing requirements.

19 (c) *Renewal.* — Management services provider licenses
20 shall be renewed annually to any licensee who continues to
21 be in compliance with all requirements and who pays the
22 annual renewal fee of \$1,000.

23 (d) Any entity or individual who shares in revenue,
24 including any affiliate operating under a revenue share
25 agreement, shall be licensed under this section.

§29-22D-8. Suppliers; license requirements.

1 (a) *Supplier license.* —

2 (1) The commission may issue a supplier license to a
3 person to sell or lease sports wagering equipment, systems,
4 or other gaming items necessary to conduct sports wagering,
5 and offer services related to such equipment or other gaming
6 items to a West Virginia Lottery sports wagering licensee
7 while the license is active. The commission may establish
8 the conditions under which the commission may issue
9 provisional licenses, pending completion of final action on
10 an application.

11 (2) The commission may adopt rules establishing
12 additional requirements for a West Virginia Lottery sports
13 wagering supplier and any system or other equipment
14 utilized for wagering. The commission may accept licensing

15 by another jurisdiction, that it specifically determines to
16 have similar licensing requirements, as evidence the
17 applicant meets West Virginia Lottery sports wagering
18 supplier licensing requirements.

19 (b) *Supplier specifications.* — An applicant for a
20 supplier license shall demonstrate that the equipment,
21 system, or services that the applicant plans to offer to the
22 sports wagering licensee conform to standards established
23 by the commission and applicable state law. The
24 commission may accept approval by another jurisdiction,
25 that it specifically determines have similar equipment
26 standards, as evidence the applicant meets the standards
27 established by the commission and applicable state law.

28 (c) *License application and renewal fees.* — Applicants
29 shall pay to the commission a nonrefundable license and
30 application fee in the amount of \$1,000. After the initial
31 one-year term, the commission shall renew supplier licenses
32 annually thereafter. Renewal of a supplier license will be
33 granted to any renewal applicant who has continued to
34 comply with all applicable statutory and regulatory
35 requirements, upon submission of the commission issued
36 renewal form and payment of a \$1,000 renewal fee.

37 (d) *Inventory.* — A licensed sports wagering supplier
38 shall submit to the commission a list of all sports wagering
39 equipment and services sold, delivered to, or offered to a
40 West Virginia Lottery sports wagering licensee in this state,
41 as required by the commission, all of which must be tested
42 and approved by an independent testing laboratory
43 approved by the commission. A sports wagering licensee
44 may continue to use supplies acquired from a licensed sports
45 wagering supplier, even if a supplier's license expires or is
46 otherwise cancelled, unless the commission finds a defect in
47 the supplies.

§29-22D-9. Occupational licenses.

1 (a) All persons employed to be engaged directly in
2 sports wagering-related activities, or otherwise conducting
3 or operating sports wagering, shall be licensed by the

4 commission and maintain a valid occupational license at all
5 times and the commission shall issue such license to be
6 employed in the operation of sports wagering to a person
7 who meets the requirements of this section.

8 (b) An occupational license to be employed by a gaming
9 facility with West Virginia Lottery sports wagering permits
10 the licensee to be employed in the capacity designated by
11 the commission while the license is still active. The
12 commission may establish, by rule, job classifications with
13 different requirements to recognize the extent to which a
14 particular job has the ability to impact the proper operation
15 of West Virginia Lottery sports wagering.

16 (c) *Application and fee.* — Applicants shall submit any
17 required application forms established by the commission
18 and pay a nonrefundable application fee of \$100. The fee
19 may be paid on behalf of an applicant by the employer.

20 (d) *Renewal fee and form.* — Each licensed employee
21 shall pay to the commission an annual license fee of \$100
22 by June 30 of each year. The fee may be paid on behalf of
23 the licensed employee by the employer. In addition to a
24 renewal fee, each licensed employee shall annually submit
25 a renewal application on the form required by the
26 commission.

§29-22D-10. License prohibitions.

1 (a) The commission may not grant any license, pursuant
2 to the provisions of this article, if evidence satisfactory to
3 the commission exists that the applicant:

4 (1) Has knowingly made a false statement of a material
5 fact to the commission;

6 (2) Has been suspended from operating a gambling
7 game, gaming device, or gaming operation, or had a license
8 revoked by any governmental authority responsible for
9 regulation of gaming activities;

10 (3) Has been convicted of a crime of moral turpitude, a
11 gambling-related offense, a theft or fraud offense, or has
12 otherwise demonstrated, either by a police record or other
13 satisfactory evidence, a lack of respect for law and order; or

14 (4) Is a company or individual who has been directly
15 employed by any illegal or offshore book that serviced the
16 United States, or otherwise accepted black market wagers
17 from individuals located in the United States.

18 (b) The commission may deny a license to any
19 applicant, reprimand any licensee, or suspend or revoke a
20 license:

21 (1) If the applicant or licensee has not demonstrated to
22 the satisfaction of the commission financial responsibility
23 sufficient to adequately meet the requirements of the
24 proposed enterprise;

25 (2) If the applicant or licensee is not the true owner of
26 the business or is not the sole owner and has not disclosed
27 the existence or identity of other persons who have an
28 ownership interest in the business; or

29 (3) If the applicant or licensee is a corporation which
30 sells more than five percent of a licensee's voting stock, or
31 more than five percent of the voting stock of a corporation
32 which controls the licensee, or sells a licensee's assets, other
33 than those bought and sold in the ordinary course of
34 business, or any interest in the assets, to any person not
35 already determined by the commission to have met the
36 qualifications of a licensee under this article.

37 (c) In the case of an applicant for a sports wagering
38 license, the commission may deny a license to any
39 applicant, reprimand any licensee, or suspend or revoke a
40 license if an applicant has not met the requirements of this
41 section or any other provision of this article.

§29-22D-11. Sports wagering house rules; posting of rules.

1 (a) Each operator shall adopt comprehensive house rules
2 for game play governing sports wagering transactions with
3 its patrons. These comprehensive rules will be published as
4 part of the minimum internal control standards. The rules
5 shall specify the amounts to be paid on winning wagers and
6 the effect of schedule changes. House rules shall be
7 approved by the commission prior to implementation.

8 (b) The house rules, together with any other information
9 the commission deems appropriate, shall be conspicuously
10 displayed and included in the terms and conditions of the
11 sports wagering system. Copies shall be made readily
12 available to patrons.

13 (c) The commission shall license and require the display
14 of West Virginia Lottery game logos on game surfaces,
15 other gaming items, and any locations the commission
16 considers appropriate.

§29-22D-12. Operator duties; sports wagering operations at a licensed gaming facility.

1 (a) *General.* — All operators licensed under this article
2 to conduct West Virginia Lottery sports wagering shall:

3 (1) Employ a monitoring system utilizing software to
4 identify non-normal irregularities in volume or odds swings
5 which could signal suspicious activities that should require
6 further investigation which shall be immediately reported
7 and investigated by the commission. System requirements
8 and specifications shall be developed according to industry
9 standards and implemented by the commission as part of the
10 minimum internal control standards;

11 (2) Promptly report to the commission any facts or
12 circumstances related to the operation of a West Virginia
13 Lottery sports wagering licensee which constitute a
14 violation of state or federal law and immediately report any
15 suspicious betting over a threshold set by the operator that

16 has been approved by the commission to the appropriate
17 state or federal authorities;

18 (3) Conduct all sports wagering activities and functions
19 in a manner which does not pose a threat to the public
20 health, safety, or welfare of the citizens of this state and does
21 not adversely affect the security or integrity of the West
22 Virginia Lottery;

23 (4) Hold the commission and this state harmless from
24 and defend and pay for the defense of any and all claims
25 which may be asserted against a licensee, the commission,
26 the state, or employees thereof, arising from the licensee's
27 actions or omission while acting as an agent of the
28 commission operating West Virginia Lottery sports
29 wagering pursuant to this article;

30 (5) Assist the commission in maximizing sports
31 wagering revenues; and

32 (6) Keep current in all payments and obligations to the
33 commission.

34 (b) *Duties.* — All West Virginia Lottery sports wagering
35 licensees shall:

36 (1) Acquire West Virginia Lottery sports wagering
37 gaming equipment by purchase, lease, or other assignment
38 and provide a secure location for the placement, operation,
39 and play of sports wagering gaming equipment;

40 (2) Prevent any person from tampering with or
41 interfering with the operation of any West Virginia Lottery
42 sports wagering;

43 (3) Ensure that West Virginia Lottery sports wagering
44 conducted at a gaming facility is within the sight and control
45 of designated employees of the licensee and such wagering
46 at the facility or otherwise available by the licensee is
47 conducted under continuous observation by security

48 equipment in conformity with specifications and
49 requirements of the commission;

50 (4) Ensure that West Virginia Lottery sports wagering
51 occurs only in the specific locations within designated
52 gaming areas approved by the commission or using a
53 commission approved mobile application or other digital
54 platform that utilizes communications technology to accept
55 wagers originating within this state, or on a sports wagering
56 device. West Virginia Lottery sports wagering shall only be
57 relocated or offered in additional authorized manners in
58 accordance with the rules of the commission;

59 (5) Maintain sufficient cash and other supplies to
60 conduct sports wagering at all times; and

61 (6) Maintain daily records showing the gross sports
62 wagering receipts and adjusted gross sports wagering
63 receipts of the licensee from West Virginia Lottery sports
64 wagering and shall timely file with the commission any
65 additional reports required by rule or by other provisions of
66 this code.

§29-22D-13. Posting of betting limits.

1 A sports wagering licensee shall conspicuously post a
2 sign at each West Virginia Lottery sports wagering location
3 indicating the minimum and maximum wagers permitted at
4 that location and shall comply with the same.

§29-22D-14. Sports wagering agreements with other governments.

1 (a) On behalf of the State of West Virginia, the
2 commission is authorized to:

3 (1) Enter into sports wagering agreements with other
4 governments whereby persons who are physically located in
5 a signatory jurisdiction may participate in sports wagering
6 conducted by one or more operators licensed by the
7 signatory governments; and

8 (2) Take all necessary actions to ensure that any sports
9 wagering agreement entered into, pursuant to this section,
10 becomes effective.

11 (b) The regulations adopted by the commission pursuant
12 to this section may include provisions prescribing:

13 (1) The form, length, and terms of an agreement entered
14 into by the commission and another government, including,
15 but not limited to, provisions relating to how: Taxes are to
16 be treated by this state and another government; revenues
17 are to be shared and distributed; and disputes with patrons
18 are to be resolved;

19 (2) The information to be furnished to the commission
20 by a government that proposes to enter into an agreement
21 with this state pursuant to this section;

22 (3) The information to be furnished to the commission
23 to enable the commission and director to carry out the
24 purposes of this section;

25 (4) The manner and procedure for hearings conducted
26 by the commission pursuant to this section, including any
27 special rules or notices; and

28 (5) The information required to be furnished to the
29 commission to support any recommendations made to the
30 commission, pursuant to this section.

31 (c) The commission may not enter into any sports
32 wagering agreement, pursuant to this section, unless the
33 agreement includes provisions that:

34 (1) Account for the sharing of revenues by this state and
35 another government;

36 (2) Permit the effective regulation of sports wagering by
37 this state, including provisions relating to licensing of
38 persons, technical standards, resolution of disputes by

39 patrons, requirements for bankrolls, enforcement,
40 accounting, and maintenance of records;

41 (3) Require each government that is a signatory to the
42 agreement to prohibit operators of sports wagering,
43 management or other service providers, or suppliers,
44 manufacturers or distributors of sports wagering systems
45 from engaging in any activity permitted by the sports
46 wagering agreement unless they are licensed in this state or
47 in a signatory jurisdiction with similar requirements
48 approved by the commission;

49 (4) No variation from the requirements of the sports
50 wagering agreement is permitted for any signatory
51 government without a lack of opposition by this state and
52 all signatory governments;

53 (5) Prohibit any subordinate or side agreements among
54 any subset of governments that are signatories to the
55 agreement unless it relates exclusively to the sharing of
56 revenues; and

57 (6) Require the government to establish and maintain
58 regulatory requirements governing sports wagering that are
59 consistent with the requirements of this state in all material
60 respects if the sports wagering agreement allows persons
61 physically located in this state to participate in sports
62 wagering conducted by another government or an operator
63 licensed by another government.

**§29-22D-15. Authorization of sports wagering in this state;
requirements.**

1 (a) An operator shall accept wagers on sports events and
2 other events authorized under this article from persons
3 physically present in a licensed gaming facility where
4 authorized sports wagering occurs, or from persons not
5 physically present who wager by means of electronic
6 devices. A person placing a wager shall be at least 21 years
7 of age.

8 (b) An operator may accept wagers from an individual
9 physically located within this state using a mobile or other
10 digital platform or a sports wagering device, approved by
11 the commission, through the patron's sports wagering
12 account.

13 (c) An operator may accept wagers from an individual
14 physically located in a state or jurisdiction with which the
15 commission has entered into a sports wagering agreement
16 using a mobile or other digital platform or a sports wagering
17 device through the patron's sports wagering account, so
18 long as the device or platform is approved by the
19 commission and all other requirements of the agreement are
20 satisfied.

21 (d) The commission or operator may ban any person
22 from entering a gaming area of a gaming facility conducting
23 sports wagering or the grounds of a gaming facility licensed
24 under this article or from participating in the play or
25 operation of any West Virginia Lottery sports wagering. A
26 log of all excluded players shall be kept by the commission
27 and each licensee, and no player on the commission's
28 exclusion list or the licensed operator's exclusion list shall
29 wager on any West Virginia Lottery sports wagering under
30 this article.

31 (e) The commission shall promulgate regulations
32 implementing the provisions of §29-22D-15(a) of this code
33 by interpretive rule and minimum internal control standards.

34 (f) The commission shall, when a federal law is enacted
35 or repealed or when a federal court decision is issued that
36 permits a state to regulate sports wagering, publish a notice
37 in the State Register notifying the public of the enactment
38 or repeal of federal law or of the issuance of such court
39 decision. The commission shall not be authorized to conduct
40 sports wagering in this state until the notice prescribed in
41 this subsection is published in the State Register.

42 (g) No licensed gaming facility employee may place a
43 wager on any sports wagering at the employer’s facility or
44 through any other mobile application or digital platform of
45 their employer.

46 (h) No commission employee may knowingly wager or
47 be paid any prize from any wager placed at any licensed
48 gaming facility with West Virginia Lottery sports wagering
49 within this state or at any facility outside this jurisdiction
50 that is directly or indirectly owned or operated by a sports
51 wagering licensee.

§29-22D-16. Sports wagering revenues; accounting for the state’s share of revenue imposed for the privilege of offering West Virginia Lottery sports wagering; limitation of other taxes; recoupment for improvements.

1 (a) *Imposition and rate of assessment.* — For the
2 privilege of holding a license to operate sports wagering
3 under this article, the state shall impose and collect ten
4 percent of the licensee’s adjusted gross sports wagering
5 receipts from the operation of West Virginia Lottery sports
6 wagering (hereinafter “privilege tax” or “tax”). The accrual
7 method of accounting shall be used for purposes of
8 calculating the amount of the tax owed by the licensee.

9 (b) *Operator revenue reports and payment of privilege*
10 *tax.* —

11 (1) The tax levied and collected pursuant to §29-22D-
12 16(a) of this code is due and payable to the commission in
13 weekly installments on or before the Wednesday following
14 the calendar week in which the adjusted gross sports
15 wagering receipts were received and the tax obligation was
16 accrued.

17 (2) The licensed operator shall complete and submit the
18 return for the preceding week by electronic communication
19 to the commission, on or before Wednesday of each week,
20 in the form prescribed by the commission that provides:

21 (A) The total gross sports wagering receipts and
22 adjusted gross sports wagering receipts from operation of
23 West Virginia Lottery sports wagering during that week;

24 (B) The tax amount for which the sports wagering
25 licensee is liable; and

26 (C) Any additional information necessary in the
27 computation and collection of the tax on adjusted gross
28 sports wagering receipts required by the commission.

29 (3) The tax amount shown to be due shall be remitted by
30 electronic funds transfer simultaneously with the filing of
31 the return. All moneys received by the commission pursuant
32 to this section shall be deposited in the sports wagering fund
33 in accordance with the provisions of this article.

34 (4) When adjusted gross receipts for a week is a
35 negative number because the winnings paid to patrons
36 wagering on the licensee's West Virginia Lottery sports
37 wagering exceeds the licensee's total gross receipts from
38 sports wagering by patrons, the commission shall allow the
39 licensee to carry over the negative amount to returns filed
40 for subsequent weeks. The negative amount of adjusted
41 gross receipts may not be carried back to an earlier week
42 and moneys previously received by the commission will not
43 be refunded, except if the licensee surrenders its operator's
44 license and the licensee's last return reported negative
45 adjusted gross receipts. In that case, the commission shall
46 multiply the amount of negative adjusted gross receipts by
47 10 percent and pay the amount to the licensee in the manner
48 approved by the commission.

49 (c) *Privilege tax obligation imposed by this section is in*
50 *lieu of other taxes.* — With the exception of the ad valorem
51 property tax collected under chapter eleven-a of this code,
52 the privilege tax on adjusted gross sports wagering receipts
53 imposed by this section is in lieu of all other state and local
54 taxes and fees imposed on the operation of, or the proceeds
55 from operation of West Virginia Lottery sports wagering,

56 except as otherwise provided in this section. The consumers
57 sales and services tax imposed pursuant to §11-15-1 *et seq.*
58 of this code, the use tax imposed by §11-15A-1 *et seq.* of
59 this code and any similar local tax imposed at the municipal
60 or county level, shall not apply to the licensee's gross
61 receipts from any West Virginia Lottery sports wagering or
62 to the licensee's purchase of sports wagering equipment,
63 supplies, or services directly used in operation of the sports
64 wagering authorized by this article.

65 (d) Acquisition of any system or wagering equipment
66 and other items related to the operation of West Virginia
67 sports wagering shall be considered "facility modernization
68 improvements" eligible for recoupment as defined in §29-
69 22A-10(b)(2) and §29-25-22(c) of this code.

70 (e) *Prohibition on credits.* — Notwithstanding any other
71 provision of this code to the contrary, no credit may be
72 allowed against the privilege tax obligation imposed by this
73 section or against any other tax imposed by any other
74 provision of this code for any investment in gaming
75 equipment or for any investment in or improvement to real
76 property that is used in the operation of West Virginia
77 Lottery sports wagering.

**§29-22D-17. West Virginia Lottery Sports Wagering Fund;
distribution of funds.**

1 (a) The special fund in the State Treasury known as the
2 West Virginia Lottery Sports Wagering Fund is hereby
3 created and all moneys collected under this article by the
4 commission shall be deposited with the State Treasurer to
5 the West Virginia Lottery Sports Wagering Fund. The fund
6 shall be an interest-bearing account with all interest or other
7 return earned on the money of the fund credited to and
8 deposited in the fund. All expenses of the commission
9 incurred in the administration and enforcement of this
10 article shall be paid from the sports wagering fund pursuant
11 to §29-22D-17(b) of this code.

12 (b) The commission shall deduct an amount sufficient
13 to reimburse its actual costs and expenses incurred in
14 administering sports wagering at licensed gaming facilities
15 from the gross deposits into the sports wagering fund. The
16 amount remaining after the deduction for administrative
17 expenses is the net profit.

18 (1) *Administrative allowance.* — The commission shall
19 retain up to 15 percent of gross deposits for the fund
20 operation and its administrative expenses: *Provided*, That in
21 the event that the percentage allotted for operations and
22 administration generates a surplus, the surplus shall be
23 allowed to accumulate but may not exceed \$250,000. On a
24 monthly basis, the director shall report any surplus in excess
25 of \$250,000 to the Joint Committee on Government and
26 Finance and remit the entire amount of those surplus funds
27 in excess of \$250,000 to the State Treasurer which shall be
28 allocated as net profit.

29 (2) *Distribution of net profit.* — In each fiscal year, net
30 profit shall be deposited into the State Lottery Fund created
31 by §29-22-18 of this code until a total of \$15 million is
32 deposited; thereafter, the remainder shall be deposited into
33 the Public Employees Insurance Agency Financial Stability
34 Fund to stabilize and preserve the future solvency of PEIA,
35 and such amount may not be included in the calculation of
36 any plan year aggregate premium cost-sharing percentages
37 between employers and employees.

§29-22D-18. Law enforcement.

1 Notwithstanding any provision of this code to the
2 contrary, the commission shall, by contract or cooperative
3 agreement with the West Virginia State Police, arrange for
4 those law-enforcement services uniquely related to gaming,
5 as such occurs at facilities of the type authorized by this
6 article, that are necessary to enforce the provisions of this
7 article that are not subject to federal jurisdiction: *Provided*,
8 That the State Police shall only have exclusive jurisdiction

9 over offenses committed on the grounds of a licensed
10 gaming facility that are offenses relating to gaming.

§29-22D-19. Civil penalties.

1 (a) The commission may impose, on any person who
2 violates the provisions of this article, a civil penalty not to
3 exceed \$50,000 for each violation. Such penalty shall be
4 imposed on all individuals and is not limited to individuals
5 licensed under this article. This provision shall not be
6 construed as applicable to office pools.

7 (b) The provisions of §29A-5-1 *et seq.* of this code apply
8 to any civil penalty imposed pursuant to the provisions of
9 this section.

§29-22D-20. Crimes and penalties related to unauthorized sports wagering operations.

1 (a) Any person, other than a licensee under this article,
2 who engages in accepting, facilitating, or operating a sports
3 wagering operation is guilty of a misdemeanor and, upon
4 conviction thereof, shall be fined not more than \$10,000 or
5 confined in jail for not more than ninety days, or both fined
6 and confined.

7 (b) Notwithstanding the penalty provisions §29-22D-
8 20(a) of this code, any person convicted of a second
9 violation of §29-22D-20(a) of this code is guilty of a
10 misdemeanor and, upon conviction thereof, shall be fined
11 not more than \$50,000, or confined in jail for not more than
12 six months, or both fined and confined.

13 (c) Notwithstanding the penalty provisions of §29-22D-
14 20(a) or §29-22D-20(b) of this code, any person convicted
15 of a third or subsequent violation of said §29-22D-20(a) of
16 this code is guilty of a felony, and upon conviction thereof,
17 shall be fined not less than \$25,000 nor more than \$100,000
18 or imprisoned in a state correctional facility for not less than
19 one year nor more than five years, or both fined and
20 confined.

§29-22D-21. Crimes and penalties related to authorized sports wagering operation.

1 (a) A sports wagering licensee is guilty of unlawful
2 operation and is guilty of a misdemeanor when:

3 (1) The licensee operates West Virginia Lottery sports
4 wagering without authority of the commission to do so;

5 (2) The licensee operates West Virginia Lottery sports
6 wagering in any location or by any manner that is not
7 approved by the commission;

8 (3) The licensee knowingly conducts, carries on,
9 operates, or allows any sports wagering to occur on
10 premises or through any other device if equipment or
11 material has been tampered with, or exposed to conditions
12 in which it will be operated in a manner designed to deceive
13 the public;

14 (4) The licensee employs an individual who does not
15 hold a valid occupational license in a position for which a
16 license is required or otherwise allows an individual to
17 perform duties for which such license is required or
18 continues to employ an individual after the employee's
19 occupational license is no longer valid;

20 (5) The licensee acts or employs another person to act
21 as if he or she is not an agent or employee of the licensee in
22 order to encourage participation in West Virginia Lottery
23 sports wagering at the licensed gaming facility;

24 (6) The licensee knowingly permits an individual under
25 the age of 21 to enter or remain in a designated gaming area
26 or to engage in sports wagering at a licensed gaming facility;
27 or

28 (7) The licensee exchanges tokens, chips, electronic
29 media, or other forms of credit used for wagering for
30 anything of value except money or credits applied to a sports

31 wagering account at a gaming facility authorized under this
32 article.

33 (b) A person is guilty of a felony when:

34 (1) A person offers, promises, or gives anything of value
35 to anyone for the purpose of influencing the outcome of a
36 race, sporting event, contest, or game upon which a wager
37 may be made, or a person places, increases, or decreases a
38 wager after acquiring knowledge, not available to the
39 general public, that anyone has been offered, promised, or
40 given anything of value for the purpose of influencing the
41 outcome of the race, sporting event, contest, or game upon
42 which the wager is placed, increased or decreased, or
43 attempts to do any of the same;

44 (2) A person changes or alters the normal outcome of
45 any game played on a mobile or other digital platform,
46 including any interactive gaming system used to monitor the
47 same or the way in which the outcome is reported to any
48 participant in the game;

49 (3) The person manufactures, sells, or distributes any
50 device that is intended by that person to be used to violate
51 any provision of this article or the sports wagering laws of
52 any other state;

53 (4) The person places a bet or aids any other individual
54 in placing a bet on a sporting event or other sports wagering
55 game or offering authorized under this article after
56 unlawfully acquiring knowledge of the outcome on which
57 winnings from that bet are contingent;

58 (5) The person claims, collects, or takes anything of
59 value from a gaming facility with West Virginia Lottery
60 sports wagering with intent to defraud or attempts such
61 action without having made a wager in which such amount
62 or value is legitimately won or owed;

63 (6) The person knowingly places a wager using
64 counterfeit currency or other counterfeit form of credit for

65 wagering at a gaming facility with West Virginia Lottery
66 sports wagering; or

67 (7) The person, not a licensed gaming facility under this
68 article or an employee or agent of a gaming facility licensed
69 under this article acting in furtherance of the licensee's
70 interest, has in his or her possession on grounds owned by
71 the gaming facility licensed under this article or on grounds
72 contiguous to the licensed gaming facility, any device
73 intended to be used to violate a provision of this article or
74 any rule of the commission.

75 (c) Any person who violates any provision of §29-22D-
76 21(a) of this code is guilty of a misdemeanor and, upon
77 conviction thereof, shall be fined not more than \$1,000 or
78 confined in jail for not more than six months, or both fined
79 and confined, except any violation that is not committed by
80 a natural person may result in a fine of not more than
81 \$25,000.

82 (d) Any person who violates any provision of §29-22D-
83 21(b) of this code is guilty of a felony and, upon conviction
84 thereof, shall be fined not less than \$5,000 nor more than
85 \$10,000, or confined in a state correctional facility for not
86 less than one year nor more than five years, or both fined
87 and confined.

88 *(e) With regard to §29-22D-21(b) of this code, each
89 West Virginia sports wagering licensee shall post notice of
90 the prohibitions and penalties of this section in a manner
91 determined by the rules of the commission.

***Note:** S.B. 415 became law without the signature of the Governor and the Senate Clerk's Office subsequently corrected an error in the enrolled bill after it had been filed with the Secretary of State. This correction, manually changing "a" to "b" in a subsection reference, is included on line 88 of this page.

§29-22D-22. Preemption.

1 No local law or rule providing any penalty, disability,
2 restriction, regulation, or prohibition for operating a gaming
3 facility with West Virginia Lottery sports wagering or
4 supplying a licensed gaming facility may be enacted, and
5 the provisions of this article preempt all regulations, rules,
6 ordinances, and laws of any county or municipality in
7 conflict with this article.

§29-22D-23. Exemption from federal law.

1 Pursuant to Section 2 of Chapter 1194, 64 Stat. 1134, 15
2 U.S.C. §1172, approved January 2, 1951, the State of West
3 Virginia, acting by and through duly elected and qualified
4 members of the Legislature, does declare and proclaim that the
5 state is exempt from Chapter 1194, 64 Stat. 1134, 15 U.S.C.
6 §1171 to §1178.

§29-22D-24. Shipment of gambling devices.

1 All shipments of gambling devices including any sports
2 wagering devices or related materials to licensed gaming
3 facilities in this state are legal shipments of gambling devices
4 into the State of West Virginia, as long as the registering,
5 recording, and labeling of which have been completed by the
6 supplier thereof in accordance with Chapter 1194, 64 Stat. 1134,
7 15 U.S.C. §1171 to §1178.

CHAPTER 102

(S. B. 479 - By Senator Gaunch)

[Passed March 7, 2018; in effect from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §6-9-1a, §6-9-7, §6-9-8, and §6-9-9a of
the Code of West Virginia, 1931, as amended; and to amend said

code by adding thereto a new section, designated §6-9-9b, all relating to audits, reviews, and monitoring of local government offices; defining terms; clarifying applicable audit requirements; establishing a small government monitoring program; authorizing the Auditor, acting in the capacity as chief inspector, to oversee and maintain the monitoring program; directing the Auditor to prescribe policies and procedures for the monitoring program; authorizing cooperative agreements with higher education institutions to perform and participate in the monitoring program; changing the expenditure threshold for performance of annual audits; clarifying the notification and publication requirements when misfeasance, malfeasance, or nonfeasance is discovered as part of an audit, examination, or investigation; lowering the time frame in which a legal authority has to take action upon recommendations from an audit; raising the cost limits for certain municipalities for performance of services by the chief inspector; removing Class III municipalities from the cost limits; adding cost limits for municipalities policemen and firemen pension and relief funds; authorizing chief inspector to designate certain reports as confidential; and declaring that audit work papers created by the chief inspector division are confidential and not deemed public records.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-1a. Definitions.

1 As used in this article:

2 (a) "Audit" means a systematic examination and collection
 3 of sufficient, competent evidential matter needed for an Auditor
 4 to attest to the fairness of management's assertions in the financial
 5 statements and to evaluate whether management has sufficiently
 6 and effectively carried out its responsibilities and complied with
 7 applicable laws and regulations. An audit shall be conducted in
 8 accordance with generally accepted auditing standards, standards
 9 issued by the chief inspector, and, as applicable, the single audit

10 requirement of the Uniform Guidance, Title 2 of the Code of
11 Federal Regulations, Uniform Administrative Requirements,
12 Cost Principles, and Audit Requirements for Federal Awards, as
13 amended or revised from time to time, or any successor circular
14 or regulation of the Office of Management and Budget.

15 (b) “Examination” includes an audit, review, or small
16 government monitoring as defined in this section.

17 (c) “Federal awards” means federal financial assistance and
18 federal cost-reimbursement contracts that nonfederal entities
19 receive directly from federal awarding agencies or indirectly from
20 pass-through entities.

21 (d) “Federal financial assistance” means assistance that
22 nonfederal entities receive or administer in the form of grants,
23 loans, loan guarantees, property, cooperative agreements, interest
24 subsidies, insurance, food commodities, direct appropriations, or
25 other assistance, but does not include amounts received as
26 reimbursement for services rendered to individuals in accordance
27 with guidance issued by the director of the federal office of
28 management and budget.

29 (e) “Financial audit” includes financial statement audits and
30 financial related audits, as defined by government auditing
31 standards.

32 (f) “Government auditing standards” means the government
33 auditing standards issued by the Comptroller General of the
34 United States, which are applicable to financial audits of
35 government organizations, programs, and activities.

36 (g) “Investigation” means an examination, inspection, or
37 review of a local government’s finances to determine or ascertain
38 whether fraudulent, illegal, or improper conduct has occurred,
39 including, but not limited to, misappropriation, waste, or misuse
40 of moneys or assets.

41 (h) “Local government” means any unit of local government
42 within the state, including a county, county board of education,
43 municipality, and any other authority, board, commission,

44 district, office, public authority, public corporation, or other
45 instrumentality of a county, county board of education, or
46 municipality or any combination of two or more local
47 governments.

48 (i) “Nonfederal entity” means a state, local government, or
49 nonprofit organization.

50 (j) “Office of Management and Budget” means the executive
51 Office of the President of the United States, Office of
52 Management and Budget.

53 (k) “Proper legal authority” means the prosecuting
54 attorney of the county wherein the audited, examined, or
55 investigated entity is located, the Attorney General, law
56 enforcement, or other legal authority the chief inspector
57 deems appropriate.

58 (l) “Review” means an inquiry or analytical procedures
59 that provide the Auditor with a reasonable basis for
60 expressing limited assurance that there are no material
61 modifications that should be made to the financial
62 statements in order for them to be in conformity with
63 generally accepted accounting principles or, if applicable,
64 with another comprehensive basis of accounting.

65 (m) “Single audit” means a financial and compliance
66 audit as defined in the federal Single Audit Act of 1996, as
67 amended, in section 7502(d), chapter 75, title 31 of the
68 United States Code, of a nonfederal entity that includes the
69 entity’s financial statements and federal awards. Each single
70 audit conducted for any fiscal year shall cover the
71 operations of the entire nonfederal entity; or at the option of
72 the nonfederal entity, the audit shall include a series of
73 audits that cover departments, agencies, and other
74 organizational units that expend or otherwise administer
75 federal awards during the fiscal year being audited except
76 that each such audit shall encompass the financial
77 statements and schedule of expenditures of federal awards

78 for each department, agency, and organizational unit, which
79 shall be considered to be a nonfederal entity.

80 (n) "Small government monitoring" means specialized
81 procedures, performed on certain qualifying local governments
82 as a lower cost alternative to an audit or review.

**§6-9-7. Examinations into affairs of local public offices;
penalties.**

1 (a) The chief inspector has the power by himself or herself,
2 or by any person appointed, designated, or approved by the
3 chief inspector to perform the service, to examine into all
4 financial affairs of every local governmental office or political
5 subdivision and all boards, commissions, authorities, agencies
6 or other offices created under authority thereof. An
7 examination shall be made annually, if required, to comply
8 with the Single Audit Act and when otherwise required by law
9 or contract. When that act does not apply, unless otherwise
10 required by law or by contract, the examination shall be made
11 at least once a year, if practicable. Furthermore, the chief
12 inspector shall furnish annually to the Legislature a list of each
13 local government office or political subdivision and all boards,
14 commissions, authorities, agencies, or other offices created
15 under authority thereof and the year of its most recent
16 completed audit.

17 (b) When required for compliance with regulations for
18 federal funds received or expended by county boards of
19 education the chief inspector or his or her designee, including
20 any certified public accountant approved by the chief inspector
21 shall conduct and issue an audit report within the time
22 specified in controlling federal regulations. Examinations of
23 other local governments shall be conducted and audit, review,
24 or monitoring reports issued in accordance with uniform
25 procedures of the chief inspector.

26 (c) In cooperation with institutions of higher education
27 located in the State of West Virginia, the chief inspector may
28 establish and maintain a small government monitoring
29 program. The small government monitoring program shall

30 authorize local governments which are not otherwise
31 required to undergo a single audit or a financial audit to
32 apply to the chief inspector, on an annual basis, for
33 participation in the program. The chief inspector shall
34 prescribe and oversee monitoring procedures that shall be
35 performed by higher education students in the field of
36 accounting. Participating institutions of higher education
37 shall enter into a cooperative agreement with the chief
38 inspector to provide the service. The chief inspector shall
39 prescribe policies and procedures for the administration of
40 the small government monitoring program.

41 (d) A county board of education may elect, by May 1 of
42 the fiscal year to be audited, to have its annual examination
43 performed by a certified public accountant approved by the
44 chief inspector to perform the examinations. When this
45 election is made, a copy of the order of the county board
46 making the election shall be filed with the chief inspector
47 and the State Board of School Finance. The county board of
48 education is allowed to contract with any certified public
49 accountant on the chief inspector's then current list of
50 approved certified public accountants, unless the State
51 Board of School Finance or the prosecuting attorney of the
52 county in which the board is located timely submits to the
53 chief inspector a written request for the examination to be
54 performed by the chief inspector or a person appointed by
55 the chief inspector, or the chief inspector determines that a
56 special or unusual situation exists. The county board shall
57 follow the audit bid procurement procedures established by
58 the chief inspector in obtaining the audit.

59 (e) The chief inspector shall, at least annually, prepare a
60 list of certified public accountants approved by the chief
61 inspector to perform examinations of local governments.
62 Names shall be added to or deleted from that list in
63 accordance with uniform procedures of the chief inspector.
64 When each list or updated list is issued, the chief inspector
65 shall promptly file a copy of the list in the State Register and
66 send a copy to the State Board of Education, the State Board

67 of School Finance, and to local governments who request a
68 copy.

69 (f) A county board of education, when procuring the
70 services of a certified public accountant on the chief
71 inspector's list, shall follow the procurement standards
72 prescribed by the Uniform Guidance, Title 2 of the Code of
73 Federal Regulations, Uniform Administrative
74 Requirements, Cost Principles, and Audit Requirements for
75 Federal Awards, in effect for the fiscal year being examined,
76 or in any replacement circular or regulation of the Office of
77 Management and Budget and in addition shall follow those
78 standards as determined by the office of chief inspector.

79 (g) The approved independent certified public
80 accountant making examinations under this section shall
81 comply with requirements of this section applicable to
82 examinations performed by the chief inspector, including
83 applicable requirements of the federal government and
84 uniform procedures of the chief inspector applicable to
85 examinations of county boards of education.

86 (1) Upon completion of the certified public accountant's
87 examination and audit or review report, the certified public
88 accountant shall promptly send two copies of the certified
89 report to the county board of education who shall file one
90 copy with the federal Audit Clearing House. The certified
91 public accountant shall send one copy of the certified report
92 to the State Board of School Finance, and one copy to the
93 chief inspector.

94 (2) If any examination discloses misfeasance,
95 malfeasance, or nonfeasance in office on the part of any
96 public officer or employee, the certified public accountant
97 shall submit his or her recommendation to the chief
98 inspector regarding the legal action the approved certified
99 public accountant considers appropriate, including, but not
100 limited to, whether criminal prosecution or civil action to
101 effect restitution is appropriate, and three additional copies
102 of the certified audit report. After review of the

103 recommendations and the audit report, the chief inspector
104 shall proceed as provided in §6-9-7(n) of this code. For
105 purposes of this section and §18-9B-13 of this code, a
106 certified audit report of an approved certified public
107 accountant shall be treated in the same manner as a report
108 of the chief inspector.

109 (h) On every examination, inquiry shall be made as to
110 the financial conditions and resources of the agency having
111 jurisdiction over the appropriations and levies disbursed by
112 the office and whether the requirements of the Constitution
113 and statutory laws of the state and the ordinances and orders
114 of the agency have been properly complied with and also
115 inquire into the methods and accuracy of the accounts and
116 such other matters of audit and accounting as the chief
117 inspector may prescribe.

118 (i) If a local government office is not subject to a single
119 audit requirement under federal regulations or if it is not
120 otherwise required by law or contract to undergo an annual
121 audit and its expenditures from all sources are less than
122 \$500,000 during the fiscal year the chief inspector may
123 choose to perform either a review or audit on the local
124 government office and may in his or her discretion
125 determine the frequency of such review or audit.

126 (j) The chief inspector or any authorized assistant may
127 issue subpoenas and compulsory process, direct the service
128 thereof by any sheriff, compel the attendance of witnesses
129 and the production of books and papers at any designated
130 time and place, selected in their respective county, and
131 administer oaths.

132 (k) If any person refuses to appear before the chief
133 inspector or his or her authorized assistant when required to
134 do so, refuses to testify on any matter or refuses to produce
135 any books or papers in his or her possession or under his or
136 her control, he or she is guilty of a misdemeanor and, upon
137 conviction thereof, shall be fined not more than \$100 and
138 confined for not more than six months.

139 (l) A person convicted of willful false swearing in an
140 examination is guilty of a misdemeanor and, upon
141 conviction thereof, shall be fined not more than \$100 and
142 confined in jail not more than six months.

143 (m) Except as otherwise provided in this section, a copy
144 of the certified report of each examination shall be filed in
145 the office of the commissioner, chief inspector with the
146 governing body of the local government and with other
147 offices as prescribed in uniform procedures of the chief
148 inspector.

149 (n) If any audit, examination or investigation discloses
150 misfeasance, malfeasance, or nonfeasance in office on the
151 part of any public officer or employee, a certified copy of
152 the report shall be published electronically by the chief
153 inspector with notice of the publishing sent in writing to the
154 proper legal authority of the entity being audited, examined,
155 or investigated the chief inspector deems appropriate for
156 such legal action as is proper. At the time the certified audit,
157 examination, or investigation report is published, the chief
158 inspector shall notify the proper legal authority of the entity
159 being audited, examined, or investigated he or she deems
160 appropriate in writing of his or her recommendation as to
161 the legal action that the chief inspector considers proper,
162 whether criminal prosecution or civil action to effect
163 restitution, or both.

164 (o) If the proper legal authority or prosecuting attorney,
165 within 90 days of receipt of the certified audit report and
166 recommendations, refuses, neglects, or fails to take efficient
167 legal action by a civil suit to effect restitution or by
168 prosecuting criminal proceedings, in accordance with the
169 recommendations, the chief inspector may institute the
170 necessary proceedings or participate therein and prosecute
171 the proceedings in any court of the state to a final
172 conclusion.

173 (p) A local government that is not a county board of
174 education may elect, by May 1 of the fiscal year to be

175 audited, to have its annual examination performed by a
176 certified public accountant approved by the chief inspector
177 to perform the examinations. When this election is made, a
178 copy of the order of the governing body making the election
179 shall be filed with the chief inspector. An electing local
180 government is allowed to contract with any certified public
181 accountant on the chief inspector's then current list of
182 approved certified public accountants, unless the
183 prosecuting attorney of the county in which the local
184 government is located timely submits to the chief inspector
185 a written request for the examination to be performed by the
186 chief inspector or a person appointed by the chief inspector,
187 or the chief inspector determines that a special or unusual
188 situation exists: *Provided*, That the audit of a local
189 government may be performed by the chief inspector at his
190 or her discretion. The local government shall follow the
191 audit bid procurement procedures established by the chief
192 inspector in obtaining the audit: *Provided, however*, That
193 the chief inspector may elect to conduct the audit of a local
194 unit of government with one or more members of his or her
195 audit staff where, in the opinion of the chief inspector, a
196 special or unusual situation exists.

**§6-9-8. Payment of cost of services of chief inspector;
revolving fund.**

1 (a) The cost of any service or act performed by the chief
2 inspector under the provisions of this article as to any county
3 or district office, officer or institution shall be paid by the
4 county commission of the county; the cost of any service or
5 act to any board of education shall be paid by the board; the
6 cost of any service or act to any municipal corporation shall
7 be paid by the authorities of the municipal corporation:
8 *Provided*, That in municipalities in which the total revenue
9 from all taxes does not exceed the sum of \$2,000 annually,
10 the cost including the per diem and all actual costs and
11 expenses of the services shall not exceed the sum of \$200.
12 The cost of this service shall be the actual cost and expense
13 of the service performed, including transportation, hotel,

14 meals, materials, per diem compensation of deputies,
15 assistants, clerical help, and the other costs that are
16 necessary to enable them to perform the services required,
17 but the costs shall not exceed the sum of \$3,000 for services
18 rendered to a Class IV municipality: *Provided, however,*
19 That the chief inspector may charge up to an additional
20 \$3,000 for costs incurred for each service or act performed
21 for a utility or park system owned by a Class IV
22 municipality and for each policemen's and firemen's
23 pension and relief fund maintained by the municipality:
24 *Provided further,* That if a municipality is required to
25 undergo a single audit by the federal agency or agencies
26 making a grant, the cost limitations of this subsection do not
27 apply: *And provided further,* That the chief inspector shall
28 provide a written quote for all costs in advance for all
29 services required by this article. The chief inspector shall
30 render to the agency liable for the cost a statement of the
31 cost as soon after the cost was incurred as practicable and
32 the agency shall allow the cost and cause it to be paid
33 promptly in the manner that other claims and accounts are
34 allowed and paid and the total amount constitutes a debt
35 against the local agency due the state. Whenever there is in
36 the State Treasury a sum of money due any county
37 commission, board of education or municipality from any
38 source, upon the application of the chief inspector, the sum
39 shall be at once applied on the debt against the county
40 commission, board of education or municipality and the fact
41 of the application of the fund shall be reported by the
42 Auditor to the county commission, board of education or
43 municipality, which report shall be a receipt for the amount
44 named in the report. All money received by the chief
45 inspector from this source shall be paid into the State
46 Treasury, shall be deposited to the credit of an account to be
47 known as chief inspector's fund and shall be expended only
48 for the purpose of covering the cost of the services, unless
49 otherwise directed by the Legislature. The cost of any
50 examination, service, or act by the chief inspector made
51 necessary, or the part thereof that was made necessary, by
52 the willful fault of any officer or employee, may be

53 recovered by the chief inspector from that person, on
54 motion, on 10-days' notice in any court having jurisdiction.

55 (b) For the purpose of permitting payments to be made
56 at definite periods to deputy inspectors and assistants for per
57 diem compensation and expenses, there is hereby created a
58 revolving fund for the chief inspector's office. The fund
59 shall be accumulated and administered as follows:

60 (1) There shall be appropriated from the state General
61 Revenue Fund the sum of \$25,000 to be transferred to this
62 fund to create a revolving fund which, together with other
63 payments into this fund as provided in this article, shall
64 constitute a fund to defray the cost of this service;

65 (2) Payments received for the cost of services of the
66 chief inspector's office and interest earned on the invested
67 balance of the chief inspector's revolving fund shall be
68 deposited into this revolving fund, which shall be known as
69 the Chief Inspector's Fund;

70 (3) Any appropriations made to this fund may not be
71 considered to have expired at the end of any fiscal period;
72 and

73 (4) The chief inspector may transfer an amount not to
74 exceed \$400,000 from the Chief Inspector's Fund to the
75 special operating fund created in §32-4-1 *et seq.* of this
76 code: *Provided*, That any transfers shall be completed prior
77 to July 1, 2003.

§6-9-9a. Public inspection of reports of examinations.

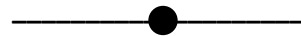
1 All reports of examinations and audits of public offices
2 made in accordance with the provisions of §6-9-7 of this
3 code, and the copies thereof, when filed in the office of the
4 chief inspector of public offices or in the office of the State
5 Tax Commissioner, shall be public documents and shall be
6 available for public inspection: *Provided*, That if an
7 examination or investigative report discloses misfeasance,
8 nonfeasance, or malfeasance, the chief inspector may direct

9 that a report remain confidential until such time that the
10 proper legal authority, as described in §6-9-7(n) of this
11 code, has completed its investigation or adjudication of the
12 matter and authorizes public disclosure.

§6-9-9b. Documentation of chief inspector.

1 (a) The audit working papers created by the chief
2 inspector division during examinations or investigations
3 shall be considered confidential, and shall not be deemed
4 public records for purposes of §29B-1-1 *et seq.* of this code.

5 (b) For purposes of this section, “audit working papers”
6 includes, but is not limited to, the books and records of the
7 entity being audited, intra- and inter-agency
8 communications, draft reports, summaries, schedules,
9 notes, memoranda, and all other records relating to an
10 examination or investigation by the chief inspector division.



CHAPTER 103

(Com. Sub. for S. B. 522 - By Senator Maynard)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §29A-1-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §29A-3-8, §29A-3-12, and §29A-3-19 of said code, all relating generally to the Administrative Procedures Act; providing that rules become void if statutory authority is repealed; providing that legislative exempt, procedural, or interpretive rules may be repealed by an agency upon notification to Secretary of State; relating to the deadline for filing agency-approved rules; providing a procedure for the agencies to affirmatively seek renewal of a legislative rule; providing that

legislative rules up for termination are not subject to a public comment period; and providing for review by the Legislative Rule-Making Review Committee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3b. Void rules.

1 (a) If an agency ceases to exist, through the operation of
2 law or by statute, any rules adopted or promulgated by the
3 agency are void on the date the agency ceases to exist,
4 unless the agency's rule-making power and its rules have
5 been transferred to another agency.

6 (b) Upon repeal or elimination of a statute that provides
7 rule-making authority, any rule adopted or promulgated by
8 the agency pursuant to that statute is void.

ARTICLE 3. RULEMAKING.

§29A-3-8. Adoption of legislative exempt, procedural, and interpretive rules.

1 (a) An agency shall consider a legislative exempt,
2 procedural, and interpretive rule for adoption not later than
3 six months after the close of public comment and file a
4 notice of withdrawal or adoption in the State Register within
5 that period. An agency's failure to file the notice constitutes
6 withdrawal and the Secretary of State shall note the failure
7 in the State Register immediately upon the expiration of the
8 six-month period.

9 (b) A legislative exempt, procedural, or interpretive rule
10 may be amended by the agency prior to final adoption
11 without further hearing or public comment. The amendment
12 may not change the main purpose of the rule. If the fiscal
13 implications have changed since the rule was proposed, the
14 agency shall attach a new fiscal note to the notice of filing.
15 Upon adoption of the rule, including any amendment, the

16 agency shall file the text of the adopted legislative exempt,
17 procedural, or interpretive rule with its notice of adoption in
18 the State Register and the rule is effective on the date
19 specified in the rule or 30 days after the filing, whichever is
20 later or as specified in this code.

21 (c) An agency may repeal a legislative exempt,
22 procedural, or interpretive rule by filing a notice of repeal
23 with the Secretary of State.

§29A-3-12. Submission of legislative rules to Legislature.

1 (a) No later than 40 days before the sixtieth day of each
2 regular session of the Legislature, the cochairmen of the
3 Legislative Rule-Making Review Committee shall submit
4 to the clerk of the respective houses of the Legislature
5 copies of all proposed legislative rules which have been
6 submitted to, and considered by, the committee pursuant to
7 the provisions of §29A-3-11 of this code and which have
8 not been previously submitted to the Legislature for study,
9 together with the recommendations of the committee with
10 respect to the rules, a statement of the reasons for any
11 recommendation that a rule be amended or withdrawn, and
12 a statement that a bill authorizing the legislative rule has
13 been drafted by the staff of the committee or by Legislative
14 Services pursuant to §29A-3-11 of this code. The
15 cochairmen of the committee may also submit the rules at
16 the direction of the committee at any time before or during
17 a special session in which consideration of the rules may be
18 appropriate. Beginning in 2019, the committee may
19 withhold from its report any proposed legislative rule which
20 was submitted to the committee after the last Friday in July
21 and beginning in 2020, and every four years thereafter, by
22 the last Friday in August. The clerk of each house shall
23 submit the report to his or her house at the commencement
24 of the next session.

25 All bills introduced authorizing the promulgation of a
26 rule may be referred by the President of the Senate and by
27 the Speaker of the House of Delegates to appropriate

28 standing committees of the respective houses for further
29 consideration or the matters may be otherwise dealt with as
30 each house or its rules provide. The Legislature may, by act,
31 authorize the agency to adopt a legislative rule
32 incorporating the entire rule or may authorize the agency to
33 adopt a rule with any amendments adopted by the
34 Legislature. The clerk of the house originating the act shall
35 immediately file a copy of any bill of authorization enacted
36 with the Secretary of State and with the agency proposing
37 the rule and the clerk of each house may prepare and file a
38 synopsis of legislative action during any session on any
39 proposed rule submitted to the house during the session for
40 which authority to promulgate was not by law provided
41 during the session. In acting upon the separate bills
42 authorizing the promulgation of rules, the Legislature may,
43 by amendment or substitution, combine the separate bills of
44 authorization insofar as the various rules authorized in the
45 amendment or substitution are proposed by agencies which
46 are placed under the administration of one of the single,
47 separate executive departments identified under the
48 provisions of §5F-1-2 of this code or the Legislature may
49 combine the separate bills of authorization by agency or
50 agencies within an executive department. In the case of rules
51 proposed for promulgation by an agency which is not
52 administered by an executive department pursuant to the
53 provisions of §5F-1-2 of this code, the separate bills of
54 authorization for the proposed rules of that agency may, by
55 amendment or substitution, be combined. These provisions
56 relating to combining separate bills of authorization
57 according to department or agency are not intended to
58 restrict the permissible breadth of bills of authorization and
59 do not preclude the Legislature from otherwise combining
60 various bills of authorization which have a unity of subject
61 matter. Any number of provisions may be included in a bill
62 of authorization, but the single object of the bill shall be to
63 authorize the promulgation of proposed legislative rules.

64 (b) If the Legislature during its regular session
65 disapproves all or part of any legislative rule which was

66 submitted to it by the Legislative Rule-Making Review
67 Committee during the session, an agency may not thereafter
68 issue any rule or directive or take other action to implement
69 the rule or part of the rule unless and until otherwise
70 authorized to do so, except that the agency may resubmit the
71 same or similar proposed rule to the Legislative Rule-
72 Making Review Committee in accordance with the
73 provisions of §29A-3-11 of this code.

74 (c) Nothing shall be construed to prevent the Legislature
75 by law from authorizing, or authorizing and directing, an
76 agency to promulgate legislative rules not proposed by the
77 agency or upon which some procedure specified in this
78 chapter is not yet complete.

79 (d) Whenever the Legislature is convened by
80 proclamation of the Governor, upon his or her own initiative
81 or upon application of the members of the Legislature, or
82 whenever a regular session of the Legislature is extended or
83 convened by the vote or petition of its members, the
84 Legislature may by act enacted during the extraordinary or
85 extended session authorize, in whole or in part, any
86 legislative rule, whether submitted to the Legislative Rule-
87 Making Review Committee or not, if legislative action on
88 the rule during the session is a lawful order of business.

89 (e) As a part of any act that amends chapter 64 of this
90 code, authorizing the promulgation of a proposed legislative
91 rule or rules, the Legislature may also provide, by general
92 language or with specificity, for the disapproval of rules not
93 approved or acted upon by the Legislature.

§29A-3-19. Sunset provision in rules.

1 (a) Any new legislative rule promulgated pursuant to
2 this article after April 1, 2016, shall include a sunset
3 provision terminating the rule after five years: *Provided*,
4 That the rule may be renewed for additional terms of five
5 years or less by the Legislature pursuant to the rule-making
6 procedures and authority in this article: *Provided, however*,

7 That if a different sunset or termination provision exists in
8 the statute under which the proposed rule is promulgated,
9 the enabling statute's provision shall control: *Provided*
10 *further*, That this subsection shall not apply to rules
11 promulgated by the Department of Environmental
12 Protection or emergency rules promulgated pursuant to
13 §29A-3-15 of this code.

14 (b) Any legislative rule existing as of April 1, 2016, that
15 is thereafter modified pursuant to this article, shall include
16 a sunset provision as part of the modification setting forth a
17 termination date for the rule: *Provided*, That the rule may be
18 renewed for additional terms of years by the Legislature
19 pursuant to the rule-making procedures and authority in this
20 article: *Provided, however*, That if a different sunset or
21 termination provision exists in the statute under which the
22 legislative rule is promulgated, the enabling statute's
23 provision controls: *Provided further*, That this subsection
24 shall not apply to legislative rules promulgated by the
25 Department of Environmental Protection or emergency
26 rules promulgated pursuant to §29A-3-15 of this code.

27 (c) The existence of a sunset provision terminating a
28 legislative rule shall not preclude the repeal of the
29 legislative rule by the Legislature prior to its termination.

30 (d) As part of its rule review under this article, the
31 Legislative Rule-Making Review Committee may establish
32 a procedure for timely review of a legislative rule prior to
33 its termination for those agencies that have affirmatively
34 sought renewal prior to expiration. The procedure may
35 include a requirement that the agency show cause as to why
36 the terminating legislative rule is required and necessary to
37 be continued for another term of years.

38 (e) The Secretary of State shall provide notice to the
39 promulgating agency and the Legislative Rule-Making
40 Review Committee at least 18 months prior to every
41 legislative rule's termination date. The promulgating
42 agency has 60 days from receipt of the notice to file the

43 legislative rule with the Secretary of State and the
44 Legislative Rule-Making Review Committee affirmatively
45 seeking renewal of the legislative rule: *Provided*, That the
46 legislative rule that is scheduled to sunset may not be
47 amended or changed except for a new sunset date and is not
48 subject to the public comment period requirements
49 contained in §29A-3-5 of this code. The Legislative Rule-
50 Making Review Committee, as part of its rule review under
51 this article, may begin reviewing a legislative rule upon its
52 filing.



CHAPTER 104

(Com. Sub. for H. B. 2982 - By Delegate Upson)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-15a; and to amend and reenact §29B-1-4 of said code, all relating to allowing certain winners of State Lottery draw games to remain anonymous; providing that a person entitled to collect proceeds exceeding one million dollars from a winning draw game ticket may remain anonymous in regards to his or her name, personal contact information, and likeness; establishing a procedure by which a draw game winner may request anonymity from the State Lottery Director; providing that a draw game winner who elects to remain anonymous must remit 5 percent of his or her winnings to the State Lottery Fund; establishing an effective date; and providing that information provided when a draw game winner elects to remain anonymous is exempt from disclosure under the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-15a. Option for winners of draw games to remain anonymous.

1 (a) A person entitled to collect proceeds exceeding one
2 million dollars from a winning draw game ticket may
3 remain anonymous: *Provided*, That such anonymity only
4 applies to the person's name, personal contact information,
5 and likeness.

6 (b) If the person entitled to collect proceeds exceeding
7 one million dollars from a winning draw game ticket desires
8 to remain anonymous, he or she shall contact the State
9 Lottery Director in writing or appear at the state lottery
10 headquarters in person, concerning his or her desire to
11 remain anonymous: *Provided*, That such a request only
12 permits that the person's name, personal contact
13 information, and likeness remain anonymous. At the time of
14 his or her request to remain anonymous, the person shall
15 provide his or her contact information, including any
16 personal telephone number, residential address, and
17 electronic mail address.

18 (c) Any request to remain anonymous may be made by
19 certified mail addressed to the West Virginia State Lottery
20 Director, P.O. Box 2067, Charleston, West Virginia 25327,
21 by electronic mail to an email address that is to be
22 established by West Virginia State Lottery prior to the
23 effective date of this section, or in person at the state lottery
24 headquarters. Once established, the secure email address
25 shall be posted on the West Virginia Lottery's website prior
26 to the effective date of this section.

27 (d) Upon receiving a request to remain anonymous, the
28 director shall contact the person requesting anonymity and
29 schedule an appointment to meet at any county, regional, or
30 state lottery office to confirm the winning number and to

31 otherwise make arrangements to protect the anonymity of
32 the requesting person.

33 (e) If a person elects to remain anonymous pursuant to
34 this section, he or she shall remit 5 percent of his or her
35 winnings to the State Lottery Fund.

36 (f) The requirements of this section are effective on
37 January 1, 2019.

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

*§29B-1-4. Exemptions.

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

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

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

*NOTE: This section was also amended by H. B. 4015 (Chapter 106),
which passed prior to this act.

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

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

31 (B) Records identifying motor vehicles used, and the
32 agencies using them, for undercover investigation activities
33 conducted by state law-enforcement agencies or other
34 agencies that are authorized by this code to use undercover
35 or unmarked vehicles;

36 (5) Information specifically exempted from disclosure
37 by statute;

38 (6) Records, archives, documents, or manuscripts
39 describing the location of undeveloped historic, prehistoric,
40 archaeological, paleontological, and battlefield sites or
41 constituting gifts to any public body upon which the donor
42 has attached restrictions on usage or the handling of which
43 could irreparably damage the record, archive, document, or
44 manuscript;

45 (7) Information contained in or related to examination,
46 operating or condition reports prepared by, or on behalf of,
47 or for the use of any agency responsible for the regulation
48 or supervision of financial institutions, except those reports
49 which are by law required to be published in newspapers;

50 (8) Internal memoranda or letters received or prepared
51 by any public body;

52 (9) Records assembled, prepared, or maintained to
53 prevent, mitigate, or respond to terrorist acts or the threat of
54 terrorist acts, the public disclosure of which threaten the
55 public safety or the public health;

56 (10) Those portions of records containing specific or
57 unique vulnerability assessments or specific or unique

58 response plans, data, databases and inventories of goods or
59 materials collected or assembled to respond to terrorist acts;
60 and communication codes or deployment plans of law-
61 enforcement or emergency response personnel;

62 (11) Specific intelligence information and specific
63 investigative records dealing with terrorist acts or the threat
64 of a terrorist act shared by and between federal and
65 international law-enforcement agencies, state and local law-
66 enforcement, and other agencies within the Department of
67 Military Affairs and Public Safety;

68 (12) National security records classified under federal
69 executive order and not subject to public disclosure under
70 federal law that are shared by federal agencies and other
71 records related to national security briefings to assist state
72 and local government with domestic preparedness for acts
73 of terrorism;

74 (13) Computing, telecommunications, and network
75 security records, passwords, security codes, or programs
76 used to respond to or plan against acts of terrorism which
77 may be the subject of a terrorist act;

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

80 (15) Architectural or infrastructure designs, maps, or
81 other records that show the location or layout of the facilities
82 where computing, telecommunications, or network
83 infrastructure used to plan against or respond to terrorism
84 are located or planned to be located;

85 (16) Codes for facility security systems; or codes for
86 secure applications for facilities referred to in subdivision
87 (15) of this subsection;

88 (17) Specific engineering plans and descriptions of
89 existing public utility plants and equipment;

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

93 (19) Records of the Division of Corrections, Regional
94 Jail and Correctional Facility Authority and the Division of
95 Juvenile Services relating to design of corrections, jail and
96 detention facilities owned or operated by the agency, and
97 the policy directives and operational procedures of
98 personnel relating to the safe and secure management of
99 inmates or residents, that if released, could be used by an
100 inmate or resident to escape a facility, or to cause injury to
101 another inmate, resident, or to facility personnel;

102 (20) Information related to applications under §61-7-4
103 of this code, including applications, supporting documents,
104 permits, renewals, or any other information that would
105 identify an applicant for or holder of a concealed weapon
106 permit: *Provided*, That information in the aggregate that
107 does not identify any permit holder other than by county or
108 municipality is not exempted: *Provided, however*, That
109 information or other records exempted under this
110 subdivision may be disclosed to a law-enforcement agency
111 or officer: (i) To determine the validity of a permit, (ii) to
112 assist in a criminal investigation or prosecution, or (iii) for
113 other lawful law-enforcement purposes;

114 (21) Personal information of law-enforcement officers
115 maintained by the public body in the ordinary course of the
116 employer-employee relationship. As used in this paragraph,
117 “personal information” means a law-enforcement officer’s
118 social security number, health information, home address,
119 personal address, personal telephone numbers, and personal
120 email addresses and those of his or her spouse, parents, and
121 children as well as the names of the law-enforcement
122 officer’s spouse, parents, and children; and

123 (22) Information provided by a person when he or she
124 elects to remain anonymous after winning a draw game
125 prize, pursuant to §29-22-15a of this code.

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

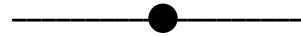
130 (1) Intimidate or coerce the civilian population;

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

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

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

137 (c) The provisions of subdivisions (9) through (16),
138 inclusive, subsection (a) of this section do not make subject
139 to the provisions of this chapter any evidence of an
140 immediate threat to public health or safety unrelated to a
141 terrorist act or the threat of a terrorist act which comes to the
142 attention of a public entity in the course of conducting a
143 vulnerability assessment response or similar activity.



CHAPTER 105

**(Com. Sub. for H. B. 4006 - By Delegates R. Romine,
Blair, Espinosa, Higginbotham, Cowles, Criss,
Ellington, Hamrick, Westfall, Atkinson and Statler)**

[Passed March 10, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2018.]

AN ACT to repeal §10-5-2a of the Code of West Virginia, 1931,
as amended; to repeal §18-2I-3 of said code; to repeal §18A-
3-2d of said code; to repeal §18A-3A-1, §18A-3A-2, §18A-
3A-2b, §18A-3A-3 and §18A-3A-5 of said code; to repeal

§18B-11-4 and §18B-11-6 of said code; to amend and reenact §4-13-2 of said code; to amend and reenact §5-26A-3 of said code; to amend and reenact §5B-2C-6 of said code; to amend and reenact §5F-1-2 of said code; to amend said code by adding thereto a new section, designated §5F-1-6; to amend and reenact §5F-2-1 of said code; to amend and reenact §6-7-2a of said code; to amend and reenact §18-2I-1, §18-2I-2 and §18-2I-4 of said code; to amend and reenact §18-10A-1, §18-10A-2, §18-10A-3, §18-10A-6a and §18-10A-12 of said code; to amend and reenact §18-30-4 of said code; to amend and reenact §18A-2-9 and §18A-2-12 of said code; to amend and reenact §18A-3-1, §18A-3-1d, §18A-3-2c and §18A-3-8 of said code; to amend and reenact §18A-3C-1, §18A-3C-2 and §18A-3C-3 of said code; to amend and reenact §18B-1B-2 of said code; to amend and reenact §18B-3D-2 of said code; to amend and reenact §18B-16-5 and §18B-16-8 of said code; to amend and reenact §18B-18B-1 of said code; and to amend and reenact §29-24-3 and §29-24-5 of said code, all relating to revising the processes through which professional development is delivered for those who provide public education in this state, including improvement of the focus on school-level continuous improvement processes led by the principal, generally; eliminating administrative offices, duplicative programs and obsolete provisions; repealing provisions related to creation and duties of distance learning coordinating council; repealing provisions related to annual state board professional development master plan; repealing provisions related to beginning principal internships; repealing provisions related to center for professional development and principals academy curriculum; repealing provisions related to center for development professional development project; repealing provisions related to principals academy establishment, mission, required attendance and employment of coordinator; repealing provisions related to pilot program of delivering educational services via distance learning; repealing provisions related to creation of depositories for assistive devices and services at two colleges or universities; repealing provisions creating the National Institute For Teaching Excellence and its governing

board; modifying membership of Sesquicentennial of the American Civil War Commission; modifying membership of Commission for National and Community Service; removing Department of Education and the Arts as option to provide technical support to the Academy of Science and Technology in preparation of annual report; eliminating Department of Education and the Arts as executive department headed by secretary; establishing internal effective date; transferring Division of Culture and History and Division of Rehabilitation Services to Department of Commerce; making the Educational Broadcasting Authority and Library Commission each an independent agency within executive branch; correcting names of agencies; eliminating salary of Secretary of Education and the Arts; modifying the scope and goals of the system for coordination and delivery of professional development to be instituted by State Board of Education; modifying legislative findings with respect to professional development; eliminating requirement for State Board of Education master plan for professional development; requiring State Board of Education rule to include process for aggregating school and system strategic plan information to assist design and delivery of professional development; transferring the Center for Professional Development to be under the authority and control of the State Board of Education; replacing references to the secretary and the Department of Education and the Arts in rehabilitation and vocational services related statutes; modifying membership of College Prepaid Tuition and Savings Program Board; including instructional leadership among the responsibilities of principals and requiring course work in instructional leadership and related topics as prerequisite for administrative certification; moving from a precertification requirement to a pre-employment requirement that principals, assistant principals and administrators complete education and training in evaluation skills; deleting provisions proscribing limitations on certain rights and privileges of principals and assistant principals as teachers; removing requirements for interaction between State Board of Education and Center for Professional Development regarding performance

evaluations; removing proscription of issuance or renewal of certain administrative certificate; removing requirement for State Board of Education consultation with Secretary of Education and Arts and Chancellor for Higher Education prior to exercise of authority over education; adding within standards for education of professional educators requirement providing for the study of the history and philosophical foundations of Western Civilization and the writings of the founders of the United States of America; eliminating references to regional education service agencies; removing requirement for State Board of Education to consult with Secretary of Education and the Arts and the Chancellor of Higher Education; removing provisions related to required training and professional development of principals through principals academy; adding instructional leadership and management techniques to required minimum standards for rule governing training of principals; removing language relating to waivers, ineligibility, progress tracking and expenses relating to training of principals; requiring county professional staff development councils to base proposals for staff development on analysis of individual and collective need indicated in school's strategic plans; incorporating development of certain teachers, principals, assistant principals, vocational administrators and others in the provisions for a comprehensive system to improve teaching and learning; making legislative finding that professional development resources must be focused rather than increased; removing obsolete provisions related to phased implementation of provisions for professional personnel evaluations; eliminating requirement for five percent of evaluations to be based on state summative assessment and increasing percent based on evidence of student learning by five percent; incorporating principals into the comprehensive system of support for improved professional performance; requiring deficiencies identified through personnel evaluations to be incorporated in strategic plans for continuous improvement; removing language requiring posting and other provisions relating to employment; restricting certain appropriations for certain activities;

modifying membership and selection process for members of Higher Education Policy Commission; modifying membership of Workforce Development Initiative Program Advisory Committee; updating agency references and removing Secretary of Education and the Arts with respect to rural health initiative; modifying membership of Science and Research Council; transferring certain references and responsibilities to Technology-Related Assistance Revolving Loan Fund For Individuals With Disabilities Board to Secretary of Commerce; directing the adoption and promulgation of rules and guidelines; and making consequential changes incident to the elimination of agencies or programs or the modification of duties, responsibilities and functions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 13. WEST VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION AND FUND.

§4-13-2. Membership; terms; filling vacancies; election of chair and vice chair.

- 1 (a) The Governor shall appoint twelve members as
2 follows:
 - 3 (1) Three academic historians;
 - 4 (2) The State Superintendent of Schools, or a designee;
 - 5 (3) One representative of the Division of Culture and
6 History;
 - 7 (4) One representative of the Division of Tourism;
 - 8 (5) One representative from the Herbert Henderson
9 Minority Affairs Office;

10 (6) Five citizens members, no more than one of whom
11 may be from any one state senatorial district;

12 (7) One member of the House of Delegates, to be
13 appointed by the Speaker of the House of Delegates, who
14 shall serve as an ex officio nonvoting member of the
15 commission; and

16 (8) One member of the Senate, to be appointed by the
17 President of the Senate, who shall serve as an ex officio
18 nonvoting member of the commission.

19 (b) The members shall serve until July 1, 2021.

20 (c) Appointments to fill vacancies shall be for the
21 unexpired terms. Vacancies shall be filled in the same
22 manner as the original appointments.

23 (d) The commission shall elect a chair and a vice chair
24 from among its members.

**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 26A. WEST VIRGINIA COMMISSION FOR
NATIONAL AND COMMUNITY SERVICE.**

§5-26A-3. Members.

1 (a) The West Virginia commission for national and
2 community service shall have no fewer than fifteen and no
3 more than twenty-five voting members to be appointed by
4 the Governor.

5 (b) The voting membership of the West Virginia
6 commission for national and community service shall
7 include:

8 (1) At least one individual with expertise in the
9 educational and developmental needs of the state's
10 disadvantaged youth;

11 (2) At least one individual with experience in promoting
12 the involvement of older adults in national or community
13 service and volunteer programs;

14 (3) A representative of a community-based agency
15 operating within the state;

16 (4) The State Superintendent of Schools or a designee;

17 (5) A representative of a county or municipal
18 government;

19 (6) A representative of a local labor organization;

20 (7) A representative of a for-profit business operating
21 within the state;

22 (8) An individual whose age is between the age of
23 sixteen years and twenty-five years, inclusive, who has
24 been, or remains, a participant or a supervisor in a volunteer
25 or service program; and

26 (9) A representative of an arts or crafts organization.

27 (c) The membership of the West Virginia Commission
28 for National and Community Service shall include a
29 representative of the corporation for national and
30 community service who shall serve as a member in a
31 nonvoting, ex officio capacity.

32 (d) No more than twenty-five percent of the voting
33 membership of the West Virginia commission for national
34 and community service may be individuals who are
35 employed by the state or its agencies, except that the
36 membership may include additional employees of the state
37 or its agencies in a nonvoting, ex officio capacity.

38 (e) No member of the West Virginia Commission for
39 National and Community Service may vote on an issue
40 affecting organizations for which the member has served as
41 a staff person or as a volunteer at any time during the
42 twelve-month period before the member's appointment to
43 the commission.

44 (f) No more than fifty percent plus one of the members
45 of the West Virginia Commission for National and
46 Community Service may be members of the same political
47 party.

48 (g) To the extent possible, the membership of the West
49 Virginia Commission for National and Community Service
50 shall reflect the diversity of the state's population.

51 (h) Members of the West Virginia Commission for
52 National and Community Service who were appointed
53 under the executive order of the Governor entered on
54 January 28, 1994, shall continue as members of the
55 commission for a term of three years, except that the
56 Governor shall designate eight members who shall serve for
57 a term of two years and shall also designate an additional
58 eight members who shall serve for a term of one year.
59 Additional appointments by the Governor under the
60 provisions of this section and appointments by the Governor
61 upon the expiration of a member's term shall be made for a
62 term of three years. Appointments of members by the
63 Governor to serve for an unexpired term shall be for the
64 remainder of the unexpired term. Members may be
65 reappointed.

66 (i) The voting members of the West Virginia
67 Commission for National and Community Service shall
68 annually elect a voting member to serve as the chair of the
69 commission.

70 (j) The members of the West Virginia Commission for
71 National and Community Service shall meet at the call of
72 the chair, who shall be obligated to call a meeting at the

73 request of a simple majority of the members or as necessary
74 to ensure that the members have met at least twice in each
75 calendar year of the commission's operation.

76 (k) The members of the West Virginia Commission for
77 National and Community Service shall serve without
78 compensation, except that the members of the commission
79 who are not state employees shall be reimbursed for their
80 actual and necessary expenses incurred in discharging their
81 duties and responsibilities as members of the commission.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2C. WEST VIRGINIA ACADEMY OF SCIENCE AND TECHNOLOGY.

§5B-2C-6. Periodic reports.

1 (a) The academy will prepare and produce an annual
2 report on the state of science and technology in West
3 Virginia and submit it to the Governor, the Speaker of the
4 House of Delegates, the President of the Senate and the joint
5 commission on economic development or before July 1, of
6 each year. The report shall address all aspects of research,
7 development and commercialization that the academy
8 council deems material, including, but not limited to:

9 (1) Strengths, weaknesses, opportunities, and threats to
10 West Virginia's research, development, and
11 commercialization environment and establishments;

12 (2) Options for actions by the Legislature and the
13 Governor to maximize the ability of the state to attract
14 investment, grants, and infrastructure development to
15 support growth of science and technology research,
16 development, and commercialization in the state;

17 (3) The status of, and options to improve, scientific and
18 technological entrepreneurship in West Virginia; and

19 (4) The status of, and options to improve, the
20 collaboration of institutions of higher education in obtaining
21 competitive research awards and grants.

22 (b) In preparing its annual report, the council may utilize
23 the technical support available to it through the West
24 Virginia Development Office, the West Virginia
25 Experimental Program to Stimulate Competitive Research
26 (EPSCoR), the West Virginia higher education system,
27 federal and state agencies, and other entities that have an
28 interest in fostering science and technology research,
29 development, and commercialization in this state.

30 (c) Each month, an academy representative shall meet
31 with legislative and executive leaders to provide updates
32 and information concerning opportunities, issues and
33 progress of science, technology, and commercialization in
34 the state.

**CHAPTER 5F. REORGANIZATION OF THE
EXECUTIVE BRANCH OF STATE GOVERNMENT.**

ARTICLE 1. GENERAL PROVISIONS.

**§5F-1-2. Executive departments created; offices of secretary
created.**

1 (a) There are created, within the executive branch of the
2 state government, the following departments:

3 (1) Department of Administration;

4 (2) Department of Environmental Protection;

5 (3) Department of Health and Human Resources;

6 (4) Department of Military Affairs and Public Safety;

7 (5) Department of Revenue;

8 (6) Department of Transportation;

9 (7) Department of Commerce; and

10 (8) Department of Veterans' Assistance.

11 (b) Each department will be headed by a secretary
12 appointed by the Governor with the advice and consent of
13 the Senate. Each secretary serves at the will and pleasure of
14 the Governor.

§5F-1-6. House Bill 4006 amendments effective date.

1 Except for instances where specifically provided
2 otherwise, all amendments to this code made by the passage
3 of House Bill 4006 during the 2018 regular session of the
4 Legislature shall become effective July 1, 2018.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

**§5F-2-1. Transfer and incorporation of agencies and boards;
funds.**

1 (a) The following agencies and boards, including all of
2 the allied, advisory, affiliated or related entities and funds
3 associated with any agency or board, are incorporated in and
4 administered as a part of the Department of Administration:

5 (1) Public Employees Insurance Agency provided in §5-
6 16-1 *et seq.* of this code;

7 (2) Governor's Mansion Advisory Committee provided
8 in §5A-5-1 *et seq.* of this code;

9 (3) Commission on Uniform State Laws provided in
10 §29-1A-1 *et seq.* of this code;

11 (4) West Virginia Public Employees Grievance Board
12 provided in §6C-3-1 *et seq.* of this code;

13 (5) Board of Risk and Insurance Management provided
14 in §29-12-1 *et seq.* of this code;

15 (6) Boundary Commission provided in §29-23-1 *et seq.*
16 of this code;

17 (7) Public Defender Services provided in §29-21-1 *et*
18 *seq.* of this code;

19 (8) Division of Personnel provided in §29-6-1 *et seq.* of
20 this code;

21 (9) The West Virginia Ethics Commission provided in
22 §6B-2-1 *et seq.* of this code;

23 (10) Consolidated Public Retirement Board provided in
24 §5-10D-1 *et seq.* of this code; and

25 (11) Real Estate Division provided in §5A-10-1 *et seq.*
26 of this code.

27 (b) The following agencies and boards, including all of
28 the allied, advisory, affiliated, or related entities and funds
29 associated with any agency or board, are incorporated in and
30 administered as a part of the Department of Commerce:

31 (1) Division of Labor provided in §21-1-1 *et seq.* of this
32 code, which includes:

33 (A) Occupational Safety and Health Review
34 Commission provided in §21-3A-1 *et seq.* of this code; and

35 (B) Board of Manufactured Housing Construction and
36 Safety provided in §21-9-1 *et seq.* of this code.

37 (2) Office of Miners' Health, Safety and Training
38 provided in §22A-1-1 *et seq.* of this code. The following
39 boards are transferred to the Office of Miners' Health,
40 Safety and Training for purposes of administrative support
41 and liaison with the Office of the Governor:

42 (A) Board of Coal Mine Health and Safety and Coal
43 Mine Safety and Technical Review Committee provided in
44 §22A-6-1 *et seq.* of this code;

45 (B) Board of Miner Training, Education and
46 Certification provided in §22A-7-1 *et seq.* of this code; and

47 (C) Mine Inspectors' Examining Board provided in
48 §22A-9-1 *et seq.* of this code.

49 (3) The West Virginia Development Office provided in
50 §5B-2-1 *et seq.* of this code;

51 (4) Division of Natural Resources and Natural
52 Resources Commission provided in §20-1-1 *et seq.* of this
53 code;

54 (5) Division of Forestry provided in §19-1A-1 *et seq.* of
55 this code;

56 (6) Geological and Economic Survey provided in §29-
57 2-1 *et seq.* of this code; and

58 (7) Workforce West Virginia provided in chapter 21A
59 of this code, which includes:

60 (A) Division of Unemployment Compensation;

61 (B) Division of Employment Service;

62 (C) Division of Workforce Development; and

63 (D) Division of Research, Information and Analysis.

64 (8) Office of Energy, within the Development Office,
65 provided in §5B-2F-1 *et seq.* of this code.

66 (9) West Virginia Tourism Office and Tourism
67 Commission provided in §5B-2I-1 *et seq.* of this code;

68 (10) Division of Culture and History provided in §29-1-
69 1 *et seq.* of this code; and

70 (11) Division of Rehabilitation Services provided in
71 §18-10A-1 *et seq.* of this code.

72 (c) The Economic Development Authority provided in
73 §31-15-1 *et seq.* of this code is continued as an independent
74 agency within the executive branch.

75 (d) The Water Development Authority and the Water
76 Development Authority Board provided in §22C-1-1 *et seq.*
77 of this code is continued as an independent agency within
78 the executive branch.

79 (e) The West Virginia Educational Broadcasting
80 Authority provided in §10-5-1 *et seq.* of this code and the
81 State Library Commission provided in §10-1-1 *et seq.* of
82 this code are each continued as separate independent
83 agencies within the executive branch.

84 (f) The following agencies and boards, including all of
85 the allied, advisory, and affiliated entities, are transferred to
86 the Department of Environmental Protection for purposes of
87 administrative support and liaison with the Office of the
88 Governor:

89 (1) Air Quality Board provided in §22B-2-1 *et seq.* of
90 this code;

91 (2) Solid Waste Management Board provided in §22C-
92 3-1 *et seq.* of this code;

93 (3) Environmental Quality Board, or its successor
94 board, provided in §22B-3-1 *et seq.* of this code;

95 (4) Surface Mine Board provided in §22B-4-1 *et seq.* of
96 this code;

97 (5) Oil and Gas Inspectors' Examining Board provided
98 in §22C-7-1 *et seq.* of this code;

99 (6) Shallow Gas Well Review Board provided in §22C-
100 8-1 *et seq.* of this code; and

101 (7) Oil and Gas Conservation Commission provided in
102 §22C-9-1 *et seq.* of this code.

103 (g) The following agencies and boards, including all of
104 the allied, advisory, affiliated, or related entities and funds
105 associated with any agency or board, are incorporated in and
106 administered as a part of the Department of Health and
107 Human Resources:

108 (1) Human Rights Commission provided in §5-11-1 *et*
109 *seq.* of this code;

110 (2) Bureau for Public Health provided in §16-1-1 *et seq.*
111 of this code;

112 (3) Office of Emergency Medical Services and the
113 Emergency Medical Service Advisory Council provided in
114 §16-4C-1 *et seq.* of this code;

115 (4) Health Care Authority provided in §16-29B *et seq.*
116 of this code;

117 (5) State Commission on Intellectual Disability
118 provided in §29-15-1 *et seq.* of this code;

119 (6) Women's Commission provided in §29-20-1 *et seq.*
120 of this code; and

121 (7) Bureau for Child Support Enforcement provided in
122 chapter 48 of this code.

123 (h) The following agencies and boards, including all of
124 the allied, advisory, affiliated, or related entities and funds
125 associated with any agency or board, are incorporated in and
126 administered as a part of the Department of Military Affairs
127 and Public Safety:

128 (1) Adjutant General's Department provided in §15-1A-
129 1 *et seq.* of this code;

130 (2) State Armory Board provided in §15-6-1 *et seq.* of
131 this code;

132 (3) Military Awards Board provided in §15-1G-1 *et seq.*
133 of this code;

134 (4) West Virginia State Police provided in §15-2-1 *et*
135 *seq.* of this code;

136 (5) Division of Homeland Security and Emergency
137 Management and Disaster Recovery Board provided in §15-
138 5-1 *et seq.* of this code and Emergency Response
139 Commission provided in §15-5A-1 *et seq.* of this code;

140 (6) Sheriffs' Bureau provided in §15-8-1 *et seq.* of this
141 code;

142 (7) Division of Justice and Community Services
143 provided in §15-9A-1 *et seq.* of this code;

144 (8) Division of Corrections provided in chapter 25 of
145 this code;

146 (9) Fire Commission provided in §29-3-1 *et seq.* of this
147 code;

148 (10) Regional Jail and Correctional Facility Authority
149 provided in §31-20-1 *et seq.* of this code; and

150 (11) Board of Probation and Parole provided in §62-12-
151 1 *et seq.* of this code.

152 (i) The following agencies and boards, including all of
153 the allied, advisory, affiliated or related entities and funds
154 associated with any agency or board, are incorporated in and
155 administered as a part of the Department of Revenue:

156 (1) Tax Division provided in chapter 11 of this code;

157 (2) Racing Commission provided in §19-23-1 *et seq.* of
158 this code;

159 (3) Lottery Commission and position of Lottery
160 Director provided in §29-22-1 of this code;

161 (4) Insurance Commissioner provided in §33-2-1 *et seq.*
162 of this code;

163 (5) West Virginia Alcohol Beverage Control
164 Commissioner provided in §11-16-1 *et seq.* of this code and
165 §60-2-1 *et seq.* of this code;

166 (6) Board of Banking and Financial Institutions
167 provided in §31A-3-1 *et seq.* of this code;

168 (7) Lending and Credit Rate Board provided in chapter
169 47A of this code;

170 (8) Division of Financial Institutions provided in §31A-
171 2-1 *et seq.* of this code;

172 (9) The State Budget Office provided in §11B-2-1 *et*
173 *seq.* of this code;

174 (10) The Municipal Bond Commission provided in §13-
175 3-1 *et seq.* of this code;

176 (11) The Office of Tax Appeals provided in §11-10A-1
177 of this code; and

178 (12) The State Athletic Commission provided in §29-
179 5A-1 *et seq.* of this code.

180 (j) The following agencies and boards, including all of
181 the allied, advisory, affiliated, or related entities and funds
182 associated with any agency or board, are incorporated in and
183 administered as a part of the Department of Transportation:

184 (1) Division of Highways provided in §17-2A-1 *et seq.*
185 of this code;

186 (2) Parkways Authority provided in §17-16A-1 *et seq.*
187 of this code;

188 (3) Division of Motor Vehicles provided in §17A-2-1 *et*
189 *seq.* of this code;

190 (4) Driver's Licensing Advisory Board provided in
191 §17B-2-1 *et seq.* of this code;

192 (5) Aeronautics Commission provided in §29-2A-1 *et*
193 *seq.* of this code;

194 (6) State Rail Authority provided in §29-18-1 *et seq.* of
195 this code; and

196 (7) Public Port Authority provided in §17-16B-1 *et seq.*
197 of this code.

198 (k) Effective July 1, 2011, the Veterans' Council
199 provided in §9A-1-1 *et seq.* of this code, including all of the
200 allied, advisory, affiliated, or related entities and funds
201 associated with it, is incorporated in and administered as a
202 part of the Department of Veterans' Assistance.

203 (l) Except for powers, authority and duties that have
204 been delegated to the secretaries of the departments by the
205 provisions of §5F-2-2 of this code, the position of
206 administrator and the powers, authority, and duties of each
207 administrator and agency are not affected by the enactment
208 of this chapter.

209 (m) Except for powers, authority and duties that have
210 been delegated to the secretaries of the departments by the
211 provisions of §5F-2-2 of this code, the existence, powers,
212 authority, and duties of boards and the membership, terms
213 and qualifications of members of the boards are not affected
214 by the enactment of this chapter. All boards that are
215 appellate bodies or are independent decision makers shall
216 not have their appellate or independent decision-making
217 status affected by the enactment of this chapter.

218 (n) Any department previously transferred to and
219 incorporated in a department by prior enactment of this
220 section means a division of the appropriate department.
221 Wherever reference is made to any department transferred
222 to and incorporated in a department created in §5F-1-2 of
223 this code, the reference means a division of the appropriate
224 department and any reference to a division of a department
225 so transferred and incorporated means a section of the
226 appropriate division of the department.

227 (o) When an agency, board, or commission is
228 transferred under a bureau or agency other than a
229 department headed by a secretary pursuant to this section,
230 that transfer is solely for purposes of administrative support
231 and liaison with the Office of the Governor, a department
232 secretary or a bureau. Nothing in this section extends the
233 powers of department secretaries under §5F-2-2 of this code
234 to any person other than a department secretary and nothing
235 limits or abridges the statutory powers and duties of
236 statutory commissioners or officers pursuant to this code.

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
11 and shall perform all of the functions and services
12 heretofore vested in and performed by virtue of existing law
13 respecting each office.

14 The annual salary of each named appointive state officer
15 is as follows:

*NOTE: This section was also amended by H. B. 4338 (Chapter 107), which passed subsequent to this act.

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 Financial
20 Institutions, \$75,000; Commissioner, Division of Culture
21 and History, \$65,000; Commissioner, Alcohol Beverage
22 Control Commission, \$75,000; Commissioner, Division of
23 Motor Vehicles, \$75,000; Director, Human Rights
24 Commission, \$55,000; Commissioner, Division of Labor,
25 \$70,000; Chairperson, Board of Parole, \$55,000; members,
26 Board of Parole, \$50,000; members, Employment Security
27 Review Board, \$17,000; and Commissioner, Workforce
28 West Virginia, \$75,000. Secretaries of the departments shall
29 be paid an annual salary as follows: Health and Human
30 Resources, \$95,000: *Provided*, That effective July 1, 2013,
31 the Secretary of the Department of Health and Human
32 Resources shall be paid an annual salary not to exceed
33 \$175,000; Transportation, \$95,000: *Provided, however*,
34 That if the same person is serving as both the Secretary of
35 Transportation and the Commissioner of Highways, he or
36 she shall be paid \$120,000; Revenue, \$95,000; Military
37 Affairs and Public Safety, \$95,000; Administration,
38 \$95,000; Commerce, \$95,000; Veterans' Assistance,
39 \$95,000; and Environmental Protection, \$95,000: *Provided*
40 *further*, That any officer specified in this subsection whose
41 salary is increased by more than \$5,000 as a result of the
42 amendment and reenactment of this section during the 2011
43 regular session of the Legislature shall be paid the salary
44 increase in increments of \$5,000 per fiscal year beginning
45 July 1, 2011, up to the maximum salary provided in this
46 subsection.

47 (b) Each of the state officers named in this subsection
48 shall continue to be appointed in the manner prescribed in
49 this code and shall be paid an annual salary as follows:

50 Director, Board of Risk and Insurance Management,
51 \$80,000; Director, Division of Rehabilitation Services,
52 \$70,000; Director, Division of Personnel, \$70,000;

53 Executive Director, Educational Broadcasting Authority,
54 \$75,000; Secretary, Library Commission, \$72,000;
55 Director, Geological and Economic Survey, \$75,000;
56 Executive Director, Prosecuting Attorneys Institute,
57 \$80,000; Executive Director, Public Defender Services,
58 \$70,000; Commissioner, Bureau of Senior Services,
59 \$75,000; Executive Director, Women's Commission,
60 \$45,000; Director, Hospital Finance Authority, \$35,000;
61 member, Racing Commission, \$12,000; Chairman, Public
62 Service Commission, \$85,000; members, Public Service
63 Commission, \$85,000; Director, Division of Forestry,
64 \$75,000; Director, Division of Juvenile Services, \$80,000;
65 Executive Director, Regional Jail and Correctional Facility
66 Authority, \$80,000; and Executive Director of the Health
67 Care Authority, \$80,000.

68 (c) Each of the following appointive state officers
69 named in this subsection shall be appointed by the
70 Governor, by and with the advice and consent of the Senate.
71 Each of the appointive state officers serves at the will and
72 pleasure of the Governor for the term for which the
73 Governor was elected and until the respective state officers'
74 successors have been appointed and qualified. Each of the
75 appointive state officers are subject to the existing
76 qualifications for holding each respective office and each
77 has and is hereby granted all of the powers and authority and
78 shall perform all of the functions and services heretofore
79 vested in and performed by virtue of existing law respecting
80 each office.

81 The annual salary of each named appointive state officer
82 shall be as follows:

83 Commissioner, State Tax Division, \$92,500; Insurance
84 Commissioner, \$92,500; Director, Lottery Commission,
85 \$92,500; Director, Division of Homeland Security and
86 Emergency Management, \$65,000; and Adjutant General,
87 \$125,000.

88 (d) No increase in the salary of any appointive state
89 officer pursuant to this section may be paid until and unless
90 the appointive state officer has first filed with the State
91 Auditor and the Legislative Auditor a sworn statement, on a
92 form to be prescribed by the Attorney General, certifying
93 that his or her spending unit is in compliance with any
94 general law providing for a salary increase for his or her
95 employees. The Attorney General shall prepare and
96 distribute the form to the affected spending units.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC
RECREATION; ATHLETIC ESTABLISHMENTS;
MONUMENTS AND MEMORIALS; ROSTER OF
SERVICEMEN; EDUCATIONAL BROADCASTING
AUTHORITY.**

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

**§10-5-2a. West Virginia distance learning coordinating
council; creation; duties.**

1 [Repealed.]

CHAPTER 18. EDUCATION.

**ARTICLE 2I. STATE-LEVEL LEADERSHIP FOR
PROFESSIONAL DEVELOPMENT SYSTEM.**

**§18-2I-1. Professional development coordination and
delivery; system goals.**

1 The purpose of this article is to establish clear state-level
2 leadership for professional development for all West
3 Virginia public school educators and administrators. As the
4 state institution charged with the general supervision of the
5 state school system, the state board shall institute a system
6 for the coordination and delivery of high-quality
7 professional development. The system shall clearly define
8 the goals for professional development and delineate roles
9 and responsibilities of the various state, school district and
10 individual school levels for the delivery of high-quality

11 professional development. The state board shall include
12 among the goals for the system of professional development
13 the following:

14 (1) The instructional leadership skills of principals are
15 developed to ensure that each school is led by a principal
16 who is knowledgeable of continuous improvement
17 processes and capable of leading effective improvement
18 efforts. The principal also must understand the value of fair
19 and accurate personnel performance evaluations as an
20 effective, continuous improvement effort to drive
21 professional learning at the school level;

22 (2) Professional development is among the array of
23 supports and processes necessary under a performance-
24 based accreditation system to build the capacity of schools
25 to impact student performance and well-being by increasing
26 staff individual and collective skills, competencies, and
27 abilities. It should be based on a thorough analysis of
28 accountability data and strategic planning for continuous
29 improvement that addresses those areas that must be a
30 priority for individual school support, including an analysis
31 of personnel evaluation data in order to target individualized
32 professional learning at the school level;

33 (3) The school is the unit of change. Local and state
34 resources, policies, and procedures must focus on assisting
35 the improvement of each West Virginia school and on
36 differentiating supports according to need and level of
37 performance, including the implementation of school-based
38 professional development programs that address the unique
39 needs of staff and students; and

40 (4) Professional development should be delivered using
41 techniques, school schedules or time in a manner that does
42 not diminish student learning by the absence of their
43 classroom teacher.

§18-2I-2. Legislative findings.

1 The Legislature finds:

2 (1) That high-quality professional development is
3 critical in supporting improved practice, assuring teacher
4 quality and raising student achievement;

5 (2) That professional development is vital in the state's
6 overall school improvement efforts;

7 (3) That the state board shall assure the efficient
8 delivery of high-quality professional development
9 programs and that the duplication of efforts be
10 minimized;

11 (4) That the state board shall assure all stakeholders are
12 appropriately involved in the planning and implementing of
13 programs to meet requisite needs and that high-quality
14 professional development programs be provided to public
15 school educators of West Virginia in the most efficient and
16 cost effective manner;

17 (5) That continuous improvement is the on-going
18 process of planning, determining, implementing, and
19 refining efforts to improve student performance and well-
20 being. It is the collective staff process of analyzing student
21 performance data, studying current school and classroom
22 practices, determining root causes, researching solutions,
23 and implementing processes outlined in the school's
24 strategic plan; and

25 (6) That the capacity for excellence resides in every
26 school. Schools are responsible for creating school-wide
27 and classroom conditions that produce student success.
28 Every school needs quality leadership and the flexibility and
29 support to make the decisions that will lead to the
30 achievement of all students.

**§18-2I-3. Annual professional development master plan
established by state board.**

1 [Repealed.]

§18-2I-4. Coordination, development and evaluation of professional development programs.

1 (a) On or before November 1, 2018, the state board shall
2 promulgate a rule in accordance with §29A-3B-1 *et seq.* of
3 this code to ensure the coordination, development and
4 evaluation of high-quality professional development
5 programs. The rule shall include, but is not limited to, the
6 following:

7 (1) Standards for quality professional development that
8 all professional development providers shall use in
9 designing, implementing, and evaluating professional
10 development that shall become part of the system for the
11 coordinated delivery of high-quality professional
12 development established by the state board;

13 (2) Processes for aggregating information, in part from
14 school and school district strategic plans, to determine areas
15 of common need for professional development, as well as
16 those more varied, to assist in the design of the most
17 effective and efficient method and level of delivery;

18 (3) Processes for assuring professional development
19 resources are appropriately allocated to identified areas of
20 need;

21 (4) Processes for evaluating the effectiveness,
22 efficiency, and impact of the professional development;

23 (5) Processes for ensuring all stakeholders, including
24 affected principals and classroom teachers, have a voice in
25 the identification of needed professional development and
26 various delivery models;

27 (6) Processes for collaboration among West Virginia
28 Department of Education, county boards, principals and
29 classroom teachers; and

30 (7) Processes for ensuring that the expertise and
31 experience of state institutions of higher education with

32 teacher preparation programs are included in developing
33 and implementing professional development programs.

34 (b) The Center for Professional Development, formerly
35 provided for under §18A-3A-1 *et seq.* of this code before
36 the effective date of the amendment and reenactment of this
37 section during the 2018 regular session of the Legislature,
38 is hereby transferred to be under the authority and control
39 of the state board. To assist in the delivery of high quality
40 professional development for teachers, principals, and other
41 school employees, the state board shall incorporate within
42 the Department of Education the Center for Professional
43 Development whose general mission shall be under the
44 direction of the state board to advance the quality of
45 teaching and learning in the schools of West Virginia
46 through programs, technical assistance and support to
47 schools and school systems to meet the legislative findings
48 and goals of this article. The center shall perform other
49 duties that may be assigned to it by the state board. In
50 addition, the center shall provide statewide coordination for
51 the continued growth and development of advanced
52 placement programs in West Virginia high schools,
53 including, but not limited to, serving as a liaison for The
54 College Board, Inc., and providing for the training of
55 advanced placement teachers.

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-1. Definitions.

1 As used in this article and §18-10B-1 *et seq.* of this
2 code:

3 (1) “State board” means the Secretary of the Department
4 of Commerce, or where required by federal law, the board,
5 commission or council designated by the Secretary of the
6 Department of Commerce to oversee certain functions of
7 the Division of Rehabilitation Services. All references in
8 this code to the state board of vocational education, except
9 where the context clearly indicates the provision of

10 vocational education to other than disabled individuals,
11 means the state board defined by this subsection.

12 (2) "Division" means the division of vocational
13 rehabilitation established by this article.

14 (3) "Director" means the director of the division of
15 vocational rehabilitation.

16 (4) "Employment handicap" means a physical or mental
17 condition which constitutes, contributes to, or if not
18 corrected will probably result in, an obstruction to
19 occupational performance.

20 (5) "Disabled individual" means any person who has a
21 substantial employment handicap.

22 (6) "Vocational rehabilitation" and "vocational
23 rehabilitation services" means any services, provided
24 directly or through public or private instrumentalities, found
25 by the director to be necessary to compensate a disabled
26 individual for his or her employment handicap and to enable
27 him or her to engage in a remunerative occupation
28 including, but not limited to, medical and vocational
29 diagnosis, vocational guidance, counseling and placement,
30 rehabilitation training, attendant care services, physical
31 restoration, transportation, occupational licenses,
32 occupational tools and equipment, including motor
33 vehicles, maintenance, and training books and materials.

34 (7) "Rehabilitation training" means all necessary
35 training provided to a disabled individual to compensate for
36 his or her employment handicap including, but not limited
37 to, manual, preconditioning, prevocational, vocational, and
38 supplementary training and training provided for the
39 purpose of achieving broader or more remunerative skills
40 and capacities.

41 (8) "Physical restoration" means any medical, surgical,
42 or therapeutic treatment necessary to correct or substantially
43 reduce a disabled individual's employment handicap within

44 a reasonable length of time including, but not limited to,
45 medical, psychiatric, dental and surgical treatment, nursing
46 services, hospital care not to exceed ninety days,
47 convalescent home care, drugs, medical and surgical
48 supplies, and prosthetic appliances, but excluding curative
49 treatment for acute or transitory conditions.

50 (9) “Prosthetic appliance” means any artificial device
51 necessary to support or take the place of a part of the body
52 or to increase the acuity of a sense organ.

53 (10) “Occupational licenses” means any license, permit
54 or other written authority required by any governmental unit
55 to be obtained in order to engage in an occupation.

56 (11) “Maintenance” means money payments not
57 exceeding the estimated cost of subsistence during
58 vocational rehabilitation.

59 (12) “Regulations” means regulations made by the
60 director with the approval of the secretary of the Department
61 of Commerce or the state board.

62 (13) “Attendant care evaluation unit” means any agency
63 certified by the division of vocational rehabilitation that
64 employs a qualified evaluator to provide evaluations and
65 attendant referrals such as the centers for independent
66 living, the West Virginia Rehabilitation Center and any
67 other unit approved by the division.

68 (14) “Attendant care services” means services which
69 include, but are not limited to:

70 (a) Routine bodily functions such as bowel and bladder
71 care;

72 (b) Dressing;

73 (c) Ambulation;

- 74 (d) Meal preparation and consumption;
 - 75 (e) Assistance in moving in and out of bed;
 - 76 (f) Bathing and grooming;
 - 77 (g) Housecleaning and laundry; and
 - 78 (h) Any other similar activity of daily living.
- 79 (15) "Attendant" means a self-employed individual who
80 is trained to perform attendant care services and who works
81 as an independent contractor.

§18-10A-2. Division of Rehabilitation Services.

1 (a) The Division of Rehabilitation Services is
2 transferred to the Department of Commerce created in §5F-
3 1-1 *et seq.* of this code. The secretary shall appoint any
4 board, commission, or council over the division to the extent
5 required by federal law to qualify for federal funds for
6 providing rehabilitation services for disabled persons. The
7 secretary and the boards, commissions or councils as he or
8 she is required by federal law to appoint are authorized and
9 directed to cooperate with the federal government to the
10 fullest extent in an effort to provide rehabilitation services
11 for disabled persons.

12 (b) References in this article or §18-10B-1 *et seq.* of this
13 code to the state Board of Vocational Education, the state
14 Board of Rehabilitation or the state board as the governing
15 board of vocational or other rehabilitation services or
16 facilities mean the Secretary of Commerce. All references
17 in the code to the Division of Vocational Rehabilitation
18 mean the Division of Rehabilitation Services and all
19 references to the Director of the Division of Vocational
20 Rehabilitation means the Director of the Division of
21 Rehabilitation Services.

§18-10A-3. Director of division of vocational rehabilitation; powers and duties.

1 The division shall be administered, under the general
2 supervision and direction of the Secretary of the Department
3 of Commerce or, if required by federal law his or her
4 designated state board, by a director appointed by the
5 secretary, or if required by federal law his or her designated
6 state board in accordance with established personnel
7 standards and on the basis of his or her education, training,
8 experience, and demonstrated ability.

9 In carrying out his or her duties under this article, the
10 director shall:

11 (1) Appoint such personnel as he or she considers
12 necessary for the efficient performance of the functions of
13 the division.

14 (2) Establish a merit system of personnel management,
15 or in lieu thereof, avail himself or herself of the services of
16 the state merit system upon payment of a fair share of the
17 expenses of the operation of the system.

18 (3) Make regulations governing the protection of
19 records and confidential information; the manner and form
20 of filing applications for vocational rehabilitation services,
21 eligibility therefor, and investigation and determination
22 thereof; procedures for fair hearings; and such other matters
23 as may be necessary or desirable in accomplishing the
24 purposes of this article.

25 (4) Have the authority to establish and operate a staff
26 development program for the employees of the division and
27 may, in furtherance of such a program, and utilizing any
28 funds appropriated or made available, for such purpose, pay
29 to the employees compensation or expenses, or both, while
30 the employees are pursuing approved training courses or
31 academic studies for the purpose of becoming better
32 equipped for their employment in the division; the staff
33 development program shall be conducted subject to

34 appropriate rules as adopted by the director and approved
35 by the state board: *Provided*, That these rules shall include
36 reasonable provisions for the return of any employee,
37 receiving the benefits of such training, for a reasonable
38 period of duty, or for reimbursement to the state for
39 expenditures incurred on behalf of the training of such
40 employee.

41 (5) Establish appropriate subordinate administrative
42 units within the division.

43 (6) Prepare and submit to the Secretary of the
44 Department of Commerce or his or her designated state
45 board annual reports of activities and expenditures and,
46 prior to each regular session of the Legislature, estimates of
47 sums required for carrying out the provisions of this article
48 and estimates of the amounts to be made available for this
49 purpose from all sources.

50 (7) Make requisition for disbursement, in accordance
51 with regulations of the funds available for vocational
52 rehabilitation purposes.

53 (8) Take such other action as may be determined
54 necessary or appropriate to carry out the purposes of this
55 article.

§18-10A-6a. West Virginia Rehabilitation Services Special Account; expenditures.

1 (a) There is hereby established in the State Treasury a
2 separate account which shall be designated the “West
3 Virginia Rehabilitation Services Special Account”. The
4 director of rehabilitation services shall deposit promptly
5 into the account all fees received for services provided by
6 the West Virginia Rehabilitation Center from whatever
7 source, including the federal government, state government
8 or from other third-party payers or personal payments.

9 (b) A five-year West Virginia rehabilitation services
10 long-range plan shall be developed by the director and shall

11 be adopted by the Secretary of Commerce. The West
12 Virginia rehabilitation services' long-range plan shall be
13 updated and revised at least every two years.

14 (c) The director may expend the moneys deposited in
15 the West Virginia Rehabilitation Services Special Account
16 in accordance with federal laws and regulations and with the
17 laws of this state necessary for the development of the five-
18 year long-range plan and subsequent revisions.

19 (d) The director may expend the moneys deposited in
20 the West Virginia Rehabilitation Services Special Account
21 as provided in the long-range plan at such times and in such
22 amounts as the director determines to be necessary for the
23 purpose of maintaining or improving the delivery of
24 rehabilitation services: *Provided*, That during the budget
25 preparation period which occurs prior to the convening of
26 the Legislature, the director shall submit for inclusion in the
27 executive budget document and budget bill his or her
28 recommended capital expenditures, recommended
29 priorities, estimated costs, and request for appropriations for
30 maintaining or improving the delivery of vocational
31 rehabilitation services.

32 (e) The director shall make an annual report to the
33 Legislature on the status of the West Virginia Rehabilitation
34 Services Special Account, including the previous year's
35 expenditures and projected expenditures for the next year.

**§18-10A-12. Vocational evaluation and work adjustment
program for disadvantaged individuals.**

1 The division, under the direction of any federally
2 mandated board, commission, or council appointed by the
3 Secretary of the Department of Commerce, is authorized
4 and directed to cooperate with the federal government in
5 providing vocational evaluation and work adjustment
6 services to disadvantaged individuals.

7 "Vocational evaluation and work adjustment services"
8 include, as appropriate in each case, such services as:

9 (a) A preliminary diagnostic study to determine that the
10 individual is disadvantaged, has an employment handicap,
11 and that services are needed;

12 (b) A thorough diagnostic study consisting of a
13 comprehensive evaluation of pertinent medical,
14 psychological, vocational, educational, cultural, social, and
15 environmental factors which bear on the individual's
16 handicap to employment and rehabilitation potential
17 including, to the degree needed, an evaluation of the
18 individual's personality, intelligence level, educational
19 achievements, work experience, vocational aptitudes and
20 interests, personal and social adjustments, employment
21 opportunities, and other pertinent data helpful in
22 determining the nature and scope of services needed;

23 (c) Services to appraise the individual's patterns of work
24 behavior and ability to acquire occupational skills, and to
25 develop work attitudes, work habits, work tolerance, and
26 social and behavior patterns suitable for successful job
27 performance, including the utilization of work, simulated or
28 real, to assess and develop the individual's capacities to
29 perform adequately in a work environment;

30 (d) Any other goods or services provided to a
31 disadvantaged individual, determined (in accordance with
32 regulations of the federal government) to be necessary for,
33 and which are provided for the purpose of, ascertaining the
34 nature of the handicap to employment and whether it may
35 reasonably be expected the individual can benefit from
36 vocational rehabilitation services or other services available
37 to disadvantaged individuals;

38 (e) Outreach, referral, and advocacy; and

39 (f) The administration of these evaluation and work
40 adjustment services.

41 As used in this section, the term "disadvantaged
42 individuals" means: (1) Disabled individuals as defined in

43 §18-10A-1(5) of this code; (2) individuals disadvantaged by
44 reason of their youth or advanced age, low educational
45 attainments, ethnic or cultural factors, prison or delinquency
46 records, or other conditions which constitute a barrier to
47 employment; and (3) other members of their families when
48 the provision of vocational rehabilitation services to family
49 members is necessary for the rehabilitation of the individual
50 described in subdivision (1) or (2) above.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.

1 (a) The West Virginia college prepaid tuition and
2 savings program is continued. The program consists of a
3 prepaid tuition plan and a savings plan.

4 (b) The board of the college prepaid tuition and savings
5 program is continued and all powers, rights and
6 responsibilities of the board of trustees of the prepaid tuition
7 trust fund are vested in the board of the college prepaid
8 tuition and savings program.

9 (c) The board consists of eight members and includes
10 the following:

11 (1) The State Treasurer, or his or her designee;

12 (2) A representative of the Higher Education Policy
13 Commission, who may or may not be a member of the
14 Higher Education Policy Commission, appointed by the
15 commission who serves as a voting member of the board;

16 (3) A representative of the Council for Community and
17 Technical College Education, who may or may not be a
18 member of the Council for Community and Technical
19 College Education, appointed by the council who serves as
20 a voting member of the board; and

21 (4) Five other members, appointed by the Governor,
22 with knowledge, skill and experience in an arts, academic,
23 business or financial field, to be appointed as follows:

24 (A) Two private citizens not employed by, or an officer
25 of, the state or any political subdivision of the state;

26 (B) One member representing the interests of private
27 institutions of higher education located in this state
28 appointed from one or more nominees of the West Virginia
29 association of private colleges; and

30 (C) Two members representing the public.

31 (d) The public members and the member representing
32 the interests of private institutions of higher education are
33 appointed by the Governor with the advice and consent of
34 the Senate.

35 (e) Only state residents are eligible for appointment to
36 the board.

37 (f) Members appointed by the Governor serve a term of
38 five years and are eligible for reappointment at the
39 expiration of their terms. If there is a vacancy among
40 appointed members, the Governor shall appoint a person
41 representing the same interests to fill the unexpired term.

42 (g) Members of the board serve until the later of the
43 expiration of the term for which the member was appointed
44 or the appointment of a successor. Members of the board
45 serve without compensation. The treasurer may pay all
46 expenses, including travel expenses, actually incurred by
47 board members in the conduct of their official duties.
48 Expense payments are made from the college prepaid
49 tuition and savings program administrative account, and are
50 made at the same rate paid to state employees.

51 (h) The treasurer may provide support staff and office
52 space for the board.

53 (i) The treasurer is the chairman and presiding officer of
54 the board, and may appoint the employees the board
55 considers advisable or necessary. A majority of the
56 members of the board constitute a quorum for the
57 transaction of the business of the board.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-9. Duties and responsibilities of school principals; assistant principals.

1 (a) Upon the recommendation of the county
2 superintendent of schools, the county board of education
3 shall employ and assign, through written contract, public
4 school principals who shall be the principal instructional
5 leader of the school and shall supervise the management and
6 the operation of the school or schools to which they are
7 assigned to improve student performance and progress. The
8 principals shall hold valid administrative certificates
9 appropriate for their assignments.

10 (b)(1) Beginning on July 1, 1994, the prerequisites for
11 issuance of an administrative certificate for principals shall
12 include that the person has successfully completed at least
13 six credit hours of approved course work in public school
14 management techniques at an accredited institution of
15 higher education and has successfully completed education
16 and training in evaluation skills approved by the state board.

17 (2) Beginning on July 1, 2019, the prerequisites for
18 issuance of an administrative certificate for principals shall
19 include that the person has successfully completed at least
20 six credit hours of approved course work in public school
21 instructional leadership and management techniques at an
22 accredited institution of higher education, including, but not
23 limited to, the standards for high quality schools, the school
24 accreditation process and strategic planning for continuous
25 improvement.

26 (c) Prior to employment as a principal or assistant
27 principal, or in another administrative position the duties of
28 which require conducting personnel performance
29 evaluations, the principal, assistant or administrator shall
30 successfully complete education and training in evaluation
31 skills approved by the state board.

32 (d) Under the supervision of the superintendent and in
33 accordance with the rules and regulations of the county
34 board of education, the principal:

35 (1) Shall assume administrative and instructional
36 leadership responsibility for the planning, management,
37 operation, and evaluation of the total educational program
38 of the school or schools to which he or she is assigned.

39 (2) May submit recommendations to the superintendent
40 regarding the appointment, assignment, promotion, transfer
41 and dismissal of all personnel assigned to the school or
42 schools under said principal's control. The
43 recommendations shall be submitted in writing as
44 prescribed by the superintendent; and

45 (3) Shall perform such other duties as may be assigned
46 by the superintendent pursuant to the rules and regulations
47 of the county board of education.

48 (e) Upon recommendation of the county superintendent
49 of schools, the county board of education shall, when
50 needed, employ and assign, through written contract,
51 assistant principals who shall work under the direction of
52 the school principal. Such assistant principals shall hold
53 valid administrative certificates appropriate for their
54 assignments.

55 (f) The assignment of principals and assistant principals
56 by each county board of education is subject to the
57 following:

58 (1) A certificated principal shall be assigned to each
59 school;

60 (2) A principal may not be assigned more than two
61 schools;

62 (3) No additional schools may be assigned to the
63 principal of a school where enrollment exceeds four
64 hundred students;

65 (4) A principal assigned to more than one school may
66 not be assigned any teaching duties except on a temporary
67 emergency basis;

68 (5) A principal shall be assigned full-time at each school
69 whose net enrollment equals or exceeds one hundred
70 seventy students and may not be assigned any teaching
71 duties except on a temporary emergency basis;

72 (6) A principal assigned on a full-time basis to a school
73 whose net enrollment is more than seventy-five students but
74 less than one hundred seventy students shall have a
75 minimum of twenty hours per week for nonteaching duties;

76 (7) A principal assigned on a full-time basis to a school
77 with seventy-five students or less shall have a minimum of
78 ten hours per week for nonteaching duties;

79 (8) Nothing in this section prohibits a county board of
80 education from assigning a full-time principal to a school
81 with a net enrollment of less than one hundred seventy
82 students; and

83 (9) The State Board of Education may not deny a county
84 board of education the right to place a principal in a school
85 with less than one hundred seventy students.

**§18A-2-12. Performance evaluations of school personnel;
professional personnel evaluation process; restrictions on
requirements on lesson plans and record keeping by
classroom teachers.**

1 (a) The state board shall adopt a written system for the
2 evaluation of the employment performance of personnel,

3 which system shall be applied uniformly by county boards
4 in the evaluation of the employment performance of
5 personnel employed by the board.

6 (b) The system adopted by the state board for evaluating
7 the employment performance of professional personnel
8 shall be in accordance with the provisions of this section.

9 (c) For purposes of this section, “professional
10 personnel”, “professional”, or “professionals”, means
11 professional personnel and other professional employees, as
12 defined in §18A-1-1 of this code but does not include
13 classroom teachers, principals, and assistant principals
14 subject to the evaluation processes established pursuant to
15 §18A-3C-2 of this code.

16 (d) The performance evaluation system shall contain,
17 but not be limited to, the following information:

18 (1) The professional personnel positions to be
19 evaluated;

20 (2) The frequency and duration of the evaluations,
21 which shall be of such frequency and duration as to insure
22 the collection of a sufficient amount of data from which
23 reliable conclusions and findings may be drawn, but at least
24 annually;

25 (3) The evaluation shall serve the following purposes:

26 (A) Serve as a basis for the improvement of the
27 performance of the personnel in their assigned duties;

28 (B) Provide an indicator of satisfactory performance for
29 individual professionals;

30 (C) Serve as documentation for a dismissal on the
31 grounds of unsatisfactory performance; and

32 (D) Serve as a basis for programs to increase the
33 professional growth and development of professional
34 personnel;

35 (4) The standards for satisfactory performance for
36 professional personnel and the criteria to be used to
37 determine whether the performance of each professional
38 meets those standards and other criteria for evaluation for
39 each professional position evaluated. Professional
40 personnel, as appropriate, shall demonstrate competency in
41 the knowledge and implementation of the technology
42 standards adopted by the state board. If a professional fails
43 to demonstrate competency in the knowledge and
44 implementation of these standards, he or she will be subject
45 to an improvement plan to correct the deficiencies; and

46 (5) Provisions for a written improvement plan, which
47 shall be specific as to what improvements, if any, are needed
48 in the performance of the professional and shall clearly set
49 forth recommendations for improvements, including
50 recommendations for additional education and training
51 during the professional's recertification or license renewal
52 process.

53 (e) A professional whose performance is considered to
54 be unsatisfactory shall be given notice of deficiencies. A
55 remediation plan to correct deficiencies shall be developed
56 by the employing county board and the professional. The
57 professional shall be given a reasonable period of time for
58 remediation of the deficiencies and shall receive a statement
59 of the resources and assistance available for the purposes of
60 correcting the deficiencies.

61 (f) No person may evaluate professional personnel for
62 the purposes of this section or professional educator for the
63 purposes of §18A-3C-2 of this code unless the person has
64 an administrative certificate issued by the state
65 superintendent and has successfully completed education
66 and training in evaluation skills approved by the state board,
67 which will enable the person to make fair, professional, and

68 credible evaluations of the personnel whom the person is
69 responsible for evaluating.

70 (g) Any professional whose performance evaluation
71 includes a written improvement plan shall be given an
72 opportunity to improve his or her performance through the
73 implementation of the plan. If the next performance
74 evaluation shows that the professional is now performing
75 satisfactorily, no further action may be taken concerning the
76 original performance evaluation. If the evaluation shows
77 that the professional is still not performing satisfactorily, the
78 evaluator either shall make additional recommendations for
79 improvement or may recommend the dismissal of the
80 professional in accordance with the provisions of §18A-2-8
81 of this code.

82 (h) This subsection applies to all classroom teachers
83 irrespective of the process under which they are evaluated.

84 (1) Lesson plans are intended to serve as a daily guide
85 for teachers and substitutes for the orderly presentation of
86 the curriculum. Lesson plans may not be used as a substitute
87 for observations by an administrator in the performance
88 evaluation process. A classroom teacher, as defined in
89 §18A-1-1 of this code, may not be required to post his or
90 her lesson plans on the Internet or otherwise make them
91 available to students and parents or to include in his or her
92 lesson plans any of the following:

93 (A) Teach and reteach strategies;

94 (B) Write to learn activities;

95 (C) Cultural diversity;

96 (D) Color coding; or

97 (E) Any other similar items which are not required to
98 serve as a guide to the teacher or substitute for daily
99 instruction;

100 (2) The Legislature finds that classroom teachers must
101 be free of unnecessary paperwork so that they can focus
102 their time on instruction. Therefore, classroom teachers may
103 not be required to keep records or logs of routine contacts
104 with parents or guardians;

105 (3) Nothing in this subsection may be construed to
106 prohibit classroom teachers from voluntarily posting
107 material on the Internet; and

108 (4) Nothing in §18A-3C-1 *et seq.* of this code may be
109 construed to negate the provisions of this subsection.

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

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

1 (a) The education of professional educators in the state
2 is under the general direction and control of the state board.

3 The education of professional educators in the state
4 includes all programs leading to certification to teach or
5 serve in the public schools. The programs include the
6 following:

7 (1) Programs in all institutions of higher education,
8 including student teaching and teacher-in-residence
9 programs as provided in this section;

10 (2) Beginning teacher induction programs;

11 (3) Granting West Virginia certification to persons who
12 received their preparation to teach outside the boundaries of
13 this state, except as provided in subsection (b) of this
14 section;

15 (4) Alternative preparation programs in this state
16 leading to certification, including programs established
17 pursuant to the provisions of §18A-3-1a, §18A-3-1b, §18A-
18 3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g,

19 §18A-3-1h and §18A-3-1i of this code and programs which
20 are in effect on the effective date of this section; and

21 (5) Continuing professional education, professional
22 development, and in-service training programs for
23 professional educators employed in the public schools in the
24 state.

25 (b) The state board shall adopt standards for the
26 education of professional educators in the state and for
27 awarding certificates valid in the public schools of this state.
28 The standards include, but are not limited to the following:

29 (1) A provision for the study of the history and
30 philosophical foundations of Western Civilization and the
31 writings of the founders of the United States of America;

32 (2) A provision for the study of multicultural education.
33 As used in this section, multicultural education means the
34 study of the pluralistic nature of American society including
35 its values, institutions, organizations, groups, status
36 positions and social roles;

37 (3) A provision for the study of classroom management
38 techniques, including methods of effective management of
39 disruptive behavior including societal factors and their
40 impact on student behavior; and

41 (4) A teacher from another state shall be awarded a
42 teaching certificate for a comparable grade level and subject
43 area valid in the public schools of this state, subject to §18A-
44 3-10 if he or she has met the following requirements:

45 (A) Holds a valid teaching certificate or a certificate of
46 eligibility issued by another state;

47 (B) Has graduated from an educator preparation
48 program at a regionally accredited institution of higher
49 education or from another educator preparation program;

50 (C) Possesses the minimum of a bachelor's degree; and

51 (D) Meets all of the requirements of the state for full
52 certification except employment.

53 (c) The state board may enter into an agreement with
54 county boards for the use of the public schools in order to
55 give prospective teachers the teaching experience needed to
56 demonstrate competence as a prerequisite to certification to
57 teach in the West Virginia public schools.

58 (d) An agreement established pursuant to subsection (c)
59 of this section shall recognize student teaching as a joint
60 responsibility of the educator preparation institution and the
61 cooperating public schools. The agreement shall include the
62 following items:

63 (1) The minimum qualifications for the employment of
64 public school teachers selected as supervising teachers,
65 including the requirement that field-based and clinical
66 experiences be supervised by a teacher fully certified in the
67 state in which that teacher is supervising;

68 (2) The remuneration to be paid to public school
69 teachers by the state board, in addition to their contractual
70 salaries, for supervising student teachers;

71 (3) Minimum standards to guarantee the adequacy of the
72 facilities and program of the public school selected for
73 student teaching;

74 (4) Assurance that the student teacher, under the
75 direction and supervision of the supervising teacher, shall
76 exercise the authority of a substitute teacher;

77 (5) A provision requiring any higher education
78 institution with an educator preparation program to
79 document that the student teacher's field-based and clinical
80 experiences include participation and instruction with
81 multicultural, at-risk and exceptional children at each
82 programmatic level for which the student teacher seeks
83 certification; and

84 (6) A provision authorizing a school or school district
85 that has implemented a comprehensive beginning teacher
86 induction program, to enter into an agreement that provides
87 for the training and supervision of student teachers
88 consistent with the educational objectives of this subsection
89 by using an alternate structure implemented for the support,
90 supervision and mentoring of beginning teachers. The
91 agreement is in lieu of any specific provisions of this
92 subsection and is subject to the approval of the state board.

93 (e) *Teacher-in-residence programs.* —

94 (1) In lieu of the provisions of subsections (c) and (d) of
95 this section and subject to approval of the state board, an
96 institution of higher education with a program for the
97 education of professional educators approved by the state
98 board may enter into an agreement with county boards for
99 the use of teacher-in-residence programs in the public
100 schools.

101 (2) A “teacher-in-residence program” means an
102 intensively supervised and mentored residency program for
103 prospective teachers during their senior year that refines
104 their professional practice skills and helps them gain the
105 teaching experience needed to demonstrate competence as a
106 prerequisite to certification to teach in the West Virginia
107 public schools.

108 (3) The authorization for the higher education institution
109 and the county board to implement a teacher-in-residence
110 program is subject to state board approval. The provisions
111 of the agreement include, but are not limited to, the
112 following items:

113 (A) A requirement that the prospective teacher in a
114 teacher-in-residence program has completed all other
115 preparation courses and has passed the appropriate basic
116 skills and subject matter test or tests required by the state
117 board for teachers to become certified in the area for which
118 licensure is sought;

119 (B) A requirement that the teacher-in-residence serve
120 only in a teaching position in the county which has been
121 posted and for which no other teacher fully certified for the
122 position has been employed;

123 (C) Specifics regarding the program of instruction for
124 the teacher-in-residence setting forth the responsibilities for
125 supervision and mentoring by the higher education
126 institution's educator preparation program, the school
127 principal, and peer teachers and mentors, and the
128 responsibilities for the formal instruction or professional
129 development necessary for the teacher-in-residence to
130 perfect his or her professional practice skills. The program
131 also may include other instructional items as considered
132 appropriate.

133 (D) A requirement that the teacher-in-residence hold a
134 teacher-in-residence permit qualifying the individual to
135 teach in his or her assigned position as the teacher of record;

136 (E) A requirement that the salary and benefit costs for
137 the position to which the teacher-in-residence is assigned
138 shall be used only for program support and to pay a stipend
139 to the teacher-in-residence as specified in the agreement,
140 subject to the following:

141 (i) The teacher-in-residence is a student enrolled in the
142 teacher preparation program of the institution of higher
143 education and is not a regularly employed employee of the
144 county board;

145 (ii) The teacher-in-residence is included on the certified
146 list of employees of the county eligible for state aid funding
147 the same as an employee of the county at the appropriate
148 level based on their permit and level of experience;

149 (iii) All state-aid-funding due to the county board for the
150 teacher-in-residence shall be used only in accordance with
151 the agreement with the institution of higher education for
152 support of the program as provided in the agreement,

153 including costs associated with instruction and supervision
154 as set forth in paragraph (C) of this subdivision;

155 (iv) The teacher-in-residence is provided the same
156 liability insurance coverage as other employees; and

157 (v) All state aid funding due to the county for the
158 teacher-in-residence and not required for support of the
159 program shall be paid as a stipend to the teacher-in-
160 residence: *Provided*, That the stipend paid to the teacher-in-
161 residence shall be no less than sixty-five percent of all state
162 aid funding due the county for the teacher-in-residence.

163 (F) Other provisions that may be required by the state
164 board.

165 (f) In lieu of the student teaching experience in a public
166 school setting required by this section, an institution of
167 higher education may provide an alternate student teaching
168 experience in a nonpublic school setting if the institution of
169 higher education meets the following criteria:

170 (1) Complies with the provisions of this section;

171 (2) Has a state board approved educator preparation
172 program; and

173 (3) Enters into an agreement pursuant to subdivisions
174 (g) and (h) of this section.

175 (g) At the discretion of the higher education institution,
176 an agreement for an alternate student teaching experience
177 between an institution of higher education and a nonpublic
178 school shall require one of the following:

179 (1) The student teacher shall complete at least one half
180 of the clinical experience in a public school; or

181 (2) The educator preparation program shall include a
182 requirement that any student performing student teaching in
183 a nonpublic school shall complete the following:

184 (A) At least two hundred clock hours of field-based
185 training in a public school; and

186 (B) A course, which is a component of the institution's
187 state board approved educator preparation program, that
188 provides information to prospective teachers equivalent to
189 the teaching experience needed to demonstrate competence
190 as a prerequisite to certification to teach in the public
191 schools in West Virginia. The course also shall include
192 instruction on at least the following elements:

193 (i) State board policy and provisions of this code
194 governing public education;

195 (ii) Requirements for federal and state accountability,
196 including the mandatory reporting of child abuse;

197 (iii) Federal and state mandated curriculum and
198 assessment requirements, including multicultural education,
199 safe schools, and student code of conduct;

200 (iv) Federal and state regulations for the instruction of
201 exceptional students as defined by the Individuals with
202 Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and

203 (v) Varied approaches for effective instruction for
204 students who are at-risk.

205 (h) In addition to the requirements set forth in
206 subsection (g) of this section, an agreement for an alternate
207 student teaching experience between an institution of higher
208 education and a nonpublic school shall include the
209 following:

210 (1) A requirement that the higher education institution
211 with an educator preparation program shall document that
212 the student teacher's field-based and clinical experiences
213 include participation and instruction with multicultural, at-
214 risk, and exceptional children at each programmatic level
215 for which the student teacher seeks certification; and

216 (2) The minimum qualifications for the employment of
217 school teachers selected as supervising teachers, including
218 the requirement that field-based and clinical experiences be
219 supervised by a teacher fully certified in the state in which
220 that teacher is supervising.

221 (i) The state superintendent may issue certificates as
222 provided in §18A-3-2a of this code to graduates of educator
223 preparation programs and alternative educator preparation
224 programs approved by the state board. The certificates are
225 issued in accordance with this section and rules adopted by
226 the state board.

227 (1) A certificate to teach may be granted only to a person
228 who meets the following criteria:

229 (A) Is a citizen of the United States, except as provided
230 in subdivision (2) of this subsection;

231 (B) Is of good moral character;

232 (C) Is physically, mentally, and emotionally qualified to
233 perform the duties of a teacher; and

234 (D) Is at least eighteen years of age on or before October
235 1 of the year in which his or her certificate is issued.

236 (2) A permit to teach in the public schools of this state
237 may be granted to a person who is an exchange teacher from
238 a foreign country or an alien person who meets the
239 requirements to teach.

240 (j) Institutions of higher education approved for
241 educator preparation may cooperate with each other and
242 with one or more county boards to organize and operate
243 centers to provide selected phases of the educator
244 preparation program. The phases include, but are not limited
245 to the following:

246 (1) Student teaching and teacher-in-residence programs;

247 (2) Beginning teacher induction programs;

248 (3) Instruction in methodology; and

249 (4) Seminar programs for college students, teachers
250 with provisional certification, professional support team
251 members, and supervising teachers.

252 By mutual agreement, the institutions of higher
253 education and county boards may budget and expend funds
254 to operate the centers through payments to the appropriate
255 fiscal office of the participating institutions and the county
256 boards.

257 (k) The provisions of this section do not require
258 discontinuation of an existing student teacher training center
259 or school which meets the standards of the state board.

260 (l) All institutions of higher education approved for
261 educator preparation in the 1962-63 school year continue to
262 hold that distinction so long as they meet the minimum
263 standards for educator preparation. Nothing in this section
264 infringes upon the rights granted to any institution by
265 charter given according to law previous to the adoption of
266 this code.

267 (m) *Definitions.* — For the purposes of this section, the
268 following words have the meanings ascribed to them unless
269 the context clearly indicates a different meaning:

270 (1) “Nonpublic school” means a private school,
271 parochial school, church school, school operated by a
272 religious order, or other nonpublic school that elects to meet
273 the following conditions:

274 (A) Comply with the provisions of §18-28-1 *et seq.* of
275 this code;

276 (B) Participate on a voluntary basis in a state operated
277 or state sponsored program provided to this type school
278 pursuant to this section; and

279 (C) Comply with the provisions of this section;

280 (2) “At-risk” means a student who has the potential for
281 academic failure, including, but not limited to, the risk of
282 dropping out of school, involvement in delinquent activity,
283 or poverty as indicated by free or reduced lunch status; and

284 (3) “Exceptional child” or “exceptional children” has
285 the meaning ascribed to these terms pursuant to §18-20-1 of
286 this code, but, as used in this section, the terms do not
287 include gifted students.

§18A-3-1d. Alternative program rules; necessary contents.

1 (a) *Alternative program rules.* –

2 (1) The state board shall promulgate a legislative rule or
3 rules in accordance with §29A-3B-1 *et seq.* of this code
4 containing procedures for the approval and operation of
5 alternative teacher education programs as provided in this
6 article. The State Board shall promulgate separate
7 procedures for alternative programs for classroom teachers,
8 alternative programs for highly qualified special education
9 teachers, and additional alternative programs to prepare
10 highly qualified special education teachers. These
11 procedures shall be separate from the state board’s other
12 procedures for approving standard teacher education
13 programs.

14 (2) Before adopting a rule or rules, the state board shall
15 submit its proposed rule or rules to the Legislative Oversight
16 Commission on Education Accountability for review.

17 (b) *Necessary contents.* – The state board’s rule or rules
18 shall include, at a minimum, the following elements:

19 (1) An orderly set of deadlines, forms, and guidance to
20 govern:

21 (A) A partnership’s process for applying to become an
22 approved education provider;

23 (B) The state board's process for reviewing and acting
24 on a partnership's application;

25 (C) An approved education provider's process for
26 seeking persons to enroll in an alternative program; and

27 (D) A person's process for enrolling in an approved
28 education provider's alternative program;

29 (2) Procedures for determining whether a partnership
30 agreement complies with §18A-3-1b and §18A-3-1c of this
31 code;

32 (3) Procedures for determining whether a partnership
33 agreement complies with any additional requirements
34 contained in the state board's rule or rules;

35 (4) Standards for how often and for what lengths of time
36 an alternative program teacher must observe in a mentor's
37 classroom;

38 (5) Guidelines for determining what tuition or other
39 charges an approved education provider may impose
40 relating to an alternative program;

41 (6) A list of the test or tests that a person must pass if he
42 or she seeks a certification to teach American Sign
43 Language; and

44 (7) A list of the test or tests that a person must pass if he
45 or she seeks a certification to teach in selected vocational
46 and technical areas.

**§18A-3-2c. Minimum qualities, proficiencies and skills
required of principals; state board rule.**

1 On or before October 1, 2018, the state board shall
2 promulgate rules in accordance with §29A-3B-1 *et seq.* of
3 this code regarding the minimum qualities, proficiencies
4 and skills that will be required of principals after July 1,
5 2019. The state board shall promulgate and may, from time

6 to time, amend such rules. The rules promulgated by the
7 state board shall address at least the following:

8 (1) Instructional leadership and management
9 techniques, including, but not limited to, the standards for
10 high quality schools, the school accreditation process, and
11 strategic planning for continuous improvement;

12 (2) Staff relations, including, but not limited to, the
13 development and use of skills necessary to make a positive
14 use of faculty senates, manage faculty and staff with
15 courtesy and mutual respect, coach and motivate
16 employees, and build consensus as a means of management;

17 (3) School community leadership qualities, including,
18 but not limited to, the ability to organize and leverage
19 community initiative, communicate effectively, work
20 effectively with local school improvement councils, manage
21 change, resolve conflict, and reflect the highest personal
22 values;

23 (4) Educational proficiencies, including, but not limited
24 to, knowledge of curriculum, instructional techniques,
25 student learning styles, student assessment criteria, school
26 personnel performance, evaluation skills, and family issues;
27 and

28 (5) Administrative skills, including, but not limited to,
29 organizational, fiscal, public policy, and total quality
30 management skills and techniques.

§18A-3-2d. Beginning principal internships.

1 [Repealed.]

§18A-3-8. County professional staff development councils.

1 The Legislature finds the professional expertise and
2 insight of the classroom teacher to be an invaluable
3 ingredient in the development and delivery of staff

4 development programs which meet the needs of classroom
5 teachers.

6 Therefore, a professional staff development council
7 comprised of proportional representation from the major
8 school levels and from vocational, special education and
9 other specialties in proportion to their employment numbers
10 in the county shall be established in each school district in
11 the state in accordance with rules adopted by the State Board
12 of Education. Nominations of instructional personnel to
13 serve on the county staff development council may be
14 submitted by the faculty senates of the district to the county
15 superintendent who shall prepare and distribute ballots and
16 tabulate the votes of the counties instructional personnel
17 voting on the persons nominated. Each county staff
18 development council shall consist of between nine and
19 fifteen members at the discretion of the county
20 superintendent based on the size of the county. The councils
21 have final authority to propose staff development programs
22 for their peers based upon an analysis of the individual and
23 collective needs of the schools of the county as indicated by
24 their strategic plans.

25 The county superintendent or a designee has an
26 advisory, nonvoting role on the council. The county board
27 shall make available an amount equal to one tenth of one
28 percent of the amounts provided in accordance with §18-
29 9A-4 of this code and credit the funds to an account to be
30 used by the council to fulfill its objectives. The local board
31 has final approval of all proposed disbursements.

32 Any funds credited to the council during a fiscal year,
33 but not used by the council, shall be carried over in the
34 council account for use in the next fiscal year. These funds
35 are separate and apart from, and in addition to, those funds
36 to be credited to the council pursuant to this section. At the
37 end of each fiscal year, the council shall report to each
38 faculty senate chairperson the amount of funds carried over
39 into the next fiscal year.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for Professional Development; intent and mission; Principals Academy curriculum and expenses; authorization to charge fees.

1 [Repealed]

§18A-3A-2. Professional development project.

1 [Repealed.]

§18A-3A-2b. The Principals Academy.

1 [Repealed.]

§18A-3A-3. Professional personnel evaluation project.

1 [Repealed.]

§18A-3A-5. West Virginia advanced placement center.

1 [Repealed.]

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-1. Findings; purposes and definition.

1 (a) The Legislature makes the following findings:

2 (1) Processes set forth in this article for the performance
3 evaluation of professional personnel and the induction and
4 professional growth of teachers and leaders are not intended
5 to make up for substandard initial preparation, but instead
6 are intended to build on a solid foundation created by the
7 teacher and principal preparation programs. Therefore, the
8 Legislature expects the teacher preparation programs to
9 graduate teachers and leaders who can perform at a level
10 that increases student achievement. The Legislature expects
11 that the processes set forth in this article will allow a teacher
12 and principal to excel beyond that level in the classroom and
13 in school leadership positions;

14 (2) The comprehensive system of support provided in
15 this article should be implemented in a way that effectively
16 provides for the professional growth of teachers and
17 principals;

18 (3) In order for the comprehensive system of support to
19 much more effectively provide for the professional growth
20 of teachers and principals, professional development
21 resources must be focused in the most cost effective manner
22 on the unique needs of individual schools, including their
23 professional personnel evaluation data, to increase the
24 school's capacity to improve student performance and
25 progress; and

26 (4) Although the quality of the teacher is extremely
27 important to the academic achievement of students, students
28 cannot learn if they are not present to receive the instruction.
29 Therefore, attending school on a regular basis is of utmost
30 importance to the academic success of students.

31 (b) The purpose of this article is to create a
32 comprehensive infrastructure that routinely supports a
33 continuous process for improving teaching and learning. Its
34 focus is on developing strong teaching and school
35 leadership, without which effective learning does not occur.
36 The general components of this infrastructure include the
37 following:

38 (1) High-quality teacher and principal preparation,
39 induction, and evaluation;

40 (2) Universal support for emerging teachers and
41 principals including comprehensive induction and support
42 for (A) Beginning teachers, student teachers, teachers
43 teaching in assignments for which they have less than a full
44 professional credential, and teacher candidates pursuing
45 certification through an alternative route; and (B) beginning
46 principals, assistant principals, and vocational
47 administrators, and those of them beginning a new

48 assignment at a school with a significantly different grade
49 level configuration;

50 (3) Evaluation of the performance of teachers and
51 leaders in demonstrating high quality professional practice,
52 leadership, and collaboration and the resulting growth in
53 student learning;

54 (4) Focused improvement in teaching and learning
55 through the use of evaluation data to inform the delivery of
56 professional development and additional supports to
57 improve teaching based on the evaluation results and to
58 inform the need for improvements in teacher preparation
59 programs; and

60 (5) The creation of a leadership culture that seeks and
61 builds powerful alliances among all stakeholders focused on
62 continuous growth in student learning.

63 (c) For purposes of this article “professional personnel”
64 includes classroom teachers, assistant principals, and
65 principals as defined in §18A-1-1 of this code.

§18A-3C-2. Performance evaluations of professional personnel.

1 (a) The provisions of this section govern the
2 performance evaluation of classroom teachers, principals
3 and assistant principals employed in public schools and
4 school systems. To the extent that this section conflicts with
5 the provisions of §18A-2-12 of this code relating to
6 professional personnel performance evaluations, this
7 section shall govern.

8 (b) Before July 1, 2018, the state board shall adopt a
9 legislative rule in accordance with §29A-3B-1 *et seq.* of this
10 code, for annually evaluating the performance of each
11 professional person. The rule shall provide for performance
12 evaluations of professional personnel to be conducted in
13 accordance with this section in each school and school
14 system.

15 (c) (1) The process adopted by the state board for
16 evaluating the performance of classroom teachers shall
17 incorporate at least the following:

18 (A) Alignment with the West Virginia Professional
19 Teaching Standards adopted by the state board that establish
20 the foundation for educator preparation, teacher assessment,
21 and professional development throughout the state;

22 (B) Employment of the professional teaching standards
23 to provide explicit and extensive measures of the work of
24 teaching and what teachers must know and be able to do and
25 provide evaluative measures of educator performance; and

26 (C) The use of two pieces of evidence at two points in
27 time over the instructional term to demonstrate student
28 learning as an indicator of educator performance.

29 (2) Eighty percent of the evaluation shall be based on an
30 appraisal of the educator's ability to perform the critical
31 standard elements of the professional teaching standards.
32 The appraisal shall include conferences with the evaluator
33 reinforced through observation. Twenty percent of the
34 evaluation shall be based on evidence of the learning of the
35 students assigned to the educator in accordance with
36 paragraph (C), subdivision (1) of this subsection.

37 (d) (1) The process adopted by the state board for
38 evaluating the performance of principals and assistant
39 principals shall include at least the following:

40 (A) Alignment with the West Virginia Professional
41 Leadership Standards adopted by the state board
42 establishing the responsibility of principals for the
43 collective success of their school including the learning,
44 growth, and achievement of students, staff, and self;

45 (B) Employment of the professional leadership
46 standards to provide explicit and extensive measures of the
47 work of school leadership focused on the continuous
48 improvement of teaching and learning. The process shall

49 include conferences and goal setting with the superintendent
50 or his or her designee and the use of a survey of stakeholders
51 to assist in identifying the needs and establishing the goals
52 for the school and the principal. The survey shall be
53 distributed to at least the following stakeholders: Students,
54 parents, teachers, and service personnel. The evaluative
55 measures shall include the use of data, evidence, and
56 artifacts to confirm the principal's performance on
57 achieving the goals established by the principal and
58 superintendent; and

59 (C) The use of two pieces of evidence at two points in
60 time over the instructional term to demonstrate the growth
61 in student learning at the school.

62 (2) Eighty percent of the evaluation shall be based on an
63 appraisal of the principal's or the assistant principal's ability
64 to perform the critical standard elements of the professional
65 leadership standards and achieve the goals established for
66 the principal and the school. Twenty percent of the
67 evaluation shall be based on evidence of the learning of the
68 students assigned to the school in accordance with
69 paragraph (C), subdivision (1) of this subsection.

70 (e) Evaluations of the performance of professional
71 personnel shall serve the following purposes:

72 (1) Serve as a basis for the improvement of the
73 performance of the professional personnel in their assigned
74 duties;

75 (2) Serve as the basis for providing professional
76 development specifically targeted on the area or areas
77 identified through the evaluation process as needing
78 improvement. If possible, this targeted professional
79 development should be delivered at the school site using
80 collaborative processes, mentoring or coaching or other
81 approaches that maximize use of the instructional setting;

82 (3) Serve as the basis for establishing priorities for the
83 provision of county-level professional development when
84 aggregate evaluation data from the county's schools
85 indicates an area or areas of needed improvement;

86 (4) Serve as a basis for informing the teacher
87 preparation programs in this state of an area or areas of
88 needed improvement in the programs, or informing a
89 specific program of needed improvement, when state-level
90 aggregate evaluation data indicates that beginning teachers
91 who have graduated from the program have specific
92 weaknesses;

93 (5) Provide an indicator of level of performance of the
94 professional personnel;

95 (6) Serve as a basis for programs to increase the
96 professional growth and development of professional
97 personnel; and

98 (7) Serve as documentation for a dismissal on the
99 grounds of unsatisfactory performance.

100 (f) The rule adopted by the state board shall include
101 standards for the performance of professional personnel and
102 the criteria to be used to determine whether their
103 performance meets the standards. The rule also shall include
104 guidance on best practices for providing time within the
105 school day for teachers and leaders subject to performance
106 evaluations under this section to participate in the
107 collaborative mentoring or coaching and planning processes
108 necessary for execution of the performance evaluation
109 process and achieving advanced levels of performance.

110 (g) The rule adopted by the state board shall include
111 provisions for written improvement plans when necessary
112 to improve the performance of the professional personnel.
113 The written improvement plan shall be specific as to what
114 improvements are needed in the performance of the
115 professional personnel and shall clearly set forth

116 recommendations for improvements including
117 recommendations for additional education and training of
118 professionals subject to recertification. Professional
119 personnel whose performance evaluation includes a written
120 improvement plan shall be given an opportunity to improve
121 his or her performance through the implementation of the
122 plan.

123 (h) A professional person whose performance is
124 considered to be unsatisfactory shall be given written notice
125 of his or her deficiencies. A written improvement plan to
126 correct these deficiencies shall be developed by the
127 employing county board and the employee. The
128 professional person shall be given a reasonable period of
129 time, not exceeding twelve months, to accomplish the
130 requirements of the improvement plan and shall receive a
131 written statement of the resources and assistance available
132 for the purposes of correcting the deficiencies. If the next
133 performance evaluation shows that the professional is now
134 performing satisfactorily, no further action may be taken
135 concerning the original performance evaluation. If the
136 evaluation shows that the professional is still not performing
137 satisfactorily, the evaluator either shall make additional
138 written recommendations for improvement or may
139 recommend the dismissal of the professional personnel in
140 accordance with the provisions of §18A-2-8 of this code.

141 (i) No person may evaluate professional personnel for
142 the purposes of this section unless the person has an
143 administrative certificate issued by the state superintendent
144 and has successfully completed education and training in
145 evaluation skills approved by the state board which will
146 enable the person to make fair, professional, and credible
147 evaluations of the personnel whom the person is responsible
148 for evaluating.

149 (j) Prior to implementation of the evaluation process
150 pursuant to this section at a school, each affected employee
151 shall be given training to ensure that the employees have a
152 full understanding of the purposes, instruments, and

153 procedures used in evaluating their performance.
154 Thereafter, this training shall be held annually at the
155 beginning of the employment term.

**§18A-3C-3. Comprehensive system for teacher and leader
induction and professional growth.**

1 (a) The intent of the Legislature is to allow for local-
2 level implementation of comprehensive systems of support
3 for building professional practice consistent with sound
4 educational practices and resources available. In this regard,
5 it is the intent of the Legislature that the comprehensive
6 systems of support shall incorporate support for improved
7 professional performance that is targeted on deficiencies
8 identified through the educator personnel evaluation
9 process and other professional development needs
10 identified in the strategic plans for continuous improvement
11 of schools and school systems. Further, because of
12 significant variability among the counties, not only in the
13 size of their teaching force, distribution of facilities and
14 available resources, but also because of their varying needs,
15 the Legislature intends for the implementation of this
16 section to be accomplished in a manner that provides
17 adequate flexibility to the counties to design and implement
18 a comprehensive system of support for improving
19 professional performance that best achieves the goals of this
20 section within the county. Finally, because of the critical
21 importance of ensuring that all teachers perform at the
22 accomplished level or higher in the delivery of instruction
23 that at least meets the West Virginia Professional Teaching
24 Standards and because achieving this objective at a
25 minimum entails providing assistance to address the needs
26 as indicated by the data informed results of annual
27 performance evaluations, including the self-assessed needs
28 of the teachers themselves, the Legislature expects the
29 highest priority for county and state professional
30 development will be on meeting these needs and that the
31 comprehensive systems of support for improving
32 professional practice will reflect substantial redirection of

33 existing professional development resources toward this
34 highest priority.

35 (b) On or before July 1, 2018, the state board shall
36 publish guidelines on the design and implementation of a
37 county-level comprehensive system of support for
38 improving professional practice. The purpose of the
39 guidelines is to assist the county board with the design and
40 implementation of a system that best achieves the goals of
41 this section within the county. The guidelines may include
42 examples of best practices and resources available to county
43 boards to assist them with the design and implementation of
44 a comprehensive system.

45 (c) Effective for the school year beginning July 1, 2018,
46 and thereafter, a county board is not eligible to receive state
47 funding appropriated for the purposes of this section or any
48 other provision of law related to beginning teacher and
49 principal internships and mentor teachers and principals
50 unless it has adopted a plan for implementation of a
51 comprehensive system of support for improving
52 professional practice, the plan has been verified by the state
53 board as meeting the requirements of this section and the
54 county is implementing the plan. The plan shall address the
55 following:

56 (1) The manner in which the county will provide the
57 strong school-based support and supervision that will assist
58 beginning teachers in developing instructional and
59 management strategies, procedural and policy expertise,
60 and other professional practices they need to be successful
61 in the classroom and perform at the accomplished level.
62 Nothing in this subdivision prohibits a school or school
63 system that was granted an exception or waiver from §18A-
64 3-2c of this code prior to the effective date of this section
65 from continuing implementation of the program in
66 accordance with the exception or waiver;

67 (2) The manner in which the county will provide the
68 strong support and supervision that will assist beginning

69 principals in developing instructional leadership,
70 supervisory and management strategies, procedural and
71 policy expertise, and other professional practices they need
72 to be successful in leading continuous school improvement
73 and performing at the accomplished level or above;

74 (3) The manner in which the county in cooperation with
75 the teacher preparation programs in this state will provide
76 strong school-based support and assistance necessary to
77 make student teaching a productive learning experience;

78 (4) The manner in which the county will use the data
79 from the educator performance evaluation system to serve
80 as the basis for providing professional development
81 specifically targeted on the area or areas identified through
82 the evaluation process as needing improvement. If possible,
83 this targeted professional development should be delivered
84 at the school site using collaborative processes, mentoring
85 or coaching or other approaches that maximize use of the
86 instructional setting;

87 (5) The manner in which the county will use the data
88 from the educator performance evaluation system to serve
89 as the basis for establishing priorities for the provision of
90 county-level professional development when aggregate
91 evaluation data from the county's schools indicates an area
92 or areas of needed improvement;

93 (6) If a county uses master teachers, mentors, academic
94 coaches, or any other approaches using individual
95 employees to provide support, supervision, or other
96 professional development or training to other employees for
97 the purpose of improving their professional practice, the
98 manner in which the county will select each of these
99 individual employees based upon demonstrated superior
100 performance and competence as well as the manner in
101 which the county will coordinate support for these
102 employees. If the duties of the position are to provide
103 mentoring to an individual teacher at only one school, then

104 priority shall be given to applicants employed at the school
105 at which those duties will be performed;

106 (7) The manner in which the county will use local
107 resources available, including, but not limited to, funds for
108 professional development and academic coaches, to focus
109 on the priority professional development goals of this
110 section;

111 (8) The manner in which the county will adjust its
112 scheduling, use of substitutes, collaborative planning time,
113 calendar, or other measures as may be necessary to provide
114 sufficient time for professional personnel to accomplish the
115 goals of this section as set forth in the county's plan; and

116 (9) The manner in which the county will monitor and
117 evaluate the effectiveness of implementation and outcomes
118 of the county system of support for improving professional
119 practice.

120 (d) Effective the school year beginning July 1, 2018, and
121 thereafter, appropriations for beginning teacher and
122 principal mentors and internships and any new
123 appropriation which may be made for the purposes of this
124 section shall be expended by county boards only to
125 accomplish the activities as set forth in their county plan
126 pursuant to this section. Effective the school year beginning
127 July 1, 2018, and thereafter, no specific level of
128 compensation is guaranteed for any employee service or
129 employment as a mentor and such service or employment is
130 not subject to the provisions of this code governing extra
131 duty contracts.

132 (e) The Legislative Oversight Commission on
133 Education Accountability shall review the progress of the
134 implementation of this article and may make any
135 recommendations it considers necessary to the Legislature
136 during the 2019 regular legislative session.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.**

1 (a) The commission is comprised of nine members, all
2 of whom are entitled to vote. The membership of the
3 commission is as follows:

4 (1) The State Superintendent of Schools, ex officio;

5 (2) The chair of the West Virginia Council for
6 Community and Technical College Education, ex officio;

7 (3) Four at-large members who are citizens of the state,
8 appointed by the Governor, by and with the advice and
9 consent of the Senate; and

10 (4) Three at-large members who are designated as
11 higher education representatives, appointed by the
12 Governor, by and with the advice and consent of the Senate;
13 for each of the higher education representatives, the
14 Governor shall choose from recommendations made by any
15 state college and university or exempted school and the
16 Governor may request additional recommendations from
17 state colleges and universities or exempted schools if in the
18 Governor in his or her sole discretion determines that
19 additional recommendations are necessary for appointments
20 to the commission.

21 (b) Each of the at-large members appointed by the
22 Governor shall represent the public interest and shall be
23 committed to the legislative intent and goals set forth in state
24 law and policy.

25 (c) The Governor may not appoint any person to be a
26 member of the commission who is an officer, employee or
27 member of the council or an advisory board of any state
28 college or university or exempted school; an officer or

29 member of any political party executive committee; the
30 holder of any other public office or public employment
31 under the government of this state or any of its political
32 subdivisions; an appointee or employee of any governing
33 board; or an immediate family member of any employee
34 under the jurisdiction of the commission, the council or any
35 governing board.

36 (d) Of the seven, at-large members appointed by the
37 Governor:

38 (1) No more than four may belong to the same political
39 party;

40 (2) At least two shall be appointed from each
41 congressional district; and

42 (3) Effective July 1, 2008, no more than one member
43 may serve from the same county.

44 (e) The at-large members appointed by the Governor
45 serve overlapping terms of four years.

46 (f) The Governor shall appoint a member to fill any
47 vacancy among the seven at-large members, by and with the
48 advice and consent of the Senate. Any member appointed to
49 fill a vacancy serves for the unexpired term of the vacating
50 member. The Governor shall fill the vacancy within thirty
51 days of the occurrence of the vacancy.

52 (g) An at-large member appointed by the Governor may
53 not serve more than two consecutive terms.

54 (h) Before exercising any authority or performing any
55 duties as a member of the commission, each member shall
56 qualify as such by taking and subscribing to the oath of
57 office prescribed by section five, article IV of the
58 Constitution of West Virginia and the certificate thereof
59 shall be filed with the Secretary of State.

60 (i) A member of the commission appointed by the
61 Governor may not be removed from office by the Governor
62 except for official misconduct, incompetence, neglect of
63 duty or gross immorality and then only in the manner
64 prescribed by law for the removal of the state elective
65 officers by the Governor.

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.

1 (a) The Workforce Development Initiative Program is
2 continued under the supervision of the council. The purpose
3 of the program is to administer and oversee grants to
4 community and technical colleges to implement the
5 provisions of this article in accordance with legislative
6 intent.

7 (b) It is the responsibility of the council to administer
8 the state fund for community and technical college and
9 workforce development, including setting criteria for grant
10 applications, receiving applications for grants, making
11 determinations on distribution of funds and evaluating the
12 performance of workforce development initiatives.

13 (c) The chancellor, under the direction of the council,
14 shall review and approve the expenditure of all grant funds,
15 including development of application criteria, the review
16 and selection of applicants for funding, and the annual
17 review and justification of applicants for grant renewal.

18 (1) To aid in decision-making, the chancellor appoints an
19 advisory committee consisting of the Executive Director of the
20 West Virginia Development Office or designee; the Assistant
21 State Superintendent for Technical and Adult Education; the
22 Chair of the West Virginia Council for Community and
23 Technical College Education; the Chair of the West Virginia
24 Workforce Investment Council; the Executive Director of
25 Workforce West Virginia; one member representing the

26 Herbert Henderson Minority Affairs Office, two members
27 representing business and industry; and one member
28 representing labor. The advisory committee shall review all
29 applications for workforce development initiative grants and
30 make recommendations for distributing grant funds to the
31 council. The advisory committee also shall make
32 recommendations on methods to share among the community
33 and technical colleges any curricula developed as a result of a
34 workforce development initiative grant.

35 (2) When determining which grant proposals will be
36 funded, the council shall give special consideration to
37 proposals by community and technical colleges that involve
38 businesses with fewer than fifty employees.

39 (3) The council shall weigh each proposal to avoid
40 awarding grants which will have the ultimate effect of
41 providing unfair advantage to employers new to the state
42 who will be in direct competition with established local
43 businesses.

44 (d) The council may allocate a reasonable amount, not
45 to exceed five percent up to a maximum of \$50,000 of the
46 funds available for grants on an annual basis, for general
47 program administration.

48 (e) Moneys appropriated or otherwise available for the
49 Workforce Development Initiative Program shall be
50 allocated by line item to an appropriate account. Any
51 moneys remaining in the fund at the close of a fiscal year
52 are carried forward for use in the next fiscal year.

53 (f) Nothing in this article requires a specific level of
54 appropriation by the Legislature.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-4. Depositories for assistive devices and services.

1 [Repealed.]

§18B-11-6. National institute for teaching excellence established.

1 [Repealed.]

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-5. Powers and duties of the vice chancellor.

1 In addition to all other duties assigned to the vice
2 chancellor by the Higher Education Policy Commission, the
3 vice chancellor shall:

4 (a) Provide assistance to communities in planning an
5 educational and clinical component for the primary health
6 care education sites;

7 (b) Coordinate and approve the provision of faculty
8 members, students, interns and residents at the education
9 sites;

10 (c) Report directly to the Higher Education Policy
11 Commission regarding the rural health initiative;

12 (d) Oversee the administration of the Kellogg
13 foundation grant;

14 (e) Coordinate the rural health initiative with the allied
15 health care education programs within the state college and
16 community college systems;

17 (f) Prepare the budget for the rural health initiative and
18 submit the budget to the Higher Education Policy
19 Commission for their approval;

20 (g) Distribute the funds which were appropriated to the
21 Higher Education Policy Commission for the rural health
22 initiative;

23 (h) Mediate any disputes between the institutions of
24 higher education regarding the rural health initiative;

25 (i) Consult with the Council for Community and
26 Technical College Education established under §18B-2B-3
27 of this code on the coordination of the education of student
28 practical nurses with the rural health initiative; and

29 (j) Perform such other duties as may be prescribed by
30 this article or as may be necessary to effectuate the
31 provisions of this article.

§18B-16-8. Allocation of appropriations.

1 (a) The primary health care education sites established
2 under this article shall be supported financially in part from
3 line item appropriations to the university of West Virginia
4 health sciences account. Funds shall be distributed to the
5 state's schools of medicine upon consideration of the
6 recommendations of the vice chancellor. Appropriations to
7 the university of West Virginia health sciences account to
8 support the rural health initiative shall be by line item, with
9 at least one line item designated for primary health
10 education program support at the schools of medicine and
11 at least one line item designated for rural health initiative
12 site support.

13 (b) The vice chancellor shall require each school of
14 medicine to submit a detailed proposal which shall state,
15 with specificity, how each school of medicine will be
16 working to further the goals and meet the criteria set forth
17 in this article and the amount of appropriation which would
18 be needed by each school to implement the proposal.

19 The vice chancellor shall, giving consideration to the
20 proposals, prepare a comprehensive plan to be presented to
21 the board of trustees, which plan shall include a
22 recommendation for allocations of moneys appropriated for
23 program support and a recommendation for the allocation
24 of moneys designated for support of the primary health care
25 education sites commensurate with each school's level of
26 participation in such sites.

27 (c) Notwithstanding the provisions of §12-3-12 of this
28 code, any funds appropriated to the Higher Education Policy
29 Commission in accordance with the provisions of this
30 section that remain unallocated or unexpended at the end of
31 any fiscal year shall not expire, shall remain in the line item
32 to which they were originally appropriated and shall be
33 available in the next fiscal year to the board of trustees or a
34 school of medicine for allocation or expenditure for the
35 purposes of this article.

36 (d) Additional financial support shall come from fees
37 generated by services, from grants and contracts, and from
38 community resources. Any fees so generated shall be paid
39 to and expended by the facility established as a primary
40 health care education site unless an alternative fee
41 arrangement is mutually agreed upon by the chief
42 administrator of the site and the vice chancellor for health
43 sciences.

ARTICLE 18B. SCIENCE AND RESEARCH COUNCIL.

§18B-18B-1. Science and Research Council established; purposes.

1 (a) The Science and Research Council is hereby
2 established. For the purposes of this article only, “council”
3 means the Science and Research Council established herein.

4 (b) The purposes of the council include, but are not
5 limited to, the following:

6 (1) Increasing the capacity of the state and state
7 institutions of higher education to attract, implement, and
8 use cutting-edge, competitive research funds and
9 infrastructure;

10 (2) Providing expertise and policy guidance in science
11 and research to the state, its agencies and state institutions
12 of higher education regarding federal programs such as the
13 Experimental Program to Stimulate Competitive Research
14 (“EPSCoR”) and similar state programs such as the West

15 Virginia Research Trust Fund established in §18B-18A-1 *et*
16 *seq.* of this code and the Research Challenge Fund
17 established in §18B-1B-12 of this code;

18 (3) Encouraging research collaboration among public
19 and private institutions of higher education and the private
20 sector, both within and outside the state;

21 (4) Promoting education at all levels in the fields of
22 science, technology, engineering, and mathematics; and

23 (5) Providing recommendations to the commission and
24 state policymakers, including the Governor and Legislature,
25 regarding science and research initiatives and effective
26 programmatic activities, budgets, and investments to
27 implement those initiatives.

28 (c) The council replaces the EPSCoR State Advisory
29 Council and consists of fifteen members as follows:

30 (1) The vice presidents in charge of research at Marshall
31 University and West Virginia University;

32 (2) A representative of health sciences at Marshall
33 University and a representative of health sciences at West
34 Virginia University, appointed by the deans of the
35 respective schools of medicine;

36 (3) The State Superintendent of Schools or designee;

37 (4) The Secretary of Commerce or designee;

38 (5) The Vice Chancellor for Science and Research of the
39 Commission;

40 (6) The Chancellor of the Commission who chairs the
41 council;

42 (7) One member engaged in applied research at
43 Marshall University and one member engaged in applied
44 research at West Virginia University, appointed by the
45 provosts of the respective universities; and

46 (8) Five members, appointed by the Governor, who
47 have demonstrated interest, knowledge, skill, and
48 experience in academic research and scientific innovation
49 and who possess recognized credentials and expertise in one
50 or more of the following areas:

51 (A) Science, technology, engineering, or mathematics
52 (“STEM”) fields;

53 (B) Cyberinfrastructure, information technology, or
54 computer science;

55 (C) Research and development;

56 (D) Technology based economic development or
57 industry; or

58 (E) Undergraduate research or science education.

59 At least two of the members appointed by the Governor
60 shall be representatives of business or industry.

61 (d) Of the initial appointments made by the Governor,
62 one member shall be appointed to a one-year term; one
63 member shall be appointed to a two-year term; one member
64 shall be appointed to a three-year term; and one member
65 shall be appointed to a four-year term. Of the initial
66 appointments made by the deans of schools of medicine, the
67 member appointed by the dean of the Marshall University
68 School of Medicine shall be appointed to a two-year term,
69 and the member appointed by the dean of the West Virginia
70 University School of Medicine shall be appointed to a three-
71 year term. Of the initial appointments made by the provosts,
72 the member appointed by the West Virginia University
73 provost shall be appointed to a two-year term, and the
74 member appointed by the Marshall University provost shall
75 be appointed to a four-year term.

76 (e) After the initial appointments, all members serve
77 terms of four years. Each appointed member who qualifies
78 under the provisions of this section may serve for no more

79 than two successive terms. An appointment to fill a vacancy
80 on the council or reappointment of a member who is eligible
81 to serve an additional term is made in accordance with the
82 provisions of this section.

83 (f) Members of the council serve without compensation,
84 but are entitled to reimbursement by the commission for
85 expenses, including travel expenses, actually incurred by
86 the member in the official conduct of the business of the
87 council.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 24. TECHNOLOGY-RELATED ASSISTANCE REVOLVING LOAN FUND FOR INDIVIDUALS WITH DISABILITIES ACT.

§29-24-3. Board created, membership, terms, officers and staff.

1 (a) The technology-related assistance revolving loan
2 fund for individuals with disabilities board created by
3 chapter 247 Acts of the Legislature, regular session, 1996,
4 is hereby continued.

5 (b) The board shall consist of seven members as
6 follows, of whom at least three must be individuals with
7 disabilities:

8 (1) Director of the Division of Rehabilitation Services,
9 ex officio, who shall be entitled to vote, or his or her
10 designee;

11 (2) A representative of the banking industry;

12 (3) A representative of the medical profession;

13 (4) A certified public accountant; and

14 (5) Three members from the public at large who are
15 users or providers of technology-related assistance devices

16 or services for individuals with disabilities. Members shall
17 be appointed by the Governor, by and with the advice and
18 consent of the Senate, for terms of three years. Members
19 appointed by the Governor with the advice and consent of
20 the Senate prior to the effective date of this section shall
21 continue to serve for the terms for which they were
22 appointed. State officers or employees may be appointed to
23 the board unless otherwise prohibited by law.

24 (c) In the event a board member fails to attend more than
25 twenty-five percent of the scheduled meetings in a twelve-
26 month period, the board may, after written notification to
27 that member and the Secretary of Commerce, request in
28 writing that the Governor remove the member and appoint
29 a new member to serve his or her unexpired term.

30 (d) If there is a death, resignation, disqualification, or
31 removal for any reason of any member of the board, the
32 vacancy shall be filled in the same manner as the original
33 appointment and the successor shall serve for the unexpired
34 term.

35 (e) The board shall elect from its membership a
36 chairperson, treasurer, and secretary as well as any other
37 officer as appropriate. The term of the "chairperson" is for
38 two years in duration and he or she cannot serve more than
39 two consecutive terms.

**§29-24-5. Power, duties and responsibilities of the board;
loans.**

1 (a) The board has the following powers, duties, and
2 responsibilities:

3 (1) Meet at such times (minimum of four times each
4 fiscal year) and at places as it determines necessary or
5 convenient to perform its duties. The board shall also meet
6 on the call of the chairperson or Secretary of Commerce;

7 (2) Maintain written minutes of its meetings;

8 (3) Propose rules for legislative promulgation in
9 accordance with §29A-3-1 *et seq.* of this code for the
10 transaction of its business and to carry out the purposes of this
11 article. The rules shall include: (A) Guidelines, procedures,
12 reporting requirements, accountability measures and such
13 other criteria as the board deems appropriate and necessary
14 to fulfill its governance responsibility under this article if it
15 elects to contract with a nonprofit, consumer-driven
16 organization to carry out the purposes of this article; (B) an
17 appeals process with regard to the administration of the fund;
18 and (C) rules governing the operation of the fund, including,
19 but not limited to, eligibility of receipt of funds and all other
20 matters consistent with and necessary to accomplishing the
21 purpose of this fund;

22 (4) Employ personnel on a full-time, part-time or
23 contracted basis. Board personnel may be members of the
24 state civil service system. Participating agencies shall make
25 staff support and resources available to the board whenever
26 practicable at the discretion of the agencies. The
27 compensation of personnel shall be paid from moneys in the
28 revolving loan fund;

29 (5) Receive, administer and disburse funds to support
30 purposes established by this article and contract with
31 nonprofit, consumer-based groups dealing with individuals
32 with disabilities to assist in administering programs
33 established by this article;

34 (6) Maintain detailed records of all expenditures of the
35 board, funds received as gifts and donations and
36 disbursements made from the revolving loan fund;

37 (7) Submit to the Secretary of the Department of
38 Commerce and the Legislature annually a summary report
39 concerning programmatic and financial status of the
40 revolving loan fund;

41 (8) Develop and implement a comprehensive set of
42 financial standards to ensure the integrity and accountability
43 of all funds received as well as loan funds disbursed; and

44 (9) Conform to the standards and requirements
45 prescribed by the State Auditor.

46 (b) Subject to available funds, the board shall enter into
47 loan agreements with any qualifying borrower, who
48 demonstrates that:

49 (1) The loan will assist one or more individuals with
50 disabilities in improving their independence, productivity
51 and full participation in the community; and

52 (2) The applicant has the ability to repay the loan. Any
53 necessary loan limitation shall be determined by the board.
54 All loans must be repaid within such terms and at such
55 interest rates as the board may determine to be appropriate.
56 However, no loan may extend beyond sixty months from
57 date of award and may be paid off anytime without
58 prepayment penalty. The board shall determine the interest
59 rate to be charged on loans made pursuant to this article, but
60 in no event may the interest rate on any such loans be less
61 than four or more than twenty-one percent per annum.

62 (c) The board may authorize loans up to ninety percent
63 of the cost of an item or items.

64 (d) The board may award loans to qualifying borrowers
65 for purposes, including, but not limited to, the following:

66 (1) To assist one or more individuals with disabilities to
67 improve their independence through the purchase of
68 technology-related devices; and

69 (2) To assist one or more individuals with disabilities to
70 become more independent members of the community and
71 improve such individuals quality of life within the community
72 through the purchase of technology-related devices.

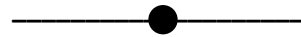
73 (e) If there is a failure of the borrower to repay the loan
74 balance due and owing, the board shall seek to recover the
75 loan balance by such legal or administrative action available
76 to it. Persons or representatives of persons who default on a
77 loan are not eligible for a new loan. The board shall retain

78 ownership of all property, equipment, or devices until the
79 borrower's loan is paid in full.

80 (f) A new loan may not be issued to, or on behalf of, a
81 disabled person if a previous loan made to, or on behalf of,
82 such person remains unpaid.

83 (g) The board may charge a fee for loan applications and
84 processing. All funds generated by fee charges shall be
85 directly placed into the revolving loan fund to off-set the
86 costs of application processing.

87 The board may accept federal funds granted by
88 Congress or executive order for the purposes of this chapter
89 as well as gifts and donations from individuals, private
90 organizations, or foundations. The acceptance and use of
91 federal funds does not commit state funds and does not place
92 an obligation upon the Legislature to continue the purposes
93 for which the federal funds are made available. All funds
94 received in the manner described in this article shall be
95 deposited in the revolving loan fund to be disbursed as other
96 moneys in the revolving loan fund.



CHAPTER 106

**(Com. Sub. for H. B. 4015 - By Delegates Howell,
Criss, Hill, Hamrick, Statler, Queen, Blair, Summers,
Sypolt, Moore and Storch)**

[Passed March 7, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2018.]

AN ACT to repeal §5A-3-49 of the Code of West Virginia, 1931,
as amended; to amend and reenact §5A-1-2 of said code; to
amend and reenact §5A-3-52 of said code; to amend said code
by adding thereto a new article, designated §5A-12-1, §5A-
12-2, §5A-12-3, §5A-12-4, §5A-12-5, §5A-12-6, §5A-12-7,

§5A-12-8, §5A-12-9, §5A-12-10, §5A-12-11, §5A-12-12, §5A-12-13 and §5A-12-14; to amend said code by adding thereto a new section, designated §12-6D-7; to amend and reenact §17A-3-23 of said code; to amend said code by adding thereto three new sections, designated §17A-3-25, §17A-3-26, and §17A-3-27; and to amend and reenact §29B-1-4 of said code, all relating to the management and inventory of vehicles owned, leased, operated, or acquired by the state and its agencies; authorizing establishment of aviation division within Department of Administration; establishing Fleet Management Division within Department of Administration; repealing provisions relating to the central motor pool; continuing management of state owned or leased aircraft through an Aviation Division; setting duties of Aviation Division; continuing Aviation Fund and authorizing administration by division director or secretary of Department of Administration; defining terms; setting scope of article and applicability to spending units; continuing Fleet Management Office as Fleet Management Division; setting duties and responsibilities of division; providing for the appointment of a division director; providing powers and duties of the division director; terminating the Fleet Management Office Fund; establishing the Fleet Management Division Fund; providing for transfer of funds from Fleet Management Office Fund to Fleet Management Division Fund; establishing rulemaking authority for division director; requiring proposal of certain legislative rules; setting requirements for operators of state vehicles; establishing duties and responsibilities of spending units with respect to state vehicles and equipment; requiring each spending unit designate a fleet coordinator; requiring spending unit provide name and contact information of fleet coordinator to division; setting requirements and responsibilities of fleet coordinators; requiring spending units use vehicle management services provided by division; authorizing certain exceptions; requiring annual reporting by spending units to division; requiring spending units maintain certain records; requiring division director establish complaint process for general public to report issues relevant to state vehicle fleet; requiring spending unit investigate complaints

received by division; requiring division prepare state vehicle fleet annual report; setting contents of annual report; providing for spot compliance audits by the State Auditor; requiring legislative compliance audit; directing Enterprise Resource Planning Board develop standard naming convention for state vehicle information in centralized accounting system; increasing number of state vehicles Attorney General may have without state license plate; changing colors of state license plates to gold with blue lettering effective January 1, 2019; authorizing Commissioner of the Division of Motor Vehicles to issue special plates to certain organizations and entities at no charge; authorizing inclusion of higher education institution logos on state license plates; requiring higher education institutions bear any additional costs of those features; prohibiting public service districts or designated nongovernmental institutional from being issued state license plate; directing commissioner of Division of Motor Vehicles develop and adopt standardized naming convention for title, registration and licensing of state vehicles; providing for expiration of green and white state license plates; requiring spending units obtain new state license plate prior to January 1, 2019; requiring affirmative statement from spending unit that vehicle is state asset recorded in central accounting system, and verification of same, prior to issuance of state license plate; providing license plates and registrations be valid for not more than 24 months; requiring renewal every two years; authorizing promulgation of emergency rules by commissioner; directing proposal of legislative and emergency rules to establish standardized naming conventions for state vehicle titles, licenses, and registrations; establishing process for spending unit to apply for and acquire new uniform vehicle title and registration plate; requiring updating of information in centralized accounting system following receipt of new title, registration and license plates; providing for a citation for vehicles with expired state license plate; requiring spending unit file report with division upon receipt of citation; directing compliance audit by Legislative Auditor

of Division of Motor Vehicles; exempting confidential information relating to certain vehicles from public disclosure under the Freedom of Information Act; authorizing rule-making; and requiring annual reports to the Governor and Legislature.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-2. Department of Administration and Office of Secretary; secretary; divisions; directors.

1 (a) The Department of Administration and the Office
2 of Secretary of Administration are continued in the
3 executive branch of state government. The secretary is
4 the Chief Executive Officer of the department and shall
5 be appointed by the Governor, by and with the advice and
6 consent of the Senate, for a term not exceeding the term
7 of the Governor.

8 (b) The Department of Administration may receive
9 federal funds.

10 (c) The secretary serves at the will and pleasure of the
11 Governor. The annual compensation of the secretary shall
12 be as specified in §6-7-2a of this code.

13 (d) There shall be in the Department of Administration
14 an Aviation Division, at the discretion of the secretary, a
15 Finance Division, a Fleet Management Division, a General
16 Services Division, an Information Services and
17 Communications Division, Division of Personnel and a
18 Purchasing Division. Each division shall be headed by a
19 director who may also head any and all sections within that
20 division and who shall be appointed by the secretary.

21 (e) There shall also be in the Department of
22 Administration those agencies, boards, commissions and
23 councils specified in §5F-2-1 of this code.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-49. Central motor pool for state-owned vehicles and aircraft.

1 [Repealed]

§5A-3-52. Aviation division; fund.

1 (a) The secretary may establish an aviation division
2 within the Department of Administration to:

3 (1) Manage all aircraft owned or possessed by the State
4 of West Virginia or any of its departments, divisions,
5 agencies, bureaus, boards, commissions, offices or
6 authorities: *Provided*, That, such aircraft shall not be used
7 for personal purposes;

8 (2) Administer the rules, including emergency rules,
9 promulgated under the provisions of §5A-3-48 of this code;
10 and

11 (3) Perform any duties relating to aircraft owned or
12 possessed by the State of West Virginia assigned by the
13 secretary, which duties may include those set out in §5A-3-
14 50 through §5A-3-53 of this code.

15 (b) The special revenue account, known as the Aviation
16 Fund, is hereby continued and shall be administered by the
17 director of the division, or in the absence of a director, by
18 the secretary. Expenditures from this fund are authorized
19 from collections but are to be made only in accordance with
20 appropriation by the Legislature and in accordance with
21 the provisions of §12-3-1 *et seq.* of this code and upon
22 fulfillment of the provisions of §11B-2-1 *et seq.* of this code.
23 Any balance remaining in the special revenue account at the
24 end of any state fiscal year does not revert to the General
25 Revenue Fund but remains in the special revenue account
26 and shall be used solely in a manner consistent with this
27 article. All costs and expenses incurred pursuant to §5A-3-
28 52 of this code, including administrative, shall be paid from

29 those funds. Charges for operating, repairing and servicing
30 aircraft made against any institution, agency, or department
31 shall be paid into the Aviation Fund by that institution,
32 department, or agency.

ARTICLE 12. FLEET MANAGEMENT DIVISION.

§5A-12-1. Definitions.

1 As used in this article:

2 (a) “Central motor pool” means, under the direction and
3 control of the Secretary of Administration, the group of state
4 vehicles to be shared among spending units;

5 (b) “Centralized accounting system” means the system
6 of record for the maintenance of an accurate inventory of
7 state vehicle fixed assets as maintained by the Enterprise
8 Resource Planning Board pursuant to §12-6D-1 *et seq.* of
9 this code;

10 (c) “Director” means the Director of the Fleet
11 Management Division;

12 (d) “Division” means the Fleet Management Division,
13 under the Department of Administration, as established
14 pursuant to this article;

15 (e) “Fleet Coordinator” means the head of a spending
16 unit, or his or her designee, who is responsible for the duties
17 of fleet coordinator as required by this article;

18 (f) “Indirect costs” means the expenses of operating
19 state vehicles that may or may not be attributable to a
20 specific vehicle, including miscellaneous expenses for
21 cleaning supplies, shop supplies, small parts, office and
22 administrative expenses attributable to fleet coordinator
23 activity, training costs for fleet coordinators and state
24 vehicle driver training, facilities costs, administrative office
25 overhead, parking costs, and shop equipment costs where
26 applicable;

27 (g) “Secretary” means the Secretary of the Department
28 of Administration;

29 (h) “Spending unit” means the State of West Virginia
30 and all agencies, offices, departments, divisions, boards,
31 commissions, councils, committees, or other entities of the
32 state government for which an appropriation is requested or
33 to which an appropriation is made by the Legislature.
34 “Spending unit” does not mean any county, city, township,
35 public service district, or other political subdivision of the
36 state;

37 (i) “State vehicle” means, for the purpose of this article,
38 a vehicle with a rating of one ton or less that is owned,
39 purchased, or leased by any state spending unit, on which a
40 state vehicle license plate is required, where the use of such
41 vehicle is paid for with public funds regardless of the source
42 of such funding, but does not include all-terrain vehicles
43 (ATVs) or vehicles requiring a commercial driver’s license
44 to operate;

45 (j) “State vehicle fleet” means all state vehicles;

46 (k) “State vehicle license plate” means a license plate
47 authorized to be issued by the Division of Motor Vehicles
48 pursuant to §17A-3-23 and §17A-3-25 of this code, which
49 identifies the vehicle as owned or leased by the state or a
50 spending unit;

51 (l) “State Vehicle Title, Registration and Relicensing
52 Project of 2018” means the requirement for all spending
53 units owning or leasing state vehicles, to report to the
54 Division of Motor Vehicles and obtain new titles, new
55 registration cards and new state vehicle license plates by
56 December 31, 2018, pursuant to §17A-3-23 and §17A-3-25
57 of this code, to standardize the naming conventions on titles
58 and registration cards of state vehicles in order to facilitate
59 the creation and maintenance of a centralized state vehicle
60 inventory system; and

61 (m) “Vehicle log” means the record of state vehicle use,
62 to be updated by the vehicle operator and maintained by the
63 fleet coordinators, used to track vehicle utilization data
64 required to be compiled and maintained pursuant to this
65 article.

§5A-12-2. Scope of Article.

1 (a) This article applies to all spending units of state
2 government relating to the purchase, lease, or use of any
3 state vehicle with the expenditure of public funds, except as
4 otherwise provided by this code.

5 (b) Notwithstanding any exemption given to a spending
6 unit by this code from the provisions of §5A-3-1 *et seq.* of
7 this code or any prior exemption granted administratively
8 from the Fleet Management Division or the Fleet
9 Management Office, each spending unit of the state that
10 owns, leases, purchases, or reimburses for personal vehicle
11 use, shall comply with the reporting provisions of this
12 article.

§5A-12-3. Fleet Management Division created; director; duties and responsibilities.

1 (a) The Fleet Management Office, as previously
2 authorized pursuant to §5A-1-2 and §5A-3-52 of this code,
3 is hereby continued in the Department of Administration as
4 the Fleet Management Division for the purpose of
5 maintaining a state vehicle fleet.

6 (b) The Division shall have the following duties and
7 responsibilities:

8 (1) To provide or contract for management services,
9 including fueling and vehicle maintenance, and any other
10 services necessary to properly manage the operation and use
11 of state vehicles;

12 (2) To preapprove and assist with purchase of new or
13 replacement vehicles for agencies including facilitating
14 financing arrangements;

15 (3) To maintain a state vehicle fleet for all state vehicles
16 owned or leased by the State of West Virginia or any of its
17 spending units;

18 (4) To charge a fee for division services by spending
19 units utilizing state vehicles;

20 (5) To provide training and notice to fleet coordinators
21 and spending units concerning the duties and
22 responsibilities under this article, including any
23 requirements related to the State Vehicle Title, Registration
24 and Relicensing Project of 2018, established pursuant to
25 §17A-3-25 of this code;

26 (6) To develop safe operation and other policies
27 governing state vehicle use;

28 (7) To propose rules for legislative approval in
29 accordance with §29A-3-1 *et seq.* of this code;

30 (8) Report annually to the Governor and to the Joint
31 Committee on Government and Finance, regarding the
32 operations of the state fleet and the utilization of state
33 vehicles;

34 (9) To develop and maintain, in cooperation with the
35 Travel Management Office, state policies for the utilization
36 of state vehicles, including establishing best practices for
37 state vehicle use; and

38 (10) To provide assistance upon request to any spending
39 unit related to financing, purchasing, leasing, operating,
40 maintaining, transferring, and decommissioning state
41 vehicles.

42 (c) The secretary shall appoint a director of the division,
43 who shall:

44 (1) Employ such staff as needed to effectuate the
45 provisions of this article;

46 (2) Maintain adequate office space for staff and
47 equipment as needed to effectuate the provisions of this
48 article; and

49 (3) Under the direction of the secretary, establish a
50 central motor pool, which shall be maintained and
51 administered by the division, subject to such rules as the
52 director may promulgate: *Provided*, That the division is
53 responsible for the storage, maintenance, and repairs of all
54 vehicles assigned to the central motor pool.

§5A-12-4. Fleet Management Division Fund.

1 The special revenue account, known as the “Fleet
2 Management Office Fund”, previously created by §5A-3-52
3 of this code, shall terminate effective July 1, 2018. On and
4 after July 1, 2018, all funds previously belonging to the
5 Fleet Management Office Fund shall transfer to the special
6 revenue account which shall be known as the “Fleet
7 Management Division Fund” which shall be created in the
8 State Treasury, and shall be administered by the director.
9 Expenditures are authorized from collections but are to be
10 made only in accordance with appropriation by the
11 Legislature and in accordance with §12-3-1 *et seq.* of this
12 code and upon fulfillment of the requirements of §11B-2-1
13 *et seq.* of this code. Any balance remaining in the special
14 revenue account at the end of any state fiscal year does not
15 revert to the General Revenue Fund but remains in the
16 special revenue account and may be used solely in a manner
17 consistent with this article.

§5A-12-5. Rule-making authority; emergency rules.

1 (a) The director shall propose legislative rules as may
2 be necessary to implement this article, in accordance with
3 §29A-3-1 *et seq.* of this code. Those rules shall include, but
4 not be limited to:

5 (1) Requirements governing the use of state vehicles;

6 (2) Reporting requirements and responsibilities for fleet
7 coordinators;

8 (3) Requirements and responsibilities for each driver or
9 operator of a state vehicle;

10 (4) Information to be collected and maintained on state
11 vehicle log sheets, including information related to mileage,
12 destinations, and purpose of trip;

13 (5) The form and manner for each spending unit fleet
14 coordinator to report to the division, including any
15 electronic format as deemed necessary by the director;

16 (6) The information that each spending unit fleet
17 coordinator shall collect and maintain regarding state
18 vehicle use by the spending unit;

19 (7) The information for spending unit fleet coordinators
20 to annually report to the division regarding state vehicle use;

21 (8) Requirements and policies governing commuting in
22 and taking home state vehicles; and

23 (9) Requirements and policies governing volunteer and
24 non-public employee drivers.

25 (b) All rules of the Fleet Management Office in effect
26 on the effective date of this article shall remain in effect
27 until they are amended, replaced, or repealed: *Provided,*
28 That these rules shall expire on July 1, 2021, if not sooner
29 superseded.

30 (c) On or before June 15, 2018, the director shall
31 propose emergency legislative rules which may amend or
32 modify existing legislative rules governing the use of state
33 vehicles pursuant to §5A-12-1 *et seq.* of this code to
34 implement the provisions of this article.

§5A-12-6. Vehicle operator regulations; training.

1 (a) Each operator of a state vehicle, or a personal vehicle
2 for which reimbursement is sought, shall maintain the
3 vehicle logs to the level of detail required by the division
4 through legislative rules, and as may be required by the
5 spending unit.

6 (b) Each operator of a state vehicle shall comply with
7 the laws, rules, and policies governing state vehicle use,
8 including spending unit rules and policies.

9 (c) Prior to operating a state vehicle, each operator shall
10 be required to take such training courses as may be required
11 by the Board of Risk and Insurance Management, the Travel
12 Management Office, the Fleet Management Division, and
13 the spending unit.

14 (d) If any public employee or public official fails to
15 comply with any rule or regulation for state vehicle use, the
16 spending unit may require that the individual attend
17 training, be restricted from using state vehicles, or be
18 prohibited from using state vehicles: *Provided*, That
19 nothing in this section authorizes the division to restrict the
20 use of state vehicles except for those employees under its
21 control.

§5A-12-7. Spending unit duties and responsibilities.

1 (a) Every spending unit shall report all vehicles and
2 equipment requiring a state license plate, including those
3 vehicles with a rating of more than one ton, those requiring
4 a commercial driver's license to operate, and all-terrain
5 vehicles, as fixed assets in the centralized accounting
6 system maintained by the Enterprise Resource Planning
7 Board.

8 (b) Every spending unit that owns state vehicles shall
9 annually affirm to the State Agency for Surplus Property on
10 or before July 15 of each year, that the vehicles and assets

11 reported to the centralized accounting system as required by
12 §5A-12-7(a) of this code are accurate and current.

§5A-12-8. Fleet coordinators.

1 (a) Each spending unit shall name a fleet coordinator,
2 who shall be responsible for the management and
3 maintenance of state vehicle information, and for reporting
4 state vehicle utilization reports to the division as required by
5 this article and legislative rules promulgated pursuant
6 thereto.

7 (b) Each spending unit shall provide to the division the
8 name and contact information for the spending unit fleet
9 coordinator.

10 (c) Each fleet coordinator is required to attend the Fleet
11 Coordinator training provided by the Fleet Management
12 Division.

13 (d) Each fleet coordinator shall be responsible for
14 providing adequate training to each operator of a state
15 vehicle within his or her spending unit.

**§5A-12-9. Utilization of Vehicle Management Services;
exemption.**

1 (a) Each spending unit that owns, uses, or maintains a
2 state vehicle shall utilize the vehicle management services
3 provided by the Fleet Management Division for all state
4 vehicles.

5 (b) Spending units may request an exemption from part
6 or all of the services provided by the Fleet Management
7 Division. The division shall review each request and may
8 recommend approval of the request by the secretary. The
9 division shall submit a legislative rule identifying each
10 spending unit for which an exemption has been approved,
11 which rule shall further state the nature of the proposed
12 exemption, and which services will be used, as well as the
13 manner in which the spending unit will comply with all
14 other requirements of this article, including the

15 requirements to report certain information to the division:
16 *Provided*, That no request for exemption pursuant to this
17 section shall become effective without the enactment of a
18 legislative rule pursuant to the provisions of §29A-3-1 *et*
19 *seq.* of this code.

§5A-12-10. Annual reports by spending units.

1 (a) Each spending unit that owns or operates a state
2 vehicle, rents vehicles for a state purpose, or reimburses for
3 personal vehicle use, shall annually report the Fleet
4 Management Division, beginning on or before October 31,
5 2018, and on or before October 31 each year thereafter, in
6 the manner required by this article and by legislative rule.

7 (b) Each spending unit that owns or leases a state
8 vehicle or rents or reimburses an employee for personal
9 vehicle use, shall periodically compile and maintain the
10 individual specific vehicle records of each state vehicle, and
11 all records of vehicle rental and private vehicle use
12 expenditures, for not less than three years, or as may be
13 required by the division or the State Auditor pursuant to
14 §5A-12-13 of this code.

§5A-12-11. Complaint process.

1 (a) The director shall provide a complaint process for
2 use by the general public to report to the division issues
3 relevant to the operation and maintenance of a state vehicle
4 fleet. Complaints may be received by the division in writing,
5 by telephone, or electronically: *Provided*, That the division
6 shall review all complaints weekly, and report to the
7 appropriate spending unit the information regarding the
8 state vehicle in use by the spending unit, and shall describe
9 the nature of the complaint, including, but not limited to
10 mechanical problems, equipment failures, misuse, or illegal
11 operation of a state vehicle.

12 (b) Each spending unit shall investigate each complaint
13 it receives and provide an update to the division on a regular
14 basis and at the conclusion of the investigation.

§5A-12-12. State vehicle fleet annual report.

1 (a) The Fleet Management Division shall maintain
2 sufficient records and fleet coordinator reports to produce a
3 State Vehicle Fleet Annual Report, regarding the
4 maintenance and operation of the state vehicle fleet.

5 (b) On or before December 31, 2019 and each
6 December 31 thereafter, the division shall submit the State
7 Vehicle Fleet Annual Report to the Governor, and to the
8 Joint Committee on Government and Finance, containing,
9 at a minimum:

10 (1) The total number of state vehicles;

11 (2) The total number of vehicles operated by each
12 spending unit;

13 (3) The total number of state vehicle miles driven, both
14 in the aggregate and by spending unit;

15 (4) The total amount of fuel purchased, and the total
16 expenditures for annual maintenance, repair, fuel
17 expenditures, both in the aggregate and by spending unit;

18 (5) The total number of miles reimbursed for personal
19 vehicle use and the amount reimbursed annually, both in the
20 aggregate and by spending unit;

21 (6) The total number of vehicles owned and operated by
22 the division, including information on the total miles driven,
23 and the annual expenditures for maintenance, repair, and
24 fuel;

25 (7) The total annual indirect costs of operating the state
26 vehicle fleet, both in the aggregate and by spending unit;

27 (8) A summary of complaints received concerning state
28 vehicle usage;

29 (9) A summary of the State Auditor's spot compliance
30 audit report authorized pursuant to §5A-12-13 of this code;

31 (10) The operating revenue and expenses of the
32 division; and

33 (11) Recommendations for any policy or statutory
34 changes the director determines may be necessary to
35 maintain accurate records of the state vehicle fleet,
36 utilization of state vehicles, and the expenses necessary to
37 maintain such vehicle fleet.

38 (c) An annual report produced in an electronic format
39 complies with the reporting requirements of this article and
40 shall be made available on the division website: *Provided,*
41 That the division shall redact any personally identifiable or
42 confidential information.

§5A-12-13. Spot compliance audits by the State Auditor.

1 (a) Beginning July 1, 2019, the State Auditor shall
2 conduct spot compliance audits to monitor operator,
3 spending unit, and fleet coordinator records and reports for
4 accuracy and compliance with the record keeping
5 provisions of this article. The State Auditor shall conduct a
6 spot compliance audit on not less than 20 percent of the state
7 vehicle fleet annually, in order to conduct spot compliance
8 audits of all state vehicle records on a five-year cycle.

9 (b) A spending unit found to be noncompliant with the
10 recordkeeping provisions of this article may be subject to
11 further compliance monitoring as the State Auditor and
12 director deem necessary.

13 (c) The State Auditor shall report to the division the
14 findings of each spot compliance audit. Such reports shall
15 list the spending units and fleet coordinators audited, and
16 verify:

17 (1) That state vehicle drivers of the spending unit have
18 complied with applicable training requirements and are
19 keeping complete and accurate vehicle logs;

20 (2) That spending unit fleet coordinators have attended
21 training, and are compiling and maintaining the state vehicle
22 records required by this article; and

23 (3) The accuracy of fleet coordinator reporting in the
24 manner consistent with the provisions of this article.

§5A-12-14. Legislative compliance audit.

1 On or before December 31, 2020, the Legislative
2 Auditor, in accordance with §4-10-1 *et seq.* of this code,
3 shall audit the division for state spending unit and fleet
4 coordinator compliance with the reporting requirements and
5 applicable provisions of this article. Such audit shall also
6 include an evaluation of the data collected by the division to
7 determine if the data being provided to the division in
8 spending unit annual reports are sufficient to evaluate the
9 state costs of owning, maintaining, and leasing state
10 vehicles, and to evaluate vehicle use and expenditure trends
11 among the spending units.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

**ARTICLE 6D. WEST VIRGINIA ENTERPRISE
RESOURCE PLANNING BOARD.**

**§12-6D-7. Establishing state vehicle fixed assets record
keeping.**

1 The West Virginia Enterprise Resource Planning Board
2 shall, after consulting with the Fleet Management Division,
3 established pursuant to §5A-12-1 *et seq.* of this code, and
4 the Division of Motor Vehicles, pursuant to the authority in
5 §17A-3-25, develop standard naming conventions for the
6 title, registration, and other fixed asset information to be
7 used in the identification of state vehicles in the system of
8 record for fixed assets, and shall also designate the
9 information to be entered by spending units into the
10 centralized accounting system maintained by the West
11 Virginia Enterprise Resource Planning Board, for the

12 development and maintenance of an accurate and updated
13 state vehicle inventory.

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

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

**§17A-3-23. Registration plates to state, county, municipal and
other governmental vehicles; use for undercover activities.**

1 (a) Any motor vehicle designed to carry passengers,
2 owned or leased by the state of West Virginia, or any of its
3 departments, bureaus, commissions, or institutions, except
4 vehicles used by the Governor, Treasurer, not to exceed 8
5 vehicles operated by investigators of the Office of the
6 Attorney General, three vehicles per elected office of the
7 Board of Public Works not otherwise specified, vehicles
8 operated by the State Police, not to exceed five vehicles
9 operated by the office of the Secretary of Military Affairs
10 and Public Safety, not to exceed five vehicles operated by
11 the Division of Homeland Security and Emergency
12 Management, vehicles operated by natural resources police
13 officers of the Division of Natural Resources, not to exceed
14 10 vehicles operated by the arson investigators of the Office
15 of State Fire Marshal, not to exceed two vehicles operated
16 by the Division of Protective Services, not to exceed 16
17 vehicles operated by inspectors of the Office of the Alcohol
18 Beverage Control Commissioner, vehicles operated by the
19 West Virginia Wing of the Civil Air Patrol, and vehicles
20 operated by probation officers employed under the Supreme
21 Court of Appeals may not be operated or driven by any
22 person unless it has displayed and attached to the front
23 thereof, in the same manner as regular motor vehicle
24 registration plates are attached, a plate of the same size as
25 the regular registration plate, with white lettering on a green
26 background bearing the words "West Virginia" in one line

27 and the words "State Car" in another line, and the lettering
28 for the words "State Car" shall be of sufficient size to be
29 plainly readable from a distance of 100 feet during
30 daylight: *Provided*, That beginning January 1, 2019, state
31 vehicle license plates shall be gold with blue lettering.

32 The vehicle shall also have attached to the rear a plate
33 bearing a number and any other words and figures as the
34 Commissioner of Motor Vehicles shall prescribe. The rear
35 plate shall also be green with the number in
36 white: *Provided*, That beginning January 1, 2019, state
37 vehicle license plates shall be gold with blue lettering.

38 (b) Registration plates issued to vehicles owned by
39 counties shall be white on red with the word "County" on
40 top of the plate and the words "West Virginia" on the
41 bottom.

42 (c) Registration plates issued to a city or municipality
43 shall be white on blue with the word "City" on top and the
44 words "West Virginia" on the bottom.

45 (d) Registration plates issued to a city or municipality
46 law-enforcement department shall include blue lettering on
47 a white background with the words "West Virginia" on top
48 of the plate and shall be further designed by the
49 commissioner to include a law-enforcement shield together
50 with other insignia or lettering sufficient to identify the
51 motor vehicle as a municipal law-enforcement department
52 motor vehicle. The colors may not be reversed and shall be
53 of reflectorized material. The registration plates issued to
54 counties, municipalities, and other governmental agencies
55 authorized to receive colored plates hereunder shall be
56 affixed to both the front and rear of the vehicles.

57 (e) (1) Registration plates issued to vehicles operated by
58 county sheriffs shall be designed by the commissioner in
59 cooperation with the sheriffs' association with the word
60 "Sheriff" on top of the plate and the words "West Virginia"
61 on the bottom. The plate shall contain a gold shield

62 representing the sheriff's star and a number assigned to that
63 plate by the commissioner. Every county sheriff shall
64 provide the commissioner with a list of vehicles operated by
65 the sheriff, unless otherwise provided in this section, and a
66 fee of \$10 for each vehicle submitted by July 1, 2002.

67 (2) Registration plates issued to vehicles operated by the
68 West Virginia Wing of the Civil Air Patrol shall be designed
69 by the commissioner in cooperation with the Civil Air Patrol
70 and include the words "Civil Air Patrol" on the plate. The
71 Civil Air Patrol shall provide the commissioner with a list
72 of vehicles operated by the Civil Air Patrol, unless
73 otherwise provided in this section, and a fee of \$10 for each
74 new vehicle for which a Civil Air Patrol license plate is
75 requested.

76 (f) The commissioner is authorized to designate the
77 colors and design of any other registration plates that are
78 issued without charge to any other agency or non-state
79 government entity entitled to registration plates at no charge
80 in accordance with the motor vehicle laws: *Provided*, That
81 where the institutions of higher education opt to have their
82 logo displayed on the state license plate, such institution
83 shall bear any additional costs of those added features:
84 *Provided, however*, That no public service districts or
85 designated nongovernmental organizations shall be issued a
86 license plate designated for vehicles owned or leased by the
87 state of West Virginia, or any of its departments, bureaus,
88 commissions, or institutions.

89 (g) Upon application, the commissioner is authorized to
90 issue a maximum of five Class A license plates per applicant
91 to be used by county sheriffs and municipalities on law-
92 enforcement vehicles while engaged in undercover
93 investigations.

94 (h) The commissioner is authorized to issue a maximum
95 of five Class A license plates to be used on vehicles assigned
96 to the Division of Motor Vehicles investigators for
97 commercial driver examination fraud investigation and

98 driver's license issuance fraud detection and fraud
99 prevention.

100 (i) The commissioner is authorized to issue an unlimited
101 number of license plates per applicant to authorized drug
102 and violent crime task forces in the state of West Virginia
103 when the chairperson of the control group of a drug and
104 violent crime task force signs a written affidavit stating that
105 the vehicle or vehicles for which the plates are being
106 requested will be used only for official undercover work
107 conducted by a drug and violent crime task force.

108 (j) The commissioner is authorized to issue 20 Class A
109 license plates to the Criminal Investigation Division of the
110 Department of Revenue for use by its investigators.

111 (k) The commissioner may issue a maximum of 10
112 Class A license plates to the Division of Natural Resources
113 for use by natural resources police officers. The
114 commissioner shall designate the color and design of the
115 registration plates to be displayed on the front and the rear
116 of all other state-owned vehicles owned by the Division of
117 Natural Resources and operated by natural resources police
118 officers.

119 (l) The commissioner is authorized to issue an unlimited
120 number of Class A license plates to the Commission on
121 Special Investigations for state-owned vehicles used for
122 official undercover work conducted by the Commission on
123 Special Investigations.

124 (m) The commissioner is authorized to issue a
125 maximum of two Class A plates to the Division of
126 Protective Services for state-owned vehicles used by the
127 Division of Protective Services in fulfilling its mission.

128 (n) The commissioner is authorized to issue Class A
129 registration plates for vehicles used by the Medicaid Fraud
130 Control Unit created by §9-7-7 of this code.

131 (o) The commissioner is authorized to issue Class A
132 registration plates for vehicles used by the West Virginia
133 Insurance Fraud Unit created by §33-41-8 of this code.

134 (p) No other registration plate may be issued for, or
135 attached to, any state-owned vehicle.

136 (q) The Commissioner of Motor Vehicles shall have a
137 sufficient number of both front and rear plates produced to
138 attach to all state-owned or leased vehicles.

139 (r) The commissioner shall, after consultation with the
140 Fleet Management Division established pursuant to §5A-
141 12-1 *et seq.* of this code and the Enterprise Resource
142 Planning Board established pursuant to §12-6D-1 *et seq.* of
143 this code, develop and adopt a standardized naming
144 convention for the title, registration, and licensing of state
145 vehicles, pursuant to §17A-3-23 and §7A-3-25 of this code.
146 The naming convention adopted shall be consistent with the
147 naming convention adopted for the centralized accounting
148 system as maintained by the Enterprise Resource Planning
149 Board for the purpose of creating and maintaining an
150 accurate and up to date inventory of the state vehicle fleet.

151 (s) It is the duty of each office, department, bureau,
152 commission, or institution furnished any vehicle to have
153 plates as described herein affixed thereto prior to the
154 operation of the vehicle by any official or employee.

155 (t) The commissioner may issue special registration
156 plates for motor vehicles titled in the name of the Division
157 of Public Transit or in the name of a public transit authority
158 as defined in this subsection and operated by a public transit
159 authority or a public transit provider to transport persons in
160 the public interest. For purposes of this subsection, “public
161 transit authority” means an urban mass transportation
162 authority created pursuant to §8-27-1 *et seq.* of this code or
163 a nonprofit entity exempt from federal and state income
164 taxes under the Internal Revenue Code and whose purpose
165 is to provide mass transportation to the public at large. The

166 special registration plate shall be designed by the
167 commissioner and shall display the words “public transit”
168 or words or letters of similar effect to indicate the public
169 purpose of the use of the vehicle. The special registration
170 plate shall be issued without charge.

171 (u) Each green registration plate with white letters
172 affixed to a state vehicle, and each corresponding title and
173 registration certificate for all state vehicles, other than those
174 vehicles with Class A registration plates as provided in this
175 section, terminates at midnight on December 31, 2018. Each
176 spending unit assigned a state vehicle that is required to
177 display a state vehicle license plate and registration shall
178 obtain a new title, new registration card, and new state
179 vehicle license plate prior to January 1, 2019: *Provided,*
180 That no state vehicle license plate shall be issued unless the
181 spending unit has provided an affirmative statement under
182 penalty of perjury that the vehicle is a state asset recorded
183 in the central accounting system as maintained by the
184 Enterprise Resource Planning Board, and the same has been
185 verified by the commissioner, as required by §17A-3-25 of
186 this code. When new registrations are issued pursuant to this
187 article and for subsequent, non-Class A registrations of state
188 owned or leased vehicles, the state vehicle registration plate
189 and certificate shall be valid for a period of not more than
190 24 months and shall be required to be renewed every two
191 years.

192 (v) The commissioner is authorized to prepare and
193 promulgate emergency rules, pursuant to §29A-3-1 *et seq.*
194 of this code in order to implement amendments to this
195 section.

196 (w) Any person who violates the provisions of this
197 section is guilty of a misdemeanor and, upon conviction
198 thereof, shall be fined not less than \$50 nor more than \$100.
199 Magistrates have concurrent jurisdiction with circuit courts
200 for the enforcement of this section.

§17A-3-25. State vehicle title, registration and relicensing project of 2018; emergency and legislative rules.

1 (a) On or before July 1, 2018, the commissioner shall
2 coordinate with the Fleet Management Division established
3 pursuant to §5A-12-1 *et seq.* of this code and the Enterprise
4 Resource Planning Board established pursuant to §12-6D-1
5 *et seq.* of this code and other applicable agencies, to develop
6 a standardized titling and registration system for state
7 vehicles. To the extent practicable, the standardization of
8 vehicle title, registration, and state vehicle license plates
9 shall conform to the state's central accounting system
10 maintained by the Enterprise Resource Planning Board. The
11 standardization of state vehicle titles, registrations, and
12 license plates, as described in this section, shall be known
13 as the "State Vehicle Title, Registration, and Relicensing
14 Project of 2018." Every spending unit shall comply with the
15 provisions of this section, and §17A-3-23 of this code.

16 (b) The commissioner, in coordination with the Fleet
17 Management Division, shall develop a standard system for
18 identifying and recording the names of agencies, offices, or
19 spending units to which each state vehicle is assigned, or
20 registered, and such standard naming conventions shall be
21 developed to align with the state's central accounting
22 system, and the centralized state vehicle inventory system.
23 The commissioner shall propose legislative and emergency
24 rules, pursuant to §29A-3-1 *et seq.* of this code, establishing
25 those standard naming conventions for the registration,
26 titling, and licensing of every state vehicle, and assigning by
27 rule a list of the standardized naming conventions for each
28 spending unit for the purpose of issuing new title,
29 registration, and license plates to each state vehicle by
30 December 31, 2018.

31 (c) Once the commissioner has promulgated legislative
32 and emergency rules as authorized pursuant to subsection (b)
33 of this section, and not later than September 1, 2018, the
34 division shall begin to issue the standardized title, registration,
35 and state vehicle license plates for all state vehicles.

36 (d) Any spending unit applying to license or relicense a
37 state vehicle pursuant to this section shall include with the
38 application an affirmative statement under the penalty of
39 perjury that the vehicle is a state asset recorded in the central
40 accounting system as maintained by the Enterprise
41 Resource Planning Board before the commissioner is
42 required to issue any motor vehicle registration plates:
43 *Provided*, That for leased vehicles, the spending unit shall
44 affirm to the commissioner that the vehicle is leased and not
45 required to be recorded in the state central accounting
46 system.

47 (e) The commissioner shall confirm that each vehicle
48 for which an agency applies for a license, title, or
49 registration is properly listed within the centralized
50 accounting system as being a vehicle owned by a state
51 agency before processing the application.

52 (f) The commissioner is authorized, by legislative and
53 emergency rule, to establish a procedure whereby the
54 commissioner shall reject the application for a state vehicle
55 title, registration and state vehicle license plate if that
56 application does not conform to the standard naming
57 convention requirements. The commissioner shall provide
58 by rule for the reasonable remedy, correcting of errors, or to
59 compel compliance with the standard naming conventions.

60 (g) At midnight on December 31, 2018, all green state
61 vehicle license plates with white lettering affixed to vehicles
62 shall expire. The commissioner, in coordination with the
63 Fleet Management Division, shall provide notice to each
64 spending unit, and advertise as deemed appropriate, to
65 inform the fleet coordinators, as defined in §5A-12-3 of this
66 code, that such license plates expire and the procedure for
67 being issued new titles, registrations, and license plates
68 pursuant to this article. The head of each spending unit with
69 state vehicles shall cooperate and comply with the
70 requirements of the State Vehicle Title, Registration, and
71 Relicensing Project of 2018, and the centralized accounting
72 system.

73 (h) Upon receipt of the new title, registration, and
74 license plates, each spending unit shall enter the appropriate
75 information into the state's central accounting system
76 maintained by the Enterprise Resource Planning Board, in
77 such detail and specificity as required by the board, the Fleet
78 Management Division established pursuant to §5A-12-1 *et*
79 *seq.* of this code.

§17A-3-26. Enforcement; report.

1 (a) Beginning January 1, 2019, any state vehicle in this
2 state with a green state license plate with white lettering is
3 in violation of this article.

4 (b) After January 1, 2019, any law-enforcement officer
5 who discovers a state vehicle with an expired state vehicle
6 license plate shall issue a citation with a penalty of \$100 per
7 violation. Upon payment of such penalty, notwithstanding
8 court costs, the clerk of the court shall remit the amount of
9 the penalty to the law-enforcement agency having brought
10 the charge before the court.

11 (c) Any spending unit issued a citation pursuant to this
12 section shall file a report with the Fleet Management
13 Division within 30 days of the citation and describe the state
14 vehicle by the vehicle identification number, the make,
15 model, and year of the vehicle, the state vehicle license
16 plate, and the date on which the license plate was renewed.

§17A-3-27. Compliance audit.

1 On or before December 31, 2019, the Legislative
2 Auditor, in accordance with §4-10-1 *et seq.* of this code,
3 shall audit the Division of Motor Vehicles for compliance
4 with the State Vehicle Title, Registration, and Relicensing
5 Project of 2018. The Legislative Auditor may make
6 recommendations for future compliance monitoring of any
7 spending unit found not in compliance with the project and
8 make such recommendations for administrative penalties
9 for noncompliance with the project.

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

***§29B-1-4. Exemptions.**

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

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

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

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

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

*NOTE: This section was also amended by H. B. 2982 (Chapter 104), which passed subsequent to this act.

31 (B) Records identifying motor vehicles used, and the
32 agencies using them, for undercover investigation activities
33 conducted by state law-enforcement agencies or other
34 agencies that are authorized by this code to use undercover
35 or unmarked vehicles;

36 (5) Information specifically exempted from disclosure
37 by statute;

38 (6) Records, archives, documents or, manuscripts
39 describing the location of undeveloped historic, prehistoric,
40 archaeological, paleontological, and battlefield sites or
41 constituting gifts to any public body upon which the donor
42 has attached restrictions on usage or the handling of which
43 could irreparably damage the record, archive, document, or
44 manuscript;

45 (7) Information contained in or related to examination,
46 operating, or condition reports prepared by, or on behalf of,
47 or for the use of any agency responsible for the regulation
48 or supervision of financial institutions, except those reports
49 which are by law required to be published in newspapers;

50 (8) Internal memoranda or letters received or prepared
51 by any public body;

52 (9) Records assembled, prepared, or maintained to
53 prevent, mitigate, or respond to terrorist acts or the threat of
54 terrorist acts, the public disclosure of which threaten the
55 public safety or the public health;

56 (10) Those portions of records containing specific or
57 unique vulnerability assessments or specific or unique
58 response plans, data, databases, and inventories of goods or
59 materials collected or assembled to respond to terrorist acts;
60 and communication codes or deployment plans of law-
61 enforcement or emergency response personnel;

62 (11) Specific intelligence information and specific
63 investigative records dealing with terrorist acts or the threat
64 of a terrorist act shared by and between federal and

65 international law-enforcement agencies, state and local law-
66 enforcement, and other agencies within the Department of
67 Military Affairs and Public Safety;

68 (12) National security records classified under federal
69 executive order and not subject to public disclosure under
70 federal law that are shared by federal agencies and other
71 records related to national security briefings to assist state
72 and local government with domestic preparedness for acts
73 of terrorism;

74 (13) Computing, telecommunications, and network
75 security records, passwords, security codes, or programs
76 used to respond to or plan against acts of terrorism which
77 may be the subject of a terrorist act;

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

80 (15) Architectural or infrastructure designs, maps, or
81 other records that show the location or layout of the facilities
82 where computing, telecommunications or network
83 infrastructure used to plan against or respond to terrorism
84 are located or planned to be located;

85 (16) Codes for facility security systems; or codes for
86 secure applications for facilities referred to in subdivision
87 (15) of this subsection;

88 (17) Specific engineering plans and descriptions of
89 existing public utility plants and equipment;

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

93 (19) Records of the Division of Corrections, Regional
94 Jail and Correctional Facility Authority, and the Division of
95 Juvenile Services relating to design of corrections, jail and
96 detention facilities owned or operated by the agency, and
97 the policy directives and operational procedures of

98 personnel relating to the safe and secure management of
99 inmates or residents, that if released, could be used by an
100 inmate or resident to escape a facility, or to cause injury to
101 another inmate, resident, or to facility personnel;

102 (20) Information related to applications under §61-7-4
103 of this code, including applications, supporting documents,
104 permits, renewals, or any other information that would
105 identify an applicant for or holder of a concealed weapon
106 permit: *Provided*, That information in the aggregate that
107 does not identify any permit holder other than by county or
108 municipality is not exempted: *Provided, however*, That
109 information or other records exempted under this
110 subdivision may be disclosed to a law-enforcement agency
111 or officer: (i) To determine the validity of a permit, (ii) to
112 assist in a criminal investigation or prosecution, or (iii) for
113 other lawful law-enforcement purposes; and

114 (21) Personal information of law-enforcement officers
115 maintained by the public body in the ordinary course of the
116 employer-employee relationship. As used in this paragraph,
117 “personal information” means a law-enforcement officer’s
118 social security number, health information, home address,
119 personal address, personal telephone numbers, and personal
120 email addresses, and those of his or her spouse, parents, and
121 children, as well as the names of the law-enforcement
122 officer’s spouse, parents, and children.

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

127 (1) Intimidate or coerce the civilian population;

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

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

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

134 (c) The provisions of subdivisions (9) through (16),
135 inclusive, subsection (a) of this section do not make subject
136 to the provisions of this chapter any evidence of an
137 immediate threat to public health or safety unrelated to a
138 terrorist act or the threat of a terrorist act which comes to the
139 attention of a public entity in the course of conducting a
140 vulnerability assessment response or similar activity.

●

CHAPTER 107

**(Com. Sub. for H. B. 4338 - By Delegates Fast, R.
Miller, Hanshaw, Shott, Eldridge, Robinson, Lovejoy,
Lane, Williams, Isner and Foster)
[By Request of the Department of Military Affairs
and Public Safety]**

[Passed March 10, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 27, 2018.]

AN ACT to repeal §25-1-1, §25-1-1a, §25-1-3, §25-1-3a, §25-1-3b, §25-1-3c, §25-1-4, §25-1-5, §25-1-5a, §25-1-6, §25-1-7, §25-1-8, §25-1-11, §25-1-11a, §25-1-11b, §25-1-11c, §25-1-11d, §25-1-11e, §25-1-11f, §25-1-13, §25-1-14, §25-1-15, §25-1-16, §25-1-16a, §25-1-17, §25-1-18, §25-1-19, §25-1-20, §25-1-21, and §25-1-22 of the Code of West Virginia, 1931, as amended; to repeal §28-5-7, §28-5-8a, §28-5-23, §28-5-24 and §28-5-27 of said code; to repeal §31-20-1, §31-20-1a, §31-20-2, §31-20-3, §31-20-4, §31-20-5, §31-20-5a, §31-20-5b, §31-20-5c, §31-20-5d, §31-20-5e, §31-20-5f, §31-20-5g, §31-20-5h, §31-20-8, §31-20-8a, §31-20-9, §31-20-9a, §31-20-10, §31-20-10a, §31-20-10b, §31-20-11, §31-20-12, §31-20-13, §31-20-14, §31-20-15, §31-20-20, §31-20-22, §31-20-23, §31-20-24, §31-20-27, §31-20-27a, §31-20-28, §31-20-29, §31-20-30, §31-20-30a, §31-20-31, and §31-20-32 of said code; to repeal §62-12-14, §62-12-14a, §62-12-15,

and §62-12-25 of said code; to repeal §62-13-3, §62-13-4, §62-13-5, and §62-13-6a of said code; to amend and reenact §6-7-2a of said code; to amend said code by adding thereto a new chapter, designated §15A-1-1, §15A-1-2, §15A-1-3, §15A-1-4, §15A-1-5, §15A-1-6, §15A-2-1, §15A-2-2, §15A-2-3, §15A-3-1, §15A-3-2, §15A-3-3, §15A-3-4, §15A-3-5, §15A-3-6, §15A-3-7, §15A-3-8, §15A-3-9, §15A-3-10, §15A-3-11, §15A-3-12, §15A-3-13, §15A-3-14, §15A-3-15, §15A-3-16, §15A-3-17, §15A-3-18, §15A-4-1, §15A-4-2, §15A-4-3, §15A-4-4, §15A-4-5, §15A-4-6, §15A-4-7, §15A-4-8, §15A-4-9, §15A-4-10, §15A-4-11, §15A-4-12, §15A-4-13, §15A-4-14, §15A-4-15, §15A-4-16, §15A-4-17, §15A-4-18, §15A-4-19, §15A-4-20, §15A-4-21, §15A-5-1, §15A-5-2, §15A-5-3, §15A-5-4, §15A-5-5, §15A-5-6, §15A-5-7, §15A-5-8, §15A-5-9, §15A-6-1, §15A-6-2, §15A-6-3, §15A-6-4, §15A-6-5, §15A-7-1, §15A-7-2, §15A-7-3, §15A-7-4, §15A-7-5, §15A-7-6, §15A-8-1, §15A-8-2, and §15A-8-3; to amend and reenact §19-12A-5 of said code; and to amend and reenact §50-3-2 and §50-3-4a of said code, all relating generally to supervision of persons committed to the custody of the Division of Corrections, Division of Juvenile Services, and the Regional Jail and Correctional Facility Authority; setting forth rules of construction; defining terms; creating Division of Administrative Services within Department of Military Affairs and Public Safety; defining scope of duties for Division of Administrative Services; authorizing appointment of director; setting qualifications for director; providing authority and duties for director; authorizing director to enter into memorandum of understanding with certain agencies to provide services; transferring certain employees, responsibilities, equipment and records to Division of Administrative Services; providing for classified service coverage for certain employees; creating Division of Corrections and Rehabilitation within Department of Military Affairs and Public Safety; eliminating Division of Corrections and Division of Juvenile Services and transferring powers and authority to Division of Corrections and Rehabilitation; transferring certain powers and authority of Regional Jail and Correctional Facility Authority to Division of Corrections and

Rehabilitation; setting forth purpose and legislative intent; requiring chapter be construed in favor of public safety; authorizing appointment of commissioner of Division of Corrections and Rehabilitation; requiring commissioner subscribe to oath and execute bond; abolishing office of Commissioner of Division of Corrections, Director of Juvenile Services, and Executive Director of Regional Jail and Correctional Facility Authority; vesting powers of abolished offices in office of commissioner of Division of Corrections and Rehabilitation; setting salary for commissioner; setting requirements for commissioner; setting powers and duties of commissioner; providing for the hiring of officers and employees of corrections institutions; providing authority for commissioner or designee to manage and administer certain affairs of correctional units and juvenile facilities under the division's jurisdiction; providing powers of superintendents of institutions or correctional units; requiring commissioner to investigate complaints made against superintendents or employees of institutions; requiring preemployment drug screening of prospective correctional employees; providing authority for superintendent and commissioner over employees; providing exceptions; authorizing hiring of correctional officer employees without regard to position on register; providing for compensation of employees; providing for reimbursement or provision of traveling and other expenses under certain circumstances; providing for certain reporting by commissioner and chief officers of institutions to State Auditor; prohibiting special compensation of officers and employees; providing penalties for violations of provision; setting forth certain law-enforcement powers of employees; establishing Corrections Special Operations Team; authorizing commissioner to prescribe design of employee uniforms; providing limitations on commissioner and municipalities with respect to uniform design; establishing criminal penalties for wearing or using uniform, badge, identification card or insignia with intent to deceive; establishing criminal penalty for falsely representing oneself as officer or employee of division; establishing criminal penalty for employee using position to threaten or coerce any

other person to receive benefit; providing exceptions; identifying institutions to be managed by commissioner; authorizing certain contracts; authorizing the establishment of certain work and study release units; authorizing contract with nonprofit or charitable entities; setting terms of placing person in half-way house or transitional housing facility; placing adult persons sentenced to incarceration under the jurisdiction of the commissioner in the custody of the commissioner; authorizing transfer of adult inmates among institutions; granting contracting authority to commissioner for county jails or other incarceration facilities; directing establishment of a per diem rate for felony sentenced inmates; authorizing transfer of mentally disturbed adult prisoners or inmates; directing commissioner evaluate all facilities for most appropriate space to house each type of inmate; requiring consultation with Juvenile Justice Commission regarding current or prospective juvenile facilities; requiring report on evaluation to Joint Committee on Government and Finance; prohibiting conversion of juvenile facilities to adult facilities or adult facilities to juvenile facilities absent legislative authorization; vesting title to certain properties in the state; making commissioner custodian of deeds; authorizing lease of West Virginia penitentiary in Moundsville, subject to certain conditions, with approval of secretary of Military Affairs and Public Safety; exempting division from purchasing; providing procedures to be followed when purchasing is done by division; providing conditions for emergency purchasing; authorizing certain agreements with medical schools and higher education institutions; authorizing mutual aid agreements, subject to certain conditions, with approval of secretary of Military Affairs and Public Safety; continuing certain funds from Regional Jail and Correctional Facility Authority; providing for transfer of fund administration from Regional Jail and Correctional Facility Authority or its executive director; limiting use of jail funds to certain operations and expenses; authorizing investment under certain circumstances; identifying contents of funds; authorizing certain expenditures of funds; requiring incarceration of persons by counties in jail facilities; providing exceptions;

clarifying authority of circuit and magistrate courts with respect to detention and commitment; requiring payment by county or municipality for per-day cost of incarceration; providing for establishment of per-day cost; capping per-day cost for a period of time; providing conditions for calculating per-day cost; establishing period of time for which county is responsible for costs of housing and maintaining inmates in its facilities; directing preparation of a report on feasibility of phasing out per diem charges; directing contents of report; continuing Jail Operations Partial Reimbursement Fund; establishing source of revenues; providing for use of funds; providing for administration of fund; granting rule-making authority; granting authority to develop policies; continuing legislative rules and policies of former Division of Corrections, Division of Juvenile Services, and Regional Jail and Correctional Facility Authority; authorizing furlough programs; authorizing rule-making; providing certain parameters for furlough program; granting immunity, with certain limitations, to certain persons and entities for claims arising out of furlough program; authorizing electronic monitoring; requiring commissioner charge reasonable fee; providing exceptions; providing for deposit and use of fees; setting parameters for electronic devices; authorizing continuation and establishment of diagnostic and classification subdivisions; requiring all persons committed to the custody of the division to undergo diagnosis and classification; requiring division perform mental health preliminary screenings; authorizing commissioner to transfer inmates; providing conditions for transfer under certain circumstances; authorizing monitoring of inmate telephone calls, inmate mail, and inmate electronic correspondence; requiring notice to inmates of monitoring; providing procedures for and restrictions on monitoring; excepting communications to or from attorneys; requiring promulgation of policy directive establishing record-keeping procedures; providing for use of records when inmate is charged with crimes based on conversations; authorizing establishment of trustee accounts; providing for handling of money and personal property of inmates or residents; requiring certain

incarcerated offenders make reimbursement toward cost of incarceration; requiring certain reports concerning the average cost per inmate; authorizing facility superintendent expend up to one half of inmate's money to satisfy certain obligations; providing for distribution of funds upon inmate departure or death; providing for notice of credit of money credited to former inmate or resident under certain circumstances; directing establishment of inmate or resident benefit funds for each institution; requiring reports on inmate benefit funds; continuing special revenue account; identifying sources of moneys for inmate or resident benefit funds; providing for use of funds in inmate or resident benefit funds; requiring division assist inmates in developing financial plans to meet any child support obligations; directing deduction by superintendent from inmate earnings for all legitimate court-ordered financial obligations; providing for civil judgments awarded to inmate to be subject to deductions for child support, restitution or other court-ordered obligations; directing investment of remaining funds with Municipal Bond Commission; limiting reimbursement rate to medical service providers for services outside division facilities; authorizing assessment of certain reasonable charges against inmates for certain services provided by the state; providing exceptions to authority to assess charges; authorizing interpretive rules; directing preparation and preservation of records for indictment and conviction, or charges and adjudication, and a register containing certain information; authorizing establishment of plant for the manufacture of license plates, road signs, or markers; making it unlawful for state employee or official to obtain license plates, road signs, or markers other than through plant; prohibiting certain persons from making gifts to or receiving gifts from inmates or residents; directing commissioner promulgate disciplinary rules and policies; setting penalties for violations; requiring commutation of certain sentences for good conduct; providing exceptions; setting conditions and procedures for commutation of sentences; authorizing Governor to authorize commissioner to consent to transfer or exchange of inmates in his or her custody in accordance with treaty between United States and

a foreign country; providing for handling of mentally ill patients; disallowing mentally ill patients being denied parole or a parole hearing based upon condition; providing for facts to be presented to superintendent if convicted person is believed to be mentally ill, intellectually disabled, or addicted; providing for application of transfer to be filed; providing for appointment of special counsel for convict who is indigent; providing for notice to convicted person; setting forth process after application for transfer is filed; authorizing establishment of work program for qualified inmates; setting conditions on work program; providing immunity for certain persons and entities; authorizing employment of Director of Employment and Director of Housing for released inmates; setting authority and duties of directors; directing commissioner establish Bureau of Prisons and Jails; directing appointment of assistant commissioner to oversee Bureau of Prisons and Jails; transferring duties and funds of Division of Corrections to Bureau of Prisons and Jails; directing appointment of superintendents for facilities within Bureau of Prisons and Jails; requiring superintendents post bond; setting authority of superintendents; authorizing establishment of imprest fund; authorizing appointment of deputy superintendents; requiring deputy superintendents post bond; authorizing hiring of other assistants and employees by superintendents with approval of commissioner; providing for oversight of employees; requiring commissioner to make space in every adult institution for both jail and prison populations; setting limitations on requirement to house both jail and prison populations in each adult institution; requiring division conduct pretrial risk assessment of person within three calendar days of arrest and placement in jail; directing pretrial risk assessment be provided to magistrate and circuit clerks; making pretrial risk assessment inadmissible evidence; requiring person committed to be housed in jail pay processing fee; directing where processing fee to be credited; directing refund of fee if person is not convicted; authorizing commissioner or employee to refuse certain offenders if offender appears to need medical attention; directing commissioner establish Bureau of Juvenile Services;

transferring duties and funds of Division of Juvenile Services to Bureau of Juvenile Services; directing appointment of assistant commissioner to oversee Bureau of Juvenile Services; directing appointment of superintendents for facilities within Bureau of Juvenile Services; requiring superintendents post bond; setting authority of superintendents; authorizing establishment of imprest fund; authorizing appointment of deputy superintendents; requiring deputy superintendents post bond; authorizing hiring of other assistants and employees by superintendents with approval of commissioner; providing for oversight of employees; directing commissioner establish Bureau of Community Corrections; directing appointment of assistant commissioner to oversee Bureau of Community Corrections; directing appointment of superintendents for facilities within Bureau of Community Corrections; requiring superintendents post bond; authorizing hiring of other assistants and employees by superintendents; providing for supervision of persons on probation or released on parole; directing rules regarding supervision of probationers and parolees; clarifying authority retained by Parole Board; setting powers and duties of state parole officers; authorizing issuance of certificates for state parole officers under certain conditions; continuing Parole Supervision Benefit Fund; authorizing use of money for payment to community corrections program; continuing Regional Jail and Correctional Facility Authority Board; continuing certain powers; transferring certain power and authority to Division of Corrections and Rehabilitation; abolishing certain powers; modifying composition of Regional Jail and Correctional Facility Authority Board; providing for appointment and qualifications of board members; providing for governance by and operation of board; directing authority review per diem cost set by state Budget Office; providing procedures if amount is challenged or believed incorrect; providing certain employees of State Board of Education not subject to supervision and approval of employees of division; making certain employees members of classified service; exempting Division of Corrections and Rehabilitation from requirement to buy certain products from

Department of Agriculture; repealing provisions of code related to Division of Corrections; repealing provisions of code related to state correctional and penal institutions; repealing provisions of code related to West Virginia Regional Jail and Correctional Facility Authority; repealing provisions of code related to probation and parole; repealing provisions of code related to corrections management; updating code references; eliminating obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

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
11 and shall perform all of the functions and services
12 heretofore vested in and performed by virtue of existing law
13 respecting 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 and Rehabilitation,
18 \$90,000; Director, Division of Natural Resources, \$75,000;
19 Superintendent, State Police, \$85,000; Commissioner,

*NOTE: This section was also amended by H. B. 4006 (Chapter 105), which passed prior to this act.

20 Division of Financial Institutions, \$75,000; Commissioner,
21 Division of Culture and History, \$65,000; Commissioner,
22 Alcohol Beverage Control Commission, \$75,000;
23 Commissioner, Division of Motor Vehicles, \$75,000;
24 Director, Human Rights Commission, \$55,000;
25 Commissioner, Division of Labor, \$70,000; Chairperson,
26 Board of Parole, \$55,000; members, Board of Parole,
27 \$50,000; members, Employment Security Review Board,
28 \$17,000; and Commissioner, Workforce West Virginia,
29 \$75,000. Secretaries of the departments shall be paid an
30 annual salary as follows: Health and Human Resources,
31 \$95,000: *Provided*, That effective July 1, 2013, the
32 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 in
46 increments of \$5,000 per fiscal year beginning July 1, 2011,
47 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; and Executive Director of the Health Care
66 Authority, \$80,000.

67 (c) Each of the following appointive state officers
68 named in this subsection shall be appointed by the
69 Governor, by and with the advice and consent of the Senate.
70 Each of the appointive state officers serves at the will and
71 pleasure of the Governor for the term for which the
72 Governor was elected and until the respective state officers'
73 successors have been appointed and qualified. Each of the
74 appointive state officers are subject to the existing
75 qualifications for holding each respective office and each
76 has and is hereby granted all of the powers and authority and
77 shall perform all of the functions and services heretofore
78 vested in and performed by virtue of existing law respecting
79 each office.

80 The annual salary of each named appointive state officer
81 shall be as follows:

82 Commissioner, State Tax Division, \$92,500; Insurance
83 Commissioner, \$92,500; Director, Lottery Commission,
84 \$92,500; Director, Division of Homeland Security and
85 Emergency Management, \$65,000; and Adjutant General,
86 \$125,000.

87 (d) No increase in the salary of any appointive state
88 officer pursuant to this section may be paid until and unless
89 the appointive state officer has first filed with the State
90 Auditor and the Legislative Auditor a sworn statement, on a
91 form to be prescribed by the Attorney General, certifying
92 that his or her spending unit is in compliance with any

93 general law providing for a salary increase for his or her
94 employees. The Attorney General shall prepare and
95 distribute the form to the affected spending units.

CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

ARTICLE 1. DEFINITIONS.

§15A-1-1. Rules of construction generally.

1 Whenever in this chapter, or in any rule or regulation
2 authorized by it, any of the words, terms, or phrases defined
3 in this article are used, they shall be taken and construed to
4 have the meaning, application, and effect ascribed to them
5 in this article, unless otherwise specified or clearly intended.

§15A-1-2. “Department.”

1 “Department” means the Department of Military Affairs
2 and Public Safety.

§15A-1-3. “Secretary.”

1 “Secretary” means the Secretary of the Department of
2 Military Affairs and Public Safety.

§15A-1-4. “Commissioner” defined.

1 “Commissioner” means the Commissioner of the
2 Division of Corrections and Rehabilitation within the
3 Department of Military Affairs and Public Safety.

§15A-1-5. “Inmate” defined.

1 “Inmate” means an adult incarcerated person.

§15A-1-6. “Resident” defined.

1 “Resident” means a juvenile within the custody of the
2 Division of Corrections and Rehabilitation.

ARTICLE 2. DIVISION OF ADMINISTRATIVE SERVICES.

§15A-2-1. Division of Administrative Services.

1 (a) The Division of Administrative Services is created
2 within the department to perform the administrative services
3 for identified agencies within the department.

4 (b) The Division of Administrative Services shall
5 provide fiscal services, payroll services, human resources
6 services, and procurement services for the Division of
7 Corrections and Rehabilitation, created in §15A-3-1 *et seq.*
8 of this code, and any other agencies or boards required by
9 the secretary: *Provided*, That the secretary may not require
10 the administrative services of the State Police, the West
11 Virginia National Guard, or the West Virginia Military
12 Authority be provided by the Division of Administrative
13 Services.

14 (c) The State Police, the West Virginia National Guard,
15 and the West Virginia Military Authority may elect to
16 utilize the services of the Division of Administrative
17 Services. The director of the Division of Administrative
18 Services is authorized to enter into a memorandum of
19 understanding with the head of the State Police, the West
20 Virginia National Guard, or the West Virginia Military
21 Authority to effectuate this utilization.

**§15A-2-2. Division director; appointment and qualifications;
powers and duties.**

1 (a) The secretary shall appoint a director for the
2 Division of Administrative Services who shall serve at the
3 will and pleasure of the secretary. The director shall have
4 extensive knowledge in the field of public safety and the
5 principles and practices of administration and experience in
6 the civil service system.

7 (b) The director shall have control and supervision of
8 the Division of Administrative Services and shall be
9 responsible for the work of each of its employees.

10 (c) The director shall have the authority to employ all
11 personnel necessary to perform the functions of the Division
12 of Administrative Services. The director shall also have the
13 authority to employ assistants and attorneys as may be
14 necessary for the efficient operation of the Division of
15 Administrative Services.

16 (d) The director shall perform the duties herein specified
17 and shall also perform other duties as the secretary may
18 prescribe.

19 (e) Where reference in this article is made to the
20 "director", it shall mean the Director of the Division of
21 Administrative Services.

**§15A-2-3. Transfer of employees; continuation of programs;
transfer of equipment and records; protection.**

1 (a) Effective July 1, 2018, all persons employed on the
2 effective date of this article by the Division of Juvenile
3 Services, the Regional Jail and Correctional Facility
4 Authority or the Division of Corrections whose current
5 employment responsibilities include those to be provided by
6 the Division of Administrative Services are hereby assigned
7 and transferred to the Division of Administrative Services.

8 (1) The Division of Administrative Services shall
9 assume all responsibilities of the administrative services
10 sections of the Division of Juvenile Services, the Regional
11 Jail and Correctional Facility Authority and the Division of
12 Corrections, including those related to ongoing programs,
13 benefits, litigation or grievances.

14 (2) All equipment and records necessary to effectuate
15 the purposes of this article shall be transferred to the
16 Division of Administrative Services.

17 (b) Any person transferred to the office of the director
18 of the division of administrative services who on the
19 effective date of this article is a classified civil service
20 employee shall, within the limits contained in §29-6-1 *et*

21 *seq.* of this code, remain in the civil service system as a
22 covered employee. Any person transferred to the office of
23 the director of the division of administrative services who
24 on the effective date of this article is a classified exempt
25 civil service employee, other than the Director, and his or
26 her Deputy Directors, and one exempt assistant, shall,
27 within the limits contained in §29-6-1 *et seq.* of this code,
28 be transferred into the civil service system as a permanent
29 covered employee, and is no longer exempt: *Provided*, That
30 any transferred employee that has been employed in his or
31 her position for less than the required probationary period
32 must first complete the probationary period prior to
33 becoming a permanent covered employee.

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-1. Purpose and legislative intent.

1 (a) The primary purpose of the Division of Corrections
2 and Rehabilitation is to enhance public safety by providing
3 for the detention of juvenile offenders, both pretrial and
4 adjudicated, pretrial detention of adult persons facing
5 criminal charges, and incarceration and care of adult
6 convicted offenders who have been sentenced by courts of
7 proper jurisdiction to serve terms of incarceration.

8 (b) It is the intent of the Legislature:

9 (1) That juveniles and adult offenders be afforded
10 appropriate education and treatment to reestablish their
11 ability to live peaceably, consistent with the protection of
12 the community;

13 (2) That persons held in pretrial detention, and
14 committed to jails and correctional institutions of the state
15 for whom release is available for crimes, be afforded
16 appropriate treatment to reestablish their ability to live
17 peaceably, consistent with the protection of the community;

18 (3) That persons committed to jails and correctional
19 institutions of the state be released at the earliest possible
20 date, consistent with public safety;

21 (4) To establish a just, humane, and efficient corrections
22 program; and

23 (5) To avoid duplication and waste of effort and money
24 on the part of public and private agencies.

25 (c) This chapter shall be construed in favor of public
26 safety.

§15A-3-2. Division of Corrections and Rehabilitation established.

1 (a) The Division of Corrections and Rehabilitation is
2 hereby established within the Department of Military
3 Affairs and Public Safety. The executive and administrative
4 head of the Division of Correction and Rehabilitation shall
5 be the Commissioner appointed pursuant to §15A-3-3 of
6 this code.

7 (b) Effective July 1, 2018, the Division of Corrections
8 and the Division of Juvenile Services are hereby abolished.
9 Except as otherwise provided in this chapter, the powers and
10 authority of those divisions are hereby transferred to the
11 Division of Corrections and Rehabilitation.

12 (c) Effective July 1, 2018, the powers and authority of
13 the Regional Jail and Correctional Facility Authority Board,
14 in relation to all functions of correctional operations, are
15 hereby transferred to the Division of Corrections and
16 Rehabilitation. The Regional Jail and Correctional Facility
17 Authority Board shall only retain the powers authorized in
18 §15A-8-1 *et seq.* of this code.

19 (d) Whenever in this code a reference is made to the
20 Division of Corrections, it shall be construed to mean the
21 Division of Corrections and Rehabilitation. Wherever in
22 this code a reference is made to the Division of Juvenile
23 Services, it shall be construed to mean the Division of

24 Corrections and Rehabilitation. Whenever in this code
25 reference is made to the Regional Jail and Correctional
26 Facility Authority Board in relation to operations of any of
27 the regional jails, it shall be construed to mean the Division
28 of Corrections and Rehabilitation.

29 (e) Any person employed by the Division of Corrections
30 and Rehabilitation who on the effective date of this article
31 is a classified service employee shall, within the limits
32 contained in §29-6-1 *et seq.* of this code, remain in the
33 classified service system as a covered employee.

34 (f) Where reference in this article is made to the
35 “division”, it shall mean the Division of Corrections and
36 Rehabilitation.

**§15A-3-3. Commissioner of division; qualifications, oath and
bond.**

1 (a) A commissioner of the Division of Corrections and
2 Rehabilitation shall be appointed by the Governor, by and
3 with the advice and consent of the Senate, as provided in
4 §6-7-2a of this code.

5 (b) Effective July 1, 2018, the offices of Commissioner
6 of Division of Corrections, the Director of Juvenile
7 Services, and the Executive Director of the Regional Jail
8 and Correctional Facility Authority are hereby abolished.
9 Except as otherwise provided in this chapter, the powers and
10 authority of those officers are vested in the Commissioner
11 of the Division of Corrections and Rehabilitation.

12 (c) The commissioner shall take and subscribe to the
13 oath prescribed by the Constitution for public officials and
14 shall execute an official bond in a penalty of \$15,000,
15 conditioned as required by law. Premiums on the bond shall
16 be paid from appropriations made for the commissioner’s
17 office. The bond shall be approved as to form by the
18 Attorney General and as to sufficiency by the Governor and,
19 when fully executed and approved, shall be filed in the
20 office of the Secretary of State.

21 (d) Whenever in this code, reference is made to the
22 Commissioner of the Division of Corrections or the Director
23 of the Division of Juvenile Services, it shall be construed to
24 mean the Commissioner of the Division of Corrections and
25 Rehabilitation. Whenever in this code reference is made to
26 the Executive Director of the Regional Jail and Correctional
27 Facility Authority, in relation to operations of any of the
28 regional jails, it shall be construed to mean the
29 Commissioner of the Division of Corrections and
30 Rehabilitation.

§15A-3-4. Powers and duties of commissioner generally.

1 (a) The commissioner, in order to carry out the purposes
2 and intent of this chapter, shall:

3 (1) Exercise general supervision over the administration
4 of the institutions under the jurisdiction of the division;

5 (2) Establish separate subdivisions, including a Bureau
6 of Prisons and Jails, a Bureau of Juvenile Services, and a
7 Bureau of Community Corrections, each to be headed by
8 assistant commissioners, and other subdivisions as he or she
9 deems advisable, which may be headed by one of the
10 assistant commissioners, or by deputy directors. Nothing
11 herein shall prohibit the commissioner from appointing the
12 same person to head more than one subdivision;

13 (3) Establish rules, policies, and regulations in writing
14 governing all subdivisions and institutions within the
15 division;

16 (4) Establish an appropriate training program for
17 personnel of the division;

18 (5) Classify the institutions of the division, varying
19 according to the factors as security features, program, age,
20 and sex of inmates, physical stature or size, character of
21 inmates;

22 (6) Establish a system of classification of inmates and
23 residents, through a reception and examination procedure;

24 (7) Cooperate with the Department of Education in
25 providing for the education of inmates and residents in all
26 institutions within the division, as provided in §18-2-13f of
27 this code and any other provision of this code;

28 (8) Supervise the treatment, custody, and discipline of
29 all inmates and residents and the maintenance of the
30 institutions and their industries;

31 (9) Establish a system of compensation for inmates and
32 residents of the institutions of the state who perform good
33 and satisfactory work either within the industrial program
34 or in the servicing and maintenance of the institutions or any
35 other institutions or camps within the state. The
36 commissioner, or his or her designee, may establish a
37 graduated scale of compensation to be paid to inmates and
38 residents in accordance with their skill in industry; and

39 (10) Subject to the provisions in §25-1A-5 of this code,
40 provide for the transportation of inmates between the jails
41 and local holding facilities for court appearances.

42 (b) The commissioner, in order to carry out the purposes
43 and intent of this chapter, may:

44 (1) Appoint a deputy commissioner to assist in the day
45 to day operations of the division;

46 (2) Employ professional and support staff, including,
47 but not limited to, certified public accountants, attorneys,
48 assistants, and other employees as necessary for the efficient
49 operation of the division;

50 (3) Acquire, own, hold, and dispose of property, real and
51 personal, tangible and intangible;

52 (4) Lease property, whether as a lessee or lessor;

53 (5) Conduct examinations and investigations and hear
54 testimony and take proof, under oath or affirmation;

55 (6) Issue subpoenas requiring the attendance of
56 witnesses and the production of books and papers relevant
57 to any hearing before the commissioner, or his or her
58 designee, to conduct any hearing;

59 (7) Apply to the circuit court having venue of the
60 offense to have punished for contempt any witness who
61 refuses to obey a subpoena, refuses to be sworn or affirmed,
62 or refuses to testify, or who commits any contempt after
63 being summoned to appear;

64 (8) Sue and be sued, implead and be impleaded, and
65 complain and defend in any court;

66 (9) Propose rules for legislative approval for the
67 management and regulation of the affairs of the division
68 pursuant to the provisions of §29A-3-1 *et seq.* of this code;

69 (10) Make policies for the management and regulation
70 of the affairs of the divisions;

71 (11) Make contracts of every kind and nature and to
72 execute all instruments necessary or convenient for carrying
73 on its business, including contracts with any other
74 governmental agency of this state or of the federal
75 government or with any person, individual, partnership, or
76 corporation to affect any or all of the purposes of this
77 chapter;

78 (12) Accept gifts or grants of property, funds, security
79 interests, money, materials, labor, supplies, or services from
80 the United States of America or from any governmental unit
81 or any person, firm, or corporation, acceptance or
82 disposition of gifts or grants; and

83 (13) Designate a facility as a rehabilitation facility; a
84 rehabilitation facility may utilize recommendations on
85 programming from West Virginia higher education

86 institutions and share statistical data with the same
87 institutions for study on the effectiveness of services
88 provided by the institution.

§15A-3-5. Officers and employees of corrections institutions.

1 (a) The commissioner, or his or her designee, has the
2 authority to manage and administer the finances, business,
3 operations, security, and personnel affairs of correctional
4 units and juvenile facilities under the jurisdiction of the
5 division.

6 (b) The superintendent of each institution or
7 correctional unit has the power to hire all assistants and
8 employees required for the management of the institution in
9 his or her charge, but the number of the assistants and
10 employees, and their compensation, shall first be approved
11 by the commissioner.

12 (c) It is the duty of the commissioner to investigate any
13 complaint made against the superintendent of any
14 institution, and against any other officer or employee
15 thereof, if the same has not been investigated.

16 (d) All prospective correctional employees shall pass a
17 preemployment drug screening prior to being hired.

18 (e) All persons employed at a state-operated
19 correctional institution or correctional unit are subject to the
20 supervision and approval of the superintendent and the
21 authority of the commissioner, or his or her designee, except
22 those persons employed by the State Board of Education,
23 pursuant to §18-2-13f of this code.

§15A-3-6. Hiring of correctional officer without regard to position on the register.

1 Notwithstanding any provision of law to the contrary or
2 any rule promulgated under the provisions of this code, the
3 Division of Corrections and Rehabilitation may hire any
4 person listed on the Correctional Officer I Register for

5 employment as a Correctional Officer I without regard to
6 the person's position on the register: *Provided*, That no
7 person on the Correctional Officer I Register may be offered
8 employment or hired before an otherwise qualified person
9 on a preference register who is willing to accept the
10 position.

§15A-3-7. Compensation of employees; traveling and other expenses.

1 The commissioner shall, in accordance with the
2 provisions of §29-6-1 *et seq.* of this code, approve the
3 salaries of all employees of the division. Salaries shall be
4 commensurate with their duties and responsibilities, but no
5 meals or other emoluments of any kind shall be furnished,
6 given, or paid to the employee as all or part of their salary.
7 The employees may be provided meals, household facilities,
8 and supplies as may be necessary for them to perform their
9 duties, if the employees agree to pay the reasonable cost as
10 established by the commissioner. In the event of an
11 emergency, such as a riot or other disturbance, the
12 commissioner may authorize meals to be provided to
13 employees at no cost. Additionally, the commissioner may
14 establish a procedure to reimburse employees reasonable
15 costs in the event the employee's personal property is stolen
16 or damaged by an inmate or resident. All persons employed
17 under this article are entitled to be reimbursed for necessary
18 traveling and other expenses.

§15A-3-8. Reports by commissioner and chief officers of institutions to Auditor.

1 The commissioner shall, from time to time, as may be
2 necessary, make a report to the Auditor, which shall state
3 the name of each person employed at any of the institutions
4 named in §15A-3-12 of this code, his or her official
5 designation and biweekly rate of compensation, and out of
6 what funds or appropriation the same is payable. The
7 superintendent of the institution, or other person who may
8 have been appointed for the purpose by the commissioner,

9 shall make and certify to the Auditor at the end of each
10 month a list of persons to whom any payments may be due,
11 stating for what purpose due, the amount due each person,
12 and the fund or appropriation from which payable; one copy
13 whereof shall be filed in the office of the institution where
14 made, and one in the office of the commissioner. If the
15 Auditor finds the list correct and in accordance with the
16 reports made to him or her by the commissioner, he or she
17 may pay to the persons entitled thereto the amounts so
18 certified as due each.

§15A-3-9. Special compensation of officers and employees prohibited; penalty.

1 No officer or employee shall receive, directly or
2 indirectly, any other compensation for his or her services
3 than that provided by law, or by the commissioner before
4 his or her appointment, nor shall he or she receive any
5 compensation whatever, directly or indirectly, for any act or
6 service which he or she may do or perform for or on behalf
7 of any contractor, or agent, or employee of a contractor. For
8 any violation of this section the officer, agent, or employee
9 of the state engaged therein shall be dismissed from his or
10 her office or service, and every contractor, or employee, or
11 agent of a contractor, engaged therein shall be expelled from
12 the grounds of an institution, and not again employed in any
13 institution as a contractor, agent, or employee.

§15A-3-10. Law-enforcement powers of employees.

1 (a) Other than as outlined in this section, a correctional
2 officer employed by the division is not a law-enforcement
3 officer as that term is defined in §30-29-1 of this code.

4 (b) The commissioner is a law-enforcement official, and
5 has the authority to use, and permit and allow or disallow
6 his or her designated employees to use, publicly provided
7 carriage to travel from their residences to their workplace
8 and return: *Provided*, That the usage is subject to the
9 supervision of the Commissioner and is directly connected

10 with and required by the nature and in the performance of
11 the official's or designated employee's duties and
12 responsibilities.

13 (c) All employees of the division are responsible for
14 enforcing rules and laws necessary for the control and
15 management of correctional units and the maintenance of
16 public safety that is within the scope of responsibilities of
17 the division.

18 (d) Persons employed by the Division of Corrections
19 and Rehabilitation as correctional officers are hereby
20 authorized and empowered to make arrests of persons
21 already charged with a violation of law who surrender
22 themselves to the correctional officer, to arrest persons
23 already in the custody of the division for violations of law
24 occurring in the officer's presence, to detain persons for
25 violations of state law committed on the property of any
26 facility under the jurisdiction of the commissioner, and to
27 conduct investigations, pursue, and apprehend escapees
28 from the custody of a facility of the division.

29 (e) The commissioner may designate correctional
30 employees as correctional peace officers who have the
31 authority:

32 (1) To detain persons for violations of state law
33 committed on the property of any state correctional
34 institution;

35 (2) To conduct investigations regarding criminal
36 activity occurring within a correctional facility;

37 (3) To execute criminal process or other process in
38 furtherance of these duties; and

39 (4) To apply for, obtain, and execute search warrants
40 necessary for the completion of his or her duties and
41 responsibilities.

42 (f) The Corrections Special Operations Team is hereby
43 established and shall consist of the Corrections Emergency
44 Response Team, the K9 unit, and the Crisis Negotiations
45 team created under the former Division of Corrections. The
46 Corrections Special Operations Team serves as the first
47 responder necessary for the protection of life, liberty, and
48 property. It shall have limited law-enforcement authority
49 regarding matters occurring at jails, correctional centers,
50 and juvenile centers, and arrest powers to apprehend
51 escapees, absconders, and in all matters arising on the
52 grounds of a facility under the care and control of the
53 commissioner: *Provided*, That at any time the Corrections
54 Special Operations Team is apprehending an escapee or an
55 absconder outside the confinement of the facility grounds,
56 it does so with the assistance and cooperation of local law
57 enforcement or the West Virginia State Police.

§15A-3-11. Unauthorized use of uniform, badge, identification card, or other insignia; impersonation of member; and penalty.

1 (a) The commissioner shall prescribe the design, or
2 designs, of uniforms used by employees of the division,
3 which shall be dissimilar to the design of the uniform worn
4 by the members of the State Police or the established
5 statewide uniform of a sheriff or deputy sheriffs. A
6 municipality shall not adopt for its police officers or other
7 employees a uniform which is similar in design to the
8 uniform adopted by the commissioner.

9 (b) No person who is not an officer or employee of the
10 Division of Corrections and Rehabilitation, and no officer
11 or employee of the division who is not authorized to do so,
12 may, with intent to deceive, wear, use, order to be used or
13 worn, copy, or imitate in any respect or manner the uniform,
14 badge, identification card, or other insignia prescribed for
15 employees of the division.

16 (c) No person who is not an officer or employee of the
17 Division of Corrections and Rehabilitation may falsely

18 represent himself or herself to be an officer or employee of
19 the Division of Corrections and Rehabilitation or to be
20 under the order or direction of any officer or employee of
21 the division.

22 (d) No person employed as an officer or employee of the
23 Division of Corrections and Rehabilitation may use his or
24 her position as such to threaten or coerce any other person
25 in order to receive any favoritism, employment, or thing of
26 favor by virtue of his or her employment with the division:
27 *Provided*, That this subsection does not apply to violations
28 of the Prison Rape Elimination Act.

29 (e) Any person who violates the provisions of §15A-3-
30 11(b), §15A-3-11(c), or §15A-3-11(d) of this code is guilty
31 of a misdemeanor and, upon conviction thereof, shall be
32 fined not more than \$200, or confined in the county or
33 regional jail for not more than six months, or both fined and
34 confined.

§15A-3-12. Institutions managed by commissioner.

1 (a) The commissioner shall manage, direct, control, and
2 govern the prisons, jails, or correctional institutions of this
3 state, and the juvenile facilities of this state, including, but
4 not limited to:

5 Mount Olive Correctional Complex and Jail;

6 Huttonsville Correctional Center and Jail;

7 Anthony Correctional Center and Jail;

8 Denmark Correctional Center and Jail;

9 Pruntytown Correctional Center and Jail;

10 Northern Regional Jail and Correctional Center;

11 Saint Marys Correctional Center and Jail;

12 Lakin Correctional Center and Jail;

- 13 Ohio County Correctional Center and Jail;
- 14 Beckley Correctional Center and Jail;
- 15 Martinsburg Correctional Center and Jail;
- 16 Salem Correctional Center and Jail;
- 17 Parkersburg Correctional Center and Jail;
- 18 Charleston Correctional Center and Jail;
- 19 Central Regional Jail and Corrections Facility;
- 20 Eastern Regional Jail and Corrections Facility;
- 21 North Central Regional Jail and Corrections Facility;
- 22 Potomac Highlands Regional Jail and Corrections Facility;
- 23 South Central Regional Jail and Corrections Facility;
- 24 Southern Regional Jail and Corrections Facility;
- 25 Southwestern Regional Jail and Corrections Facility;
- 26 Tygart Valley Regional Jail and Corrections Facility;
- 27 Western Regional Jail and Corrections Facility;
- 28 Donald R. Kuhn Juvenile Center;
- 29 Gene Spadaro Juvenile Center;
- 30 J.M. Chick Buckbee Juvenile Center;
- 31 Kenneth “Honey” Rubenstein Juvenile Center;
- 32 Lorrie Yeager Juvenile Center;
- 33 Robert L. Shell Juvenile Center;
- 34 Sam Perdue Juvenile Center;

35 Tiger Morton Juvenile Center;

36 Vicki Douglas Juvenile Center; and

37 Any other juvenile or adult facility later transferred to
38 the commissioner.

39 (b) The commissioner may contract with the county
40 commission of McDowell County to house and incarcerate
41 inmates at the Stevens Correctional Center consistent with
42 all requirements and standards governing the division.

43 (c) The commissioner may contract with Youth Services
44 System to house and detain juveniles at the Ronald
45 Mulholland Juvenile Center consistent with all the
46 requirements and standards governing the division.

47 (d) The commissioner may establish work and study
48 release units as extensions and subsidiaries of those state
49 institutions under his or her control and authority. The work
50 and study release units may be coeducational and shall be
51 managed, directed, and controlled as provided in this article.

52 (e) The commissioner may contract with nonprofit or
53 charitable entities including, but not limited to, nonprofit
54 community mental health clinics, operating half-way
55 houses, or transitional housing facilities for the placement
56 of persons in the commissioner's custody, whether confined
57 or under parole supervision, as long as the facilities meet
58 standards and criteria established by the commissioner.

59 (1) The commissioner may direct that a person who is
60 placed in a half-way house or transitional housing facility
61 under this section make reimbursement to the state in the
62 amount of a reasonable sum calculated to offset all or part
63 of the costs of the placement. Prior to ordering the person to
64 make the reimbursement, the commissioner, or his or her
65 designee, shall consider the following:

66 (A) The person's ability to pay;

67 (B) The nature and extent of the person's
68 responsibilities to his or her dependents, if any;

69 (C) The length of probable incarceration under the
70 court's sentence; and

71 (D) The effect, if any, that reimbursement might have
72 on the person's rehabilitation.

73 (2) The division shall provide the number of persons
74 placed in a half-way house or a transitional housing facility
75 as authorized in this section in its report made pursuant to
76 §5-1-20 of this code, and shall describe its plans to use the
77 authority provided under the provisions of §15A-3-12(g) of
78 this code in furtherance of the duties and responsibilities
79 imposed by this article.

80 (f) All adult persons sentenced by a court to serve a
81 sentence of incarceration in a prison, jail, or correctional
82 institution under the jurisdiction of the commissioner shall
83 be deemed to be sentenced to the custody of the
84 commissioner. The commissioner, or his or her designee,
85 has the authority to and may order the transfer of any adult
86 to any appropriate institution within the division.

87 (g) The commissioner has full discretionary authority to
88 contract with any county jail, or other appropriate facility or
89 institution for the incarceration and care of adult inmates. If
90 a felony sentenced inmate is held in a jail facility or unit,
91 under the jurisdiction of the commissioner, the
92 commissioner shall pay a per diem rate, not subject to the
93 limitations set forth in §15A-3-16(g) of this code.

94 (h) The commissioner, or his or her designee, may
95 transfer any adult prisoner or inmate who is mentally
96 disturbed and who would more appropriately be treated in
97 an institution under the jurisdiction of the Bureau of Health,
98 to the Bureau, subject to the approval of the Director of
99 Health, and may transfer any adult prisoner or inmate to an

100 appropriate mental facility for specialized medical
101 treatment.

102 (i) The commissioner shall, no later than July 1, 2019,
103 complete an evaluation of all facilities within his or her
104 control for the most appropriate space to house each type of
105 inmate, and shall consult with the Juvenile Justice
106 Commission on any and all intended uses of current or
107 prospective juvenile facilities. This evaluation shall include
108 an assessment of the physical plant of each institution, the
109 inmate population size and type, and classification of
110 inmates. Following completion of the evaluation, the
111 commissioner shall develop a plan on how to best utilize the
112 institutional space, and shall report to the Joint Committee
113 on Government and Finance with recommendations
114 regarding implementation of that plan. The commissioner
115 may, from time to time, and as circumstances dictate,
116 reorganize the facilities, and units within the facilities, to
117 house pretrial inmates, convicted misdemeanants, and
118 convicted felons in the most appropriate manner. No facility
119 shall be converted from a juvenile to an adult facility, or
120 from an adult to a juvenile facility, without legislative
121 authorization.

§15A-3-13. Title to property of state institutions; custody of deeds and other muniments of title; authority of Commissioner.

1 The title to all property constituting or belonging to the
2 several institutions named in §15A-3-12 of this code is
3 vested in the state. The commissioner is custodian of all
4 deeds and other muniments of title and shall cause such as
5 are susceptible of recordation to be recorded in the proper
6 offices. The commissioner is authorized, as lessor, to lease
7 the West Virginia penitentiary in Moundsville, title to which
8 is vested in the state by prior act of the Legislature, for a
9 term of not more than five years: *Provided*, That this section
10 does not affect any lease in effect as of the effective date of
11 this section. Any agreement entered into under this section
12 shall be with the consent and approval of the Secretary of

13 the Department of Military Affairs and Public Safety, and
14 shall include a provision within each agreement allowing
15 for the immediate termination by the secretary or
16 commissioner at any time.

§15A-3-14. Exempt from Purchasing Division; purchasing procedures.

1 (a) The provisions established in §5A-3-1 *et seq.* of this
2 code do not apply to the division or any institution under the
3 control of the division.

4 (b) When the cost under any contract or agreement
5 entered into by the division, other than compensation for
6 personal services, involves an expenditure of more than
7 \$2,500 and less than \$25,000, the division shall solicit at
8 least 3 bids, if possible, from vendors and make a written
9 contract with the lowest responsible bidder. When the cost
10 under any contract or agreement entered into by the
11 division, other than compensation for personal services,
12 involves an expenditure of \$25,000 or more, the division
13 shall make a written contract with the lowest responsible
14 bidder after public notice published as a Class II legal
15 advertisement in compliance with the provisions of §59-3-1
16 *et seq.* of this code, the publication area for the publication
17 to be the county or counties wherein the work is to be
18 performed or which is affected by the contract, which notice
19 shall state the general character of the work and general
20 character of the materials to be furnished, the place where
21 plans and specifications therefor may be examined and the
22 time and place of receiving bids. But a contract for lease of
23 a correctional facility is not subject to the foregoing
24 requirements and the division may enter into the contract for
25 lease pursuant to negotiation upon the terms and conditions
26 and for the period as it finds to be reasonable and proper
27 under the circumstances and in the best interests of proper
28 operation or efficient acquisition or construction of the
29 projects. The division may reject any and all bids. A bond
30 with good and sufficient surety, approved by the division,
31 shall be required of all contractors in an amount equal to at

32 least 50 percent of the contract price, conditioned upon
33 faithful performance of the contract.

34 (c) If the division has to make a purchase under
35 emergency conditions, or an emergency situation, which
36 jeopardizes the safe, secure, and orderly operations of the
37 division, as deemed by the Commissioner, and approved by
38 the Secretary, §15A-3-14(a) and §15A-3-14(b) of this code
39 shall not apply.

40 (d) The commissioner may enter into agreements with
41 medical schools and institutions of higher education in this
42 state to develop standards for appropriate and innovative
43 medical programming and care for inmates: *Provided*, That
44 the division will follow the procedures set forth in §15A-3-
45 14(b) of this code for delivery of regular and normal medical
46 care within the facilities.

§15A-3-15. Mutual aid agreements.

1 (a) The commissioner may enter into agreements to
2 provide for the rendering of mutual aid with the political
3 subdivisions of this state, other states, and the federal
4 government to provide for the common defense, protect the
5 public peace, health, and safety and to preserve the lives and
6 property of the people of this state.

7 (b) Any agreement entered into under this section shall
8 be with the consent and approval of the Secretary of the
9 Department of Military Affairs and Public Safety, and shall
10 include a provision within each agreement allowing for the
11 immediate termination by the secretary or commissioner at
12 any time.

**§15A-3-16. Funds for operations of jails under the jurisdiction
of the commissioner.**

1 (a) Any special revenue funds previously administered
2 by the Regional Jail and Correctional Facility Authority or
3 its Executive Director are continued, and shall be
4 administered by the commissioner.

5 (b) Funds that have been transferred by §15A-3-16(a) of
6 this code shall be limited in use to operations of jail
7 functions, and for payment to the Regional Jail and
8 Correctional Facility Authority Board, for payment of
9 indebtedness. In no case shall a fund be utilized to offset or
10 pay operations of nonjail parts of the facility: *Provided*,
11 That funds may be utilized on a pro rata basis for shared
12 staff and for operational expenses of facilities being used as
13 both prisons and jails.

14 (c) Whenever the commissioner determines that the
15 balance in these funds is more than the immediate
16 requirements of this article, he or she may request that the
17 excess be invested until needed. Any excess funds so
18 requested shall be invested in a manner consistent with the
19 investment of temporary state funds. Interest earned on any
20 moneys invested pursuant to this section shall be credited to
21 these funds.

22 (d) These funds consist of the following:

23 (1) Moneys collected and deposited in the State
24 Treasury which are specifically designated by Acts of the
25 Legislature for inclusion in these funds;

26 (2) Contributions, grants, and gifts from any source,
27 both public and private, specifically directed to the
28 operations of jails under the control of the commissioner;

29 (3) All sums paid pursuant to §15A-3-16(g) of this code;
30 and

31 (4) All interest earned on investments made by the state
32 from moneys deposited in these funds.

33 (e) The amounts deposited in these funds shall be
34 accounted for and expended in the following manner:

35 (1) Amounts deposited shall be pledged first to the debt
36 service on any bonded indebtedness;

37 (2) After any requirements of debt service have been
38 satisfied, the Commissioner shall requisition from these
39 funds the amounts that are necessary to provide for payment
40 of the administrative expenses of this article, as limited by
41 this section;

42 (3) The commissioner shall requisition from these
43 funds, after any requirements of debt service have been
44 satisfied, the amounts that are necessary for the maintenance
45 and operation of jails under his or her control. These funds
46 shall make an accounting of all amounts received from each
47 county by virtue of any filing fees, court costs or fines
48 required by law to be deposited in these funds and amounts
49 from the jail improvement funds of the various counties;

50 (4) Notwithstanding any other provisions of this article,
51 sums paid into these funds by each county pursuant to
52 §15A-3-16(g) of this code for each inmate shall be placed
53 in a separate account and shall be requisitioned from these
54 funds to pay for costs incurred; and

55 (5) Any amounts deposited in these funds from other
56 sources permitted by this article shall be expended based on
57 particular needs to be determined by the commissioner.

58 (f)(1) After a jail facility becomes available pursuant to
59 this article for the incarceration of inmates, each county
60 within the region shall incarcerate all persons whom the
61 county would have incarcerated in any jail prior to the
62 availability of the jail facility in the jail facility, except those
63 whose incarceration in a local jail facility used as a local
64 holding facility is specified as appropriate under the
65 previously promulgated, and hereby transferred standards
66 and procedures developed by the Jail Facilities Standards
67 Commission, and whom the sheriff or the circuit court elects
68 to incarcerate therein.

69 (2) Notwithstanding the provisions of §15A-3-16(f)(1)
70 of this code, circuit and magistrate courts are authorized to:

71 (A) Detain persons who have been arrested or charged
72 with a crime in a county or municipal jail specified as
73 appropriate under the standards and procedures referenced
74 in §15A-3-16(f)(1), for a period not to exceed 96 hours; or

75 (B) Commit persons convicted of a crime in a county or
76 municipal jail, specified as appropriate under the standards
77 and procedures referenced in §15A-3-16(f)(1) of this code,
78 for a period not to exceed 14 days.

79 (g) When inmates are placed in a jail facility under the
80 jurisdiction of the commissioner pursuant to §15A-3-16(f)
81 of this code, the county, and municipality if the
82 incarceration is a municipal violation, shall pay into this
83 fund a cost per day for each incarcerated inmate to be
84 determined by the state Budget Office, by examining the
85 most recent three years of costs submitted by the
86 commissioner for the cost of operating the jail facilities and
87 units under his or her jurisdiction, and taking an average per
88 day, per inmate cost of maintaining the operations of the jail
89 facilities or units: *Provided*, That beginning July 1, 2018,
90 and continuing through July 1, 2021, in no case shall any
91 county or municipality be required to pay a rate that exceeds
92 \$48.25 per day, per inmate. Nothing in this section shall be
93 construed to mean that the per diem cannot be decreased or
94 be less than \$48.25 per day per inmate.

95 (h) The per diem costs for incarcerating inmates may not
96 include the cost of construction, acquisition, or renovation
97 of the regional jail facilities: *Provided*, That each jail facility
98 or unit operating in this state shall keep a record of the date
99 and time that an inmate is incarcerated, and a county may
100 not be charged for a second day of incarceration for an
101 individual inmate until that inmate has remained
102 incarcerated for more than 24 hours. After that, in cases of
103 continuous incarceration, subsequent per diem charges shall
104 be made upon a county only as subsequent intervals of 24
105 hours pass from the original time of incarceration.

106 (i) The county is responsible for costs incurred by the
107 division for housing and maintaining inmates in its facilities
108 who are pretrial inmates and convicted misdemeanants. The
109 costs of housing shall be borne by the division on a felony
110 conviction on which an inmate is incarcerated beginning the
111 calendar day following the day of sentencing: *Provided,*
112 That beginning July 1, 2019, the costs of housing shall be
113 borne by the division on a felony conviction when an inmate
114 is incarcerated beginning the calendar day following the day
115 of conviction. In no case shall the county be responsible for
116 any costs of housing and maintaining felony convicted
117 inmate populations.

118 (j) The county is responsible for the costs incurred by
119 the authority for housing and maintaining an inmate who,
120 prior to a felony conviction on which the inmate is
121 incarcerated and is awaiting transportation to a state
122 correctional facility for a 60 day evaluation period as
123 provided in §62-12-7a of this code.

124 (k) On or before July 1, 2020, the commissioner shall
125 prepare a report on the feasibility of phasing out the county
126 and municipal per diem charges required by §15A-3-16(g)
127 of this code. This report shall include information regarding
128 savings realized because of the consolidation of the former
129 Division of Corrections, Division of Juvenile Services, and
130 the operations of the Regional Jail and Correctional Facility
131 Authority, as well as any other recommendations that might
132 ease the burden of paying the per diem inmate costs by the
133 counties or municipalities. On or before January 1, 2019,
134 January 1, 2020 and January 1, 2021, the commissioner
135 shall report to the Joint Committee on Government and
136 Finance and the co-chairmen of the Joint Standing
137 Committee on Finance the actual per diem rate as calculated
138 pursuant to §15A-3-16(g) of this code and any amount not
139 assessed to counties if the actual per diem cost is larger than
140 the amount charged to the counties or municipalities
141 pursuant to §15A-3-16(g) between July 1, 2018 and July 1,
142 2021.

§15A-3-17. Jail Operations Partial Reimbursement Fund.

1 (a) There is continued in the State Treasury the Jail
2 Operations Partial Reimbursement Fund.

3 (b) Revenues deposited into this fund shall be composed
4 of fees collected by magistrate courts pursuant to §50-3-2(a)
5 of this code, and by circuit courts pursuant to §59-1-11 of
6 this code.

7 (c) Revenues deposited into this fund shall be used to
8 reimburse those counties and municipalities participating in
9 the jail system for the cost of incarceration.

10 (d) The State Treasurer shall, in cooperation with the
11 division, administer the fund. The State Treasurer shall
12 determine the amount of funds available for reimbursement
13 and, upon receiving a report from the commissioner
14 containing the total number of inmate days in the fiscal year
15 immediately concluded, the State Treasurer shall calculate
16 the reimbursement to each participant based upon a pro rata
17 share formula: *Provided*, That only counties and
18 municipalities that, on July 1 of each year, are not more than
19 90 days delinquent in payments for moneys to incarcerate
20 its offenders are eligible to receive this reimbursement:
21 *Provided, however*, That the pro rata share formula shall not
22 include the counties or municipalities which are not entitled
23 to reimbursement pursuant to this section.

24 (e) A participant's share shall be comparable with its
25 total of inmate days, which shall consist of the number of
26 inmates it contributed to the regional jail system and the
27 number of days those inmates remained incarcerated.

28 (f) A participant's share shall be disbursed annually,
29 within 90 days of July 1 each year, as provided in §15A-3-
30 17(d) of this section.

§15A-3-18. Rules.

1 (a) The commissioner is authorized to propose rules for
2 legislative authorization pursuant to §29A-3-1 *et seq.* of this

3 code or develop policies for the proper execution of his or
 4 her duties and powers; adopt rules or policies for the
 5 government of the institutions named or referred to in §15A-
 6 3-12 of this code; adopt rules or policies for the
 7 administration of the financial and business affairs of the
 8 institutions named or referred to in §15A-3-12 of this code,
 9 and establish policies regarding the treatment of mentally ill
 10 inmates, which reflect the safety and security concerns
 11 specific to jails and correctional facilities.

12 (b) All legislative rules and policies of the former
 13 Division of Corrections, the former Division of Juvenile
 14 Services, and the Regional Jail and Correctional Facility
 15 Authority shall remain effective until amended or
 16 terminated pursuant to the provisions of §29A-3-1 *et seq.* of
 17 this code by the Division of Correction and Rehabilitation:
 18 *Provided*, That these rules shall expire on July 1, 2021, if
 19 not superseded sooner.

20 (c) Notwithstanding any provisions of law to the
 21 contrary, the division is not subject to the rules promulgated
 22 by, nor any mandates upon, the board of health for the
 23 treatment of mentally ill patients.

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-1. Applicability of article.

1 (a) Except as otherwise provided herein, the provisions
 2 of this article relate to adult inmates housed in jails, prisons,
 3 and correctional facilities, and do not apply to juvenile
 4 residents housed in juvenile centers.

5 (b) Where reference in this article is made to the
 6 “division”, it shall mean the Division of Corrections and
 7 Rehabilitation.

§15A-4-2. Furlough programs.

1 (a) The commissioner may establish a furlough program
 2 for inmates committed to his or her custody for a felony

3 offense. The program may provide that selected inmates be
4 permitted to reside outside an institution operated by the
5 division pursuant to legislative rules promulgated pursuant
6 to §29A-3-1 *et seq.* of this code.

7 (b) The commissioner, or his or her designee, is
8 authorized to propose rules for legislative authorization,
9 pursuant to §29A-3-1 *et seq.* of this code, or policy
10 directives, promulgated by the commissioner, a furlough
11 program for pretrial and misdemeanor inmates under his or
12 her control and custody in accordance with the following
13 provisions:

14 (1) The program may include, but is not limited to,
15 granting furloughs or special escorts for specified inmates
16 under the commissioner's control and custody to attend
17 funerals or make hospital visits to terminally ill family
18 members.

19 (2) The commissioner shall establish criteria to be used
20 in determining which inmates are not likely to jeopardize
21 public safety and should be granted a furlough or a special
22 escort through this program.

23 (3) The commissioner is authorized to establish any
24 other guidelines he or she considers necessary to administer
25 the program and to ensure public safety, including, but not
26 limited to:

27 (A) Eligibility for consideration, restrictions,
28 conditions, and procedures; and

29 (B) The family relationship an inmate must have with
30 the deceased or terminally ill individual in order to qualify
31 for consideration for a furlough.

32 (c)(1) The division, the commissioner, members of the
33 Regional Jail and Correctional Facility Authority Board,
34 and employees of the division are immune from suit and
35 liability, either personally or in their official capacity, for
36 any claim for damage to or loss of property or personal

37 injury or other civil liability caused or arising out of any
38 actual or alleged act of an inmate while on a furlough
39 granted under this section.

40 (2) The immunity from suit and liability provided in this
41 subsection does not extend to liability for any damage, loss,
42 injury, or liability caused by the intentional or willful and
43 wanton misconduct of any person identified in §15A-4-
44 2(c)(1) of this code.

§15A-4-3. Electronic monitoring of offenders; special account.

1 (a) The commissioner may use electronic monitoring
2 equipment to aid in the supervision of offenders.

3 (b) The commissioner shall charge offenders subject to
4 supervision by means of electronic monitoring equipment a
5 reasonable fee, to be established under a legislative rule
6 proposed by the commissioner for legislative authorization
7 pursuant to §29A-3-1 *et seq.* of this code, to help defray the
8 costs of the purchase and use of the equipment and the
9 division’s operational costs: *Provided*, That an offender’s
10 inability to pay a fee does not preclude the offender from
11 being eligible for this program.

12 (c) All fees collected shall be deposited in a special
13 account in the State Treasury designated the “electronic
14 monitoring program account.” The funds deposited in the
15 account may be used by the commissioner only for the
16 operation of the program and for the administration of the
17 division.

18 (d) For purposes of this section, “electronic monitoring
19 equipment” means an electronic device or apparatus
20 approved by the division that is capable of recording or
21 transmitting information regarding the offender’s presence
22 or nonpresence in a designated area. The device shall be
23 minimally intrusive. Except to the extent provided in this
24 section, the division shall not approve any monitoring
25 device which is capable of recording or transmitting: (1)
26 Visual images, except for that of a still image of the offender

27 that can only be transmitted by the offender triggering the
28 monitoring system; or (2) information as to the offender's
29 activities while he or she is within the designated area. A
30 monitoring device may transmit information regarding
31 blood alcohol levels. The monitoring device shall not be
32 used to eavesdrop or record any conversation: *Provided,*
33 That conversations between the offender and the person
34 supervising the offender may be recorded solely for purpose
35 of voice identification.

§15A-4-4. Diagnostic and classification divisions.

1 (a) The commissioner may continue and establish
2 diagnostic and classification subdivisions.

3 (b) Notwithstanding any provision of this code to the
4 contrary, all persons committed to the custody of the
5 division for presentence diagnosis and classification, and all
6 persons sentenced to the custody of the division shall, upon
7 transfer to the division, undergo diagnosis and
8 classification, which shall include:

9 (1) Assessments of a person's criminogenic risk and
10 need factors that are reliable, validated, and normed for a
11 specific population and responsive to cultural and gender-
12 specific needs as well as individual learning styles and
13 temperament;

14 (2) Application of a mental health preliminary screen;
15 and

16 (3) If the mental health preliminary screen suggests the
17 need for further assessment, a full psychological evaluation.

18 (c) The division shall perform mental health preliminary
19 screens, appraisals, and evaluations according to standards
20 provided by the American Correctional Association.

§15A-4-5. Transfer of inmates of state institutions or facilities.

1 (a) The commissioner shall have authority to cause the
2 transfer of any inmate from any facility under his or her
3 control to any other state or federal institution or facility

4 which is better equipped for the care or treatment of the
5 inmate, or for other good cause or reason.

6 (b) Whenever an inmate committed to the custody of the
7 division becomes mentally ill and his or her needs cannot be
8 properly met within the correctional facility, the
9 commissioner shall proceed in accordance with §15A-4-19
10 of this code.

11 (c) Whenever an inmate committed to the custody of
12 the division needs medical attention, other than mental
13 health care, not available at the prison, the superintendent
14 of the facility shall immediately notify the commissioner
15 who, after proper investigation, shall cause the transfer of
16 the inmate to a facility properly equipped to render the
17 medical attention necessary. The inmate, while receiving
18 treatment in the hospital, shall be under an appropriate
19 level of supervision at all times and shall forthwith be
20 returned to his or her correctional facility upon release
21 from the facility.

22 (d) In providing or arranging for the necessary medical
23 and other care and treatment of a pregnant inmate, the
24 superintendent of the facility shall take reasonable
25 measures to assure that pregnant inmates will not be
26 restrained after reaching the second trimester of pregnancy
27 until the end of the pregnancy: *Provided*, That if the
28 inmate, based upon her classification, discipline history, or
29 other factors deemed relevant by the superintendent poses
30 a threat of escape, or to the safety of herself, the public,
31 staff, or the fetus, the inmate may be restrained in a manner
32 reasonably necessary: *Provided, however*, That prior to
33 directing the application of restraints and where there is no
34 threat to the safety of the inmate, the public, staff, or the
35 fetus, the superintendent, or designee shall consult with an
36 appropriate health care professional to assure that the
37 manner of restraint will not pose an unreasonable risk of
38 harm to the inmate or the fetus.

§15A-4-6. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

1 (a) The commissioner, or his or her designee, is
2 authorized to monitor, intercept, record, and disclose
3 telephone calls to or from adult inmates of state institutions
4 under his or her control, in accordance with the following
5 provisions:

6 (1) All adult inmates of state institutions shall be
7 notified in writing that their telephone conversations may be
8 monitored, intercepted, recorded, and disclosed;

9 (2) Only the commissioner, superintendent, or their
10 designee shall have access to recordings of inmates'
11 telephone calls unless disclosed pursuant to §15A-4-6(a)(4)
12 of this code;

13 (3) Notice shall be prominently placed on, or
14 immediately near, every telephone that may be monitored;

15 (4) The contents of inmates' telephone calls may be
16 disclosed to an appropriate law-enforcement agency, or the
17 West Virginia Intelligence Fusion Center, when disclosure
18 is necessary for the investigation, prevention, or prosecution
19 of a crime or to safeguard the orderly operation of the
20 correctional institution. Disclosure may also be made in
21 civil or administrative proceedings pursuant to an order of a
22 court or an administrative tribunal when the disclosure is:

23 (A) Necessary to safeguard and protect the orderly
24 operation of the correctional institution; or

25 (B) Necessary to protect persons from physical harm or
26 the threat of physical harm;

27 (5) All recordings of telephone calls shall be retained for
28 at least three years and maintained and destroyed in
29 accordance with the record retention policy of the division
30 adopted as required by §5A-8-1 *et seq.* of this code; or

31 (6) To safeguard the sanctity of the attorney-client
32 privilege, a telephone line that is not monitored shall be
33 made available for telephone calls to or from an attorney.
34 These calls may not be monitored, intercepted, recorded, or
35 disclosed in any matter.

36 (b) The commissioner shall promulgate a policy
37 directive establishing a record-keeping procedure which
38 requires retention of: (1) A copy of the contents of any
39 inmate telephone conversation provided to law
40 enforcement; and (2) the name of the law-enforcement
41 officer and the law-enforcement agency to which the
42 contents of the telephone conversation were provided. The
43 records required to be retained pursuant to this subsection
44 shall be retained in accordance with the record retention
45 policy specified in §29B-1-4(a)(4) of this code. The
46 inmate's telephone conversation and the information
47 regarding law enforcement are law-enforcement records
48 under that subdivision.

49 (c) Should an inmate be charged with a crime based, in
50 whole or in part, on the inmate's telephone conversation
51 supplied to law enforcement, the inmate's attorney in the
52 criminal matter shall be entitled to access to and copies of
53 the inmate's telephone conversations in the custody of the
54 commissioner which are not evidence in or the subject of
55 another criminal investigation.

56 (d) The provisions of this section apply only to those
57 persons in the physical custody of the commissioner.

§15A-4-7. Monitoring inmate mail; procedures and restrictions; identifying mail from a state institution; mail to or from attorneys excepted.

1 (a) The commissioner, or his or her designee, is
2 authorized to monitor, open, review, copy, and disclose mail
3 sent to adult inmates of state institutions under his or her
4 control, in accordance with the following provisions:

5 (1) All adult inmates of state institutions shall be
6 notified in writing that their mail may be monitored, opened,
7 reviewed, copied, and disclosed;

8 (2) Only the commissioner and his or her designee shall
9 have access to copies of inmates' mail unless disclosed
10 pursuant to §15A-4-7(a)(4) of this code;

11 (3) Notice that the mail may be monitored shall be
12 prominently placed on or immediately near every mail
13 receptacle or other designated area for the collection or
14 delivery of mail;

15 (4) The contents of inmate's mail may be disclosed to
16 an appropriate law-enforcement agency, or the West
17 Virginia Intelligence Fusion Center, when disclosure is
18 necessary for the investigation, prevention, or prosecution
19 of a crime or to safeguard the orderly operation of the
20 institution. Disclosure may also be made in civil or
21 administrative proceedings pursuant to an order of a court
22 or administrative tribunal when the disclosure is:

23 (A) Necessary to safeguard and protect the orderly
24 operation of the institution; or

25 (B) Necessary to protect persons from physical harm or
26 the threat of physical harm;

27 (5) All copies of mail shall be retained for at least three
28 years and maintained and destroyed in accordance with the
29 records retention policy of the division adopted as required
30 by §5A-8-1 *et seq.* of this code; or

31 (6) The inmate whose mail has been copied and
32 disclosed under this section shall be given a copy of that
33 mail when it is determined by the commissioner, or
34 superintendent, not to jeopardize the safe and secure
35 operation of the facility or to be detrimental to an ongoing
36 investigation or administrative action.

37 (b) To safeguard the sanctity of the attorney-client
38 privilege, mail to or from an inmate's attorney shall not be
39 monitored, reviewed, copied, and kept by the institution, or
40 disclosed in any manner unless required by an order of a
41 court of competent jurisdiction. However, that mail may be
42 checked for weapons, drugs, and other contraband provided
43 it is done in the presence of the inmate and there is a
44 reasonable basis to believe that any weapon, drug, or other
45 contraband exists in the mail.

46 (c) All inmate's outgoing mail must be clearly identified
47 as being sent from an inmate at a state correctional
48 institution and must include on the face of the envelope the
49 name and full address of the institution.

50 (d) The commissioner or his or her designee is
51 authorized to open, monitor, review, copy, and disclose an
52 inmate's outgoing mail in accordance with the provisions of
53 §5A-4-7(a) of this code.

54 (e) The commissioner shall promulgate a policy
55 directive establishing a record-keeping procedure which
56 requires retention of: (1) All inmate mail provided to law
57 enforcement; and (2) the name of the law-enforcement
58 officer and the law-enforcement agency to which the inmate
59 mail was provided. The records required to be retained
60 pursuant to this subsection shall be retained in accordance
61 with the record retention policy specified in §15A-4-7(a)(5)
62 of this code. The inmate mail and the information regarding
63 law enforcement are law-enforcement records under §29B-
64 1-4(a)(4) of this code.

65 (f) Should an inmate be charged with a criminal offense
66 based, in whole or in part, on the inmate's mail supplied to
67 law enforcement, the inmate's attorney in the criminal
68 matter shall be entitled access to and copies of the inmate's
69 mail in the custody of the commissioner which are not
70 evidence in or the subject of another criminal investigation.

71 (g) The provisions of this section apply only to those
72 persons in the physical custody of the commissioner.

**§15A-4-8. Monitoring of inmate electronic correspondence;
procedures and restrictions; to or from attorneys
excepted.**

1 (a) The commissioner, or his or her designee, is
2 authorized to monitor, intercept, record, and disclose
3 electronic communications to or from adult inmates of state
4 institutions under his or her control, in accordance with the
5 following provisions:

6 (1) All adult inmates of state institutions shall be
7 notified in writing that their electronic communications may
8 be monitored, intercepted, recorded, and disclosed;

9 (2) Only the commissioner, superintendent, or their
10 designees, shall have access to copies or recordings of
11 inmates' electronic communications unless disclosed
12 pursuant to §15A-4-8(a)(4) of this code;

13 (3) Notice shall be prominently placed on, or
14 immediately near, every electronic communications device
15 that may be monitored;

16 (4) The contents of inmates' electronic communications
17 may be disclosed to an appropriate law-enforcement
18 agency, or the West Virginia Intelligence Fusion Center,
19 when disclosure is necessary for the investigation,
20 prevention, or prosecution of a crime or to safeguard the
21 orderly operation of the correctional institution. Disclosure
22 may also be made in civil or administrative proceedings
23 pursuant to an order of a court or an administrative tribunal
24 when the disclosure is:

25 (A) Necessary to safeguard and protect the orderly
26 operation of the correctional institution; or

27 (B) Necessary to protect persons from physical harm or
28 the threat of physical harm;

29 (5) All recordings or copies of electronic
30 communications shall be retained for at least three years and
31 maintained and destroyed in accordance with the record
32 retention policy of the division adopted as required by §5A-
33 8-1 *et seq.* of this code; or

34 (6) To safeguard the sanctity of the attorney-client
35 privilege, a method of electronic communications that is not
36 monitored shall be made available for communications to or
37 from an attorney. These communications shall not be
38 monitored, intercepted, recorded, or disclosed in any matter.

39 (b) The commissioner shall promulgate a policy
40 directive establishing a record-keeping procedure which
41 requires retention of: (1) A copy of the contents of any
42 inmate electronic communication provided to law
43 enforcement; and (2) the name of the law-enforcement
44 officer and the law-enforcement agency to which the
45 contents of the communications were provided. The records
46 required to be retained pursuant to this subsection shall be
47 retained in accordance with the record retention policy
48 specified in §15A-4-8(a)(5) of this code. The inmate's
49 electronic communication and the information regarding
50 law enforcement are law-enforcement records under §29B-
51 1-4(a)(4) of this code.

52 (c) Should an inmate be charged with a crime based, in
53 whole or in part, on the inmate's electronic communication
54 supplied to law enforcement, the inmate's attorney in the
55 criminal matter shall be entitled to access to and copies of
56 the inmate's electronic communications in the custody of
57 the commissioner which are not evidence in or the subject
58 of another criminal investigation.

59 (d) The provisions of this section shall apply only to
60 those persons in the physical custody of the commissioner.

§15A-4-9. Trustee accounts and funds, earnings and personal property of inmates and residents.

1 (a) The commissioner is authorized to establish at each
2 institution under his or her jurisdiction a "Trustee Fund".
3 The superintendent of each institution shall receive and take
4 charge of the money and personal property, as defined by
5 policy, of all inmates or residents in his or her institution
6 and all money or personal property, as defined by policy,
7 sent to the inmates or residents or earned by the inmates as
8 compensation for work performed while they are domiciled
9 there. The superintendent shall credit the money and
10 earnings to the inmate or resident entitled to it and shall keep
11 an accurate account of all the money and personal property
12 so received, which account is subject to examination by the
13 commissioner. The superintendent shall deposit the moneys
14 in one or more responsible banks in accounts to be
15 designated "Trustee Fund".

16 (b) For all felony sentenced inmates, except those
17 serving life without mercy and those the superintendent
18 determines are likely to serve the remainder of their natural
19 lives in the custody of the division due to their age and the
20 length of their sentences, the superintendent shall keep in an
21 account at least 10 percent of all money earned during the
22 inmate's or resident's incarceration and pay the money to
23 the inmate or resident at the time of the inmate's or
24 resident's release. The superintendent may authorize the
25 inmate to withdraw money from his or her mandatory
26 savings for the purpose of preparing the inmate for reentry
27 into society.

28 (c) The commissioner may direct that offenders who
29 work in community work programs, including work release
30 inmates who have obtained employment, make
31 reimbursement to the state toward the cost of his or her
32 incarceration.

33 (d)(1) Prior to ordering an incarcerated offender to make
34 reimbursement toward the costs of his or her incarceration,
35 the commissioner, or his or her designee, shall consider the
36 following:

37 (A) The offender's ability to pay;

38 (B) The nature and extent of the offender's
39 responsibilities to his or her dependents, if any;

40 (C) The length of probable incarceration under the
41 court's sentence; and

42 (D) The effect, if any, that reimbursement might have
43 on the offender's rehabilitation.

44 (2) No order of reimbursement entered pursuant to this
45 section may exceed \$500 per month unless the offender
46 gives his or her express consent; and

47 (3) The commissioner shall, prior to the beginning of
48 each fiscal year, prepare a report that details the average cost
49 per inmate incurred by the division for the care and
50 supervision of those individuals in his or her custody.

51 (e) The superintendent of any facility, on request of an
52 inmate or resident, may expend up to one half of the money
53 earned by the inmate or resident on behalf of the family of
54 the inmate or resident if the 10 percent mandatory savings
55 has first been set aside and other fees or court ordered
56 obligations owed by the inmate or resident have been paid.
57 The remainder of the money earned, after deducting
58 amounts expended as authorized, shall be accumulated to
59 the credit of the inmate or resident and be paid to the inmate
60 or resident at times as may be prescribed by rules. The funds
61 so accumulated on behalf of inmates or residents shall be
62 held by the superintendent of each institution under a bond
63 approved by the Attorney General.

64 (f) The superintendent shall deliver to the inmate or
65 resident at the time he or she leaves the institution, or as
66 soon as practicable after departure, all personal property,
67 moneys, and earnings then credited to the inmate or
68 resident, or in case of the death of the inmate or resident
69 before authorized release from the institution, the
70 superintendent shall deliver the property to the inmate's or

71 resident's personal representative. In case a conservator is
72 appointed for the inmate or resident while he or she is
73 domiciled at the institution, the superintendent shall deliver
74 to the conservator, upon proper demand, all moneys and
75 personal property belonging to the inmate or resident that
76 are in the custody of the superintendent.

77 (g) If any money is credited to a former inmate or
78 resident after remittance of the sum of money as provided
79 in §15A-4-9(f) of this code, the commissioner shall notify
80 the former inmate or resident within 30 days of receipt of
81 the money. The former inmate or resident will be afforded
82 the opportunity to collect the money if he or she pays the
83 cost of the transaction. If the former inmate or resident does
84 not claim the money within 30 days of receiving the notice
85 and the sum of money is less than \$10, the commissioner
86 may place the money into the inmate benefit fund.

87 (h) The provisions of this section apply to both juveniles
88 and adults within the custody of the commissioner.

§15A-4-10. Inmate or resident benefit funds.

1 (a) The commissioner shall establish an inmate, or
2 resident, benefit fund for each of the institutions under his
3 or her jurisdiction. The inmate, or resident, benefit fund is a
4 fund held by the institutions for the benefit and welfare of
5 inmates incarcerated, or juveniles placed in facilities under
6 the jurisdiction of the commissioner, and for the benefit of
7 victims.

8 (b) There is continued a special revenue account in the
9 State Treasury for each inmate, or resident, benefit fund
10 established by the commissioner. If an account does not
11 currently exist for an institution, the commissioner may
12 establish the account for that institution. Moneys received
13 by an institution for deposit in an inmate, or resident, benefit
14 fund shall be deposited with the State Treasurer to be
15 credited to the special revenue account created for the
16 institution's inmate, or resident, benefit fund: *Provided,*

17 That commissions on any contract providing services to jail
18 inmates shall not be deposited into this account. Moneys in
19 a special revenue account established for an inmate benefit
20 fund may be expended by the institution for the purposes set
21 forth in this section. Moneys to be deposited into an inmate,
22 or resident, benefit fund consist of, but are not limited to:

23 (1) All profit from the exchange or commissary
24 operation and if the commissary is operated by a vendor,
25 whether a public or private entity, the profit is the negotiated
26 commission paid to the Division of Corrections and
27 Rehabilitation by the vendor;

28 (2) All net proceeds from vending machines used for
29 inmate or resident visitation;

30 (3) All proceeds from contracted inmate or resident
31 telephone commissions;

32 (4) Any funds that may be assigned by inmates or
33 donated to the institution by the general public or an inmate
34 service organization on behalf of all inmates or residents;

35 (5) Any funds confiscated considered contraband; and

36 (6) Any unexpended balances in individual inmate or
37 resident trustee funds if designated by the inmate upon his
38 or her discharge from the institution.

39 (c) The inmate benefit fund may only be used for the
40 following purposes at facilities:

41 (1) Open-house visitation functions or other nonroutine
42 inmate or resident functions;

43 (2) Holiday functions which may include decorations
44 and gifts for children of inmates or residents;

45 (3) Cable television service;

46 (4) Rental of movies;

- 47 (5) Payment of video license;
- 48 (6) Recreational supplies, equipment, or area surfacing;
- 49 (7) Reimbursement of employee wages for overtime
50 incurred during open-house visitations and holiday
51 functions;
- 52 (8) Post-secondary education classes;
- 53 (9) Reimbursement of a pro rata share of inmate or
54 resident work compensation;
- 55 (10) Household equipment and supplies in day rooms or
56 units as approved by superintendents of institutions,
57 excluding supplies used in the daily maintenance and
58 sanitation of the unit;
- 59 (11) Christmas or other holidays gift certificates for
60 each inmate or resident to be used at the exchange or
61 commissary;
- 62 (12) Any expense associated with the operation of the
63 fund;
- 64 (13) Expenditures necessary to properly operate an
65 automated inmate family and victim information
66 notification system;
- 67 (14) Any expense for improvement of the facility which
68 will benefit the inmate or resident population that is not
69 otherwise funded;
- 70 (15) Any expense related to the installation, operation,
71 and maintenance of the inmate or resident telephone system;
72 and
- 73 (16) Restitution of any negative balance on any inmate's
74 trustee account for inmate medical copay, legal and
75 ancillary related postage, and photocopy fees that are due
76 the State of West Virginia, if the balance is uncollectible

77 from an inmate after one calendar year from an inmate's
78 release on parole or discharge date.

79 (d) The institution shall compile a monthly report that
80 specifically documents inmate benefit fund receipts and
81 expenditures and a yearly report for the previous fiscal year
82 by September 1 of each year and submit the reports to the
83 commissioner.

84 (e) The provisions of this section apply to both juveniles
85 and adults within the custody of the commissioner.

§15A-4-11. Financial responsibility program for inmates.

1 (a) The Legislature finds that:

2 (1) There is an urgent need for vigorous enforcement of
3 child support, restitution, and other court ordered
4 obligations;

5 (2) The duty of inmates to provide for the needs of
6 dependent children, including their necessary food,
7 clothing, shelter, education, and health care should not be
8 avoided because of where the inmate resides;

9 (3) A person owing a duty of child support who chooses
10 to engage in behaviors that result in the person becoming
11 incarcerated should not be able to avoid child support
12 obligations; and

13 (4) Each sentenced inmate should be encouraged to
14 meet his or her legitimate court-ordered financial
15 obligations.

16 (b) As part of the initial classification process into a
17 correctional facility, the division shall assist each inmate in
18 developing a financial plan for meeting the inmate's child
19 support obligations, if any exist. At subsequent program
20 reviews, the division shall consider the inmate's efforts to
21 fulfill those obligations as indicative of that individual's
22 acceptance and demonstrated level of responsibility.

23 (c)(1) The superintendent shall deduct from the earnings
24 of each inmate all legitimate court-ordered financial
25 obligations. The superintendent shall also deduct child
26 support payments from the earnings of each inmate who has
27 a court-ordered financial obligation. The commissioner
28 shall develop a policy that outlines the formula for the
29 distribution of the offender's income and the formula shall
30 include a percentage deduction, not to exceed 50 percent in
31 the aggregate, for any court ordered victim restitution, court
32 fees, and child support obligations owed under a support
33 order, including an administrative fee, consistent with the
34 provisions of §48-14-406(c) of this code, to support the
35 division's administration of this financial service;

36 (2) If the inmate worker's income is subject to
37 garnishment for child support enforcement deductions, it
38 shall be calculated on the net wages after taxes, legal
39 financial obligations, and garnishment;

40 (3) The division shall develop the necessary
41 administrative structure to record inmates wages and keep
42 records of the amount inmates pay for child support; and

43 (4) Nothing in this section limits the authority of the
44 Bureau for Child Support Enforcement of the Department
45 of Health and Human Resources from taking collection
46 action against an inmate's moneys, assets, or property.

47 (d) If an inmate is awarded a civil judgment which
48 awards him or her monetary damages, the court in which
49 those damages are awarded shall enter an order which
50 deducts all outstanding child support, restitution, or other
51 court-ordered obligations from the award to the inmate, and
52 satisfies those obligations, prior to releasing any funds to the
53 inmate.

54 (e) The accumulation of the total funds, not necessary
55 for current distribution, shall be invested, with the approval
56 of the commissioner or as appropriate, through the West
57 Virginia Municipal Bond Commission, in short term bonds

58 or treasury certificates or equivalent of the United States.
 59 Bonds and certificates so purchased shall remain in the
 60 custody of the State Treasurer. The earnings from
 61 investments so made shall be reported to the principal
 62 officer of each institution from time to time, as earned, and
 63 shall be credited to the respective accounts of the
 64 institutions by the West Virginia Municipal Bond
 65 Commission. When the earnings are transferred to the
 66 respective institutions, they shall be credited by the
 67 superintendent to the credit of, and for the benefit of, the
 68 inmate, or resident, benefit fund.

§15A-4-12. Limitation on reimbursement rate to medical service providers for services outside division facilities.

1 The division, or its contracted medical providers, may
 2 not pay an amount to an outside provider of a medical
 3 service for an adult inmate residing in a jail or correctional
 4 facility greater than the reimbursement rate applicable to
 5 service providers established in the West Virginia state
 6 Medicaid plan by the Bureau for Medical Services:
 7 *Provided*, That critical access hospitals shall be reimbursed
 8 at 75 percent of the billed charges. These limitations apply
 9 to all medical care services, goods, prescription drugs, and
 10 medications provided to a person who is in the custody of a
 11 correctional facility and is provided these services outside
 12 of a correctional facility: *Provided, however*, That the
 13 Department of Military Affairs and Public Safety and the
 14 Department of Health and Human Resources effectuate an
 15 interagency agreement for the electronic processing and
 16 payment of medical services.

§15A-4-13. Charges assessed against inmates for services provided by state.

1 (a) The commissioner is authorized to assess inmates
 2 serving a sentence in any state jail, penal, or correctional
 3 facility reasonable charges for health care and treatment
 4 services provided to them by the state. The charges assessed
 5 against an inmate may be deducted directly from the

6 inmate's trustee account without the inmate's consent. The
7 inmate shall be notified of the amount deducted and the
8 charges to which it has been applied.

9 (b) As used in this section, a "reasonable charge" may
10 not exceed the sum of \$25 for any billable service. Inmates
11 shall be notified of the fee schedule, billable services, and
12 exempt services. Services initiated by the inmate shall be
13 assessed a fee, except that no charge may be assessed for:
14 (1) a specific health care service required under the law of
15 this state, including, by way of illustration, tuberculin
16 testing; (2) an emergency service following a traumatic
17 injury other than a self-induced injury, or necessary to
18 prevent death or severe or permanent disability; (3)
19 diagnosis and treatment of communicable diseases,
20 including, by way of illustration, tuberculosis or hepatitis;
21 (4) treatment of diagnosed severe mental illness; (5)
22 treatment of specific chronic conditions identified by the
23 commissioner, including, by way of illustration, heart
24 disease and diabetes; (6) staff-initiated care, including
25 follow-up and referral visits; (7) preventive services that the
26 commissioner determines are to be provided or made
27 available to all inmates, including services related to disease
28 prevention and promotion of proper health habits; or (8)
29 other services as may be exempted by rule of the
30 commissioner. No inmate may be denied any necessary
31 billable medical service because of inability to pay the
32 charge.

33 (c) Any inmate who intentionally ingests, inhales,
34 injects, absorbs, applies, or otherwise exposes himself or
35 herself to, in any manner whatsoever not otherwise
36 specified herein, an illegal drug, a drug not legally
37 prescribed to him or her, a drug in quantities above that
38 recommended by a prescribing physician, a synthetic
39 intoxicant, or any substance for the purpose of causing an
40 excited, euphoric, or stupefied state, or altered perception,
41 including hallucinations or delusions, and the inmate
42 requires medical treatment due to the ingestion, inhalation,

43 injection, absorption, application, or exposure shall
44 reimburse the cost of the medical treatment to the division.

45 (d) Each inmate shall be afforded an opportunity at least
46 quarterly to review all deposits into, withdrawals from, and
47 balance remaining in the inmate's trustee account during the
48 preceding three months.

49 (e) The commissioner shall promulgate interpretive
50 rules implementing this section pursuant to §29A-3-1 *et seq.*
51 of this code prior to making any assessment under this
52 section. The policy directive rules may establish the fee
53 schedule and list of billable services and further define
54 services to be exempted.

§15A-4-14. Record of inmate or resident.

1 The commissioner shall file and preserve the record of
2 the indictment and conviction, in the case of an adult, or the
3 charges and adjudication, in the case of a juvenile, of each
4 inmate or resident, and keep a register describing him or her,
5 the term of his or her confinement, for what offense, and
6 when received into the institution.

§15A-4-15. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.

1 For the purpose of obtaining license plates to be used
2 upon motor vehicles licensed for operation in this state and
3 road signs or markers of any description for state roads, the
4 commissioner is hereby authorized and empowered on
5 behalf of the state, to establish and operate a plant for the
6 manufacture of the license plates and road signs or markers
7 in his or her institution.

8 It shall be unlawful for any state official or employee to
9 manufacture or obtain the license plates, road signs, or
10 markers otherwise than as herein specified: *Provided*, That
11 the Commissioner of Highways may originally secure road

12 signs or markers from sources other than that provided
13 herein.

§15A-4-16. Gifts to or dealings with inmate or resident.

1 No officer or employee of the state, or contractor, or
2 employee of a contractor shall make any gift or present to
3 an inmate or resident, or receive any from an inmate or
4 resident, or have any barter or dealings with a convict,
5 except as allowed and permitted by the commissioner.

6 For every violation of this section, the party engaged
7 therein shall be dismissed from his or her office or service,
8 and every contractor, or employee, or agent of a contractor
9 engaged therein shall be expelled from any facility within
10 the jurisdiction of the commissioner, and not again
11 employed in any institution as a contractor, agent, or
12 employee.

**§15A-4-17. Deduction from sentence for good conduct;
mandatory supervision.**

1 (a) All current and future adult inmates sentenced to a
2 felony and, placed in the custody of the division, except
3 those committed pursuant to §25-4-1 *et seq.* of this code,
4 shall be granted commutation from their sentences for good
5 conduct in accordance with this section: *Provided*, That
6 nothing in this section shall be considered to recalculate the
7 “good time” of inmates currently serving a sentence or of
8 giving back good time to inmates who have previously lost
9 good time earned for a disciplinary violation, except for
10 those inmates currently serving a sentence for a
11 misdemeanor.

12 (b) The commutation of sentence, known as “good
13 time”, shall be deducted from the maximum term of
14 indeterminate sentences or from the fixed term of
15 determinate sentences.

16 (c) Each inmate committed to the custody of the
17 commissioner and incarcerated in a facility pursuant to that

18 commitment shall be granted one day good time for each
19 day he or she is incarcerated, including any and all days in
20 jail awaiting sentence which are credited by the sentencing
21 court to his or her sentence pursuant to §61-11-24 of this
22 code or for any other reason relating to the commitment. An
23 inmate may not be granted any good time for time served
24 either on parole or bond or in any other status when he or
25 she is not physically incarcerated.

26 (d) An inmate sentenced to serve a life sentence is not
27 eligible to earn or receive any good time pursuant to this
28 section.

29 (e) An inmate under two or more consecutive sentences
30 shall be allowed good time as if the several sentences, when
31 the maximum terms of the consecutive sentences are added
32 together, were all one sentence.

33 (f) The commissioner shall promulgate disciplinary
34 rules and policies. The rules and policies shall describe acts
35 that inmates are prohibited from committing, procedures for
36 charging individual inmates for violation of the rules, and
37 for determining the guilt or innocence of inmates charged
38 with the violations, and the sanctions which may be
39 imposed for the violations. A copy of the rules shall be given
40 to each inmate. For each violation, by a sanctioned inmate,
41 any part or all of the good time which has been granted to
42 the inmate pursuant to this section may be forfeited and
43 revoked by the superintendent of the institution in which the
44 violation occurred. The superintendent when appropriate
45 and with approval of the commissioner, may restore any
46 forfeited good time.

47 (g) Each inmate, upon his or her commitment to, and
48 being placed into the custody of the commissioner, or upon
49 his or her return to custody as the result of violation of
50 parole pursuant to §62-12-19 of this code, shall be given a
51 statement setting forth the term or length of his or her
52 sentence or sentences and the time of his or her minimum
53 discharge computed according to this section.

54 (h) Each inmate shall be given a revision of the
55 statement described in §15A-4-17(g) of this code when any
56 part or all of the good time has been forfeited and revoked
57 or restored pursuant to §15A-4-17(f) of this code, by which
58 the time of his or her earliest discharge is changed.

59 (i) The superintendent may, with the approval of the
60 commissioner, allow extra good time for inmates who
61 perform exceptional work or service.

62 (j) There shall be no grants or accumulations of good
63 time or credit to any current or future inmate serving a
64 sentence in the custody of the Division of Corrections and
65 Rehabilitation except in the manner provided in this section.

66 (k) Prior to the calculated discharge date of an inmate
67 serving a sentence for a felony crime of violence against the
68 person, a felony offense where the victim was a minor child
69 or a felony offense involving the use of a firearm, one year
70 shall be deducted from the inmate's accumulated good time
71 to provide for one year of mandatory post-release
72 supervision following the first instance in which the inmate
73 reaches his or her calculated discharge date. All inmates
74 released pursuant to this subsection shall be subject to
75 electronic or GPS monitoring for the entire period of
76 supervision. The provisions of this subsection are applicable
77 to offenses committed on or after July 1, 2013.

78 (l) Upon sentencing of an inmate for a felony offense
79 not referenced in §15A-4-17(k) of this code, the court may
80 order that 180 days of the sentence, or some lesser period,
81 be served through post-release mandatory supervision if the
82 court determines supervision is appropriate and in the best
83 interest of justice, rehabilitation, and public safety. All
84 inmates released pursuant to this subsection shall be subject
85 to electronic or GPS monitoring for the entire period of
86 supervision. The provisions of this subsection are applicable
87 to offenses committed on or after July 1, 2013.

88 (m) The commissioner shall adopt policies and
89 procedures to implement the mandatory supervision
90 provided for in §15A-4-17(k) and §15A-4-17(l) of this code,
91 which may include terms, conditions, and procedures for
92 supervision, modification, and violation applicable to
93 persons on parole.

94 (n) As used in this section, “felony crime of violence
95 against the person” means felony offenses set forth in §61-
96 2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1
97 *et seq.* of this code, and the felony offenses of arson and
98 burglary of a residence where an individual is physically
99 located at the time of the offense as set forth in §61-3-1 *et*
100 *seq.* of this code.

101 (o) As used in this section, “felony offense where the
102 victim was a minor child” means any felony crime of
103 violence against the person and any felony offense set forth
104 in §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or
105 §61-8D-1 *et seq.* of this code.

**§15A-4-18. Governor’s authority to authorize commissioner
to consent to transfer of inmates under a federal treaty.**

1 If a treaty in effect between the United States and a
2 foreign country provides for the transfer or exchange of
3 convicted offenders to the country of which they are citizens
4 or nationals, the Governor may, on behalf of the state and
5 subject to the terms of the treaty and with the consent of the
6 offender, authorize the commissioner to consent to the
7 transfer or exchange of inmates in his or her custody and
8 take any other action necessary to initiate the participation
9 of this state in the treaty. No transfer may occur pursuant to
10 the provisions of this section until the inmate is informed of
11 his or her rights and the procedures involved in his or her
12 native language unless it is determined that the inmate’s
13 knowledge of English is sufficient.

§15A-4-19. Mentally ill inmates; treatment; transfer between correctional and mental health facilities; correctional facility procedures.

1 (a) No person who is, or was considered to be, mentally
2 ill, intellectually disabled, or addicted shall be denied parole
3 or a parole hearing based upon the past or present condition.
4 In the event a convicted person is deemed to be an
5 appropriate candidate for parole, but for a condition
6 warranting involuntary hospitalization of the person, shall
7 be paroled, and proceedings instituted pursuant to §27-5-4
8 of this code. Any time spent in such a facility shall be
9 considered part of the term, and any person whose sentence
10 expires while receiving treatment for a mental condition
11 shall be discharged unless proceedings have been instituted
12 and a determination made pursuant to §27-5-4 of this code.

13 (b) When a convicted person in a jail, prison, or other
14 facility is believed to be mentally ill, intellectually disabled,
15 or addicted, as those terms are defined in §27-1-1 *et seq.* of
16 this code, and in need of treatment, training, or other
17 services, the facts relating to the illness, shall be presented
18 to the superintendent of the facility. The facts may be
19 presented by a correctional officer, member of a
20 correctional institution medical staff, relative, or the
21 convicted person. Immediately upon receipt of the facts, the
22 superintendent shall arrange for psychiatric or
23 psychological examination of the person alleged to be so
24 afflicted. If the report of the examination is to the effect that
25 the individual is mentally ill, intellectually disabled, or
26 addicted and that treatment, training, or other services are
27 required which cannot reasonably be provided at the
28 correctional facility, the superintendent shall file within 20
29 days after presentation of the facts an application for
30 transfer with the clerk of the circuit court of the county of
31 location of the correctional facility. The application for
32 transfer shall include a statement of the nature of the
33 treatment which the person's condition warrants and the
34 facility to which transfer is sought.

35 Within 10 days of receipt of the application from the
36 superintendent, the mental hygiene commissioner or circuit
37 judge shall appoint counsel for the convicted person if the
38 person is indigent.

39 The clerk of the circuit court shall forthwith notify the
40 convicted person, by certified mail, return receipt requested,
41 delivered only to addressee, that the application has been
42 filed, enclosing therewith a copy of the application with an
43 explanation of the place and purpose of the transfer and the
44 type of treatment to be afforded, together with the name,
45 address, and telephone number of any appointed counsel.
46 The person shall be afforded reasonable telephone access to
47 his or her counsel. The clerk shall also notify the
48 superintendent or other chief administrative officer of the
49 facility to which transfer is sought. Within 15 days after
50 receipt of notice, the convicted person, through counsel,
51 shall file a verified return admitting or denying the
52 allegations and informing the court or mental hygiene
53 commissioner as to whether the respondent wishes to
54 oppose the transfer. Counsel shall file the return only after
55 personal consultation with the convicted person. The
56 superintendent of the facility to which transfer is sought
57 shall also file a return within 15 days of the receipt of notice,
58 informing the court or mental hygiene commissioner as to
59 whether the needed treatment or other services can be
60 provided within that facility. If the superintendent objects to
61 receiving the convicted person for treatment or services, the
62 reasons for the objection shall be specified in detail.

63 If the transfer is opposed by either the convicted person
64 or by the superintendent of the facility to which transfer is
65 sought, the matter shall forthwith be set for hearing, in no
66 event to exceed 30 days from the date of the return opposing
67 the transfer, and the clerk shall provide to the convicted
68 person, the superintendent of the facility to which transfer
69 is sought, and the superintendent of the correctional facility,
70 at least 10 days written notice, by certified mail, return

71 receipt requested, of the purpose, time, and place of the
72 hearing.

73 The convicted person shall be present at the hearing, and
74 be afforded an opportunity to testify and to present and
75 cross-examine witnesses. Counsel for the convicted person
76 shall be entitled to copies of all medical reports upon
77 request. The person shall have the right to an examination
78 by an independent expert of the person's choice and
79 testimony from the expert as a medical witness on the
80 person's behalf. The cost of providing the medical expert
81 shall be borne by the state if the person is indigent. The
82 person shall not be required to give testimony which is self-
83 incriminating. The circuit court or mental hygiene
84 commissioner shall hear evidence from all parties, in accord
85 with the rules of evidence. A transcript or recording shall be
86 made of all proceedings, and transcript made available to
87 the person within 30 days, if the same is requested for the
88 purpose of further proceedings, and without cost if the
89 person is indigent.

90 Upon completion of the hearing, and consideration of
91 the evidence presented therein, the circuit court or mental
92 hygiene commissioner shall make findings of facts as to
93 whether or not: (1) The individual is mentally ill,
94 intellectually disabled, or addicted; (2) the individual
95 because of mental illness, mental retardation, or addiction is
96 likely to cause serious harm to self or others; (3) the
97 individual could not obtain the requisite treatment or
98 training at the correctional facility or another appropriate
99 correctional facility; and (4) the designated facility to which
100 transfer is sought could provide the treatment or training
101 with the security as the court finds appropriate; and, if all
102 the findings are in the affirmative, the circuit court may
103 order the transfer of the person to the appropriate facility.
104 The findings of fact shall be incorporated into the order
105 entered by the circuit court. In all proceedings hereunder,
106 proof of mental condition and of likelihood of serious harm
107 must be established by clear, cogent, and convincing

108 evidence, and the likelihood of serious harm must be based
109 upon evidence of recent overt acts.

§15A-4-20. Work program.

1 (a) The commissioner is authorized to establish at each
2 institution a work program for qualified inmates. The
3 commissioner shall establish guidelines and qualifications
4 to allow inmates sentenced to a regional jail facility to be
5 gainfully employed with local businesses and governmental
6 entities as part of a job program. A qualified inmate does
7 not include an inmate convicted of a sexual offense or a
8 violent felony.

9 (b) An inmate who works in work programs established
10 under this section may be required to make reimbursement
11 to the division toward the cost of his or her incarceration to
12 be credited to the agency billed for that incarceration,
13 pursuant to the conditions set forth in §15A-4-19 of this
14 code.

15 (c) Notwithstanding any provision of this code to the
16 contrary, the county commission, its members and agents,
17 the Division of Corrections and Rehabilitation or designee,
18 its employees, agents, or assigns, the Regional Jail and
19 Correctional Facility Authority Board, its members, agents,
20 or assigns, the sheriff, and his or her deputies, shall be
21 immune from all liability of any kind except for accident,
22 injury, or death resulting directly from gross negligence or
23 malfeasance.

**§15A-4-21. Director of employment; director of housing;
released inmates; duties.**

1 The commissioner may employ or contract for a
2 Director of Employment and a Director of Housing for
3 released inmates. The Director of Employment shall work
4 with federal, state, county, and local government and private
5 entities to negotiate agreements which facilitate
6 employment opportunities for released inmates. The
7 Director of Housing shall work with federal, state, county,

8 and local government and private entities to negotiate
9 agreements which facilitate housing opportunities for
10 released inmates. The Director of Employment shall
11 investigate job opportunities and give every possible
12 assistance in helping released inmates find employment.
13 The Director of Housing shall work in conjunction with the
14 Bureau of Community Corrections and the Parole Board to
15 reduce release delays due to lack of a home plan, develop
16 community housing resources, and provide short-term loans
17 to released inmates for costs related to reentry into the
18 community.

ARTICLE 5. BUREAU OF PRISONS AND JAILS.

§15A-5-1. Creation of Bureau of Prisons and Jails; organization of facilities.

1 (a) The commissioner shall establish a Bureau of
2 Prisons and Jails. The commissioner shall determine what
3 adult facilities or institutions shall appropriately be
4 managed by the Bureau of Prisons and Jails.

5 (b) The commissioner shall appoint an assistant
6 commissioner, who shall oversee the Bureau of Prisons and
7 Jails.

8 (c) Where reference in this article is made to the
9 “division”, it shall mean the Division of Corrections and
10 Rehabilitation.

§15A-5-2. Transfer of duties and funds of Division of Corrections.

1 All prior conveyed responsibilities of the Division of
2 Corrections, and its Commissioner are hereby transferred to
3 the Division of Corrections and Rehabilitation. All funds,
4 both general revenue and special revenue, are hereby
5 transferred to the Division of Corrections and
6 Rehabilitation. Any funds administered by the Division of
7 Corrections are to be administered by the Division of
8 Corrections and Rehabilitation, and its Commissioner.

§15A-5-3. Superintendents; duties and authority; bond; residence.

1 (a) The commissioner shall appoint a superintendent for
2 each institution under the control of the division. Each
3 superintendent shall be bonded by the Board of Risk and
4 Insurance Management.

5 (b) The superintendent shall be the chief executive
6 officer of his or her assigned correctional institution and,
7 subject to the direction of the commissioner, has the
8 responsibility for the overall management of all operations
9 within his or her assigned institution. The superintendent
10 shall be in charge of its internal police and management and
11 shall provide for feeding, clothing, working and taking care
12 of the inmates, subject to the control of the commissioner.

13 (c) The superintendent shall promptly enforce all orders
14 and rules made by the commissioner. He or she shall protect
15 and preserve the property of the state and may for that
16 purpose punish the inmates in the manner authorized by the
17 commissioner. The superintendent shall have the custody and
18 control of all the real and personal property at the correctional
19 institution, subject to the orders of the commissioner.

20 (d) The commissioner may authorize the superintendent
21 to establish an imprest fund in accordance with the
22 provisions of §12-2-2 of this code for the sole purpose of
23 providing employees with funds to transport inmates for any
24 purpose as determined by the superintendent, and any of the
25 fund that currently exists is hereby continued. The employee
26 is required to complete a travel reimbursement form for the
27 travel within five days of returning to the correctional
28 facility. The funds shall be used to reimburse the imprest
29 fund for the amount expended by the employee.

§15A-5-4. Appointment of deputy superintendent; duties; bond.

1 Each superintendent, with the approval of the
2 commissioner, may hire a deputy superintendent. The

3 deputy superintendent's duties shall be fixed by the
4 superintendent, as approved by the commissioner. In the
5 absence of the superintendent, the deputy superintendent
6 shall perform all the duties required of the superintendent.
7 The deputy superintendent shall be bonded by the Board of
8 Risk and Insurance Management.

§15A-5-5. Hiring of other assistants and employees.

1 The superintendent of each correctional institution or
2 unit shall, in the manner provided in §15A-3-5 of this code,
3 hire all assistants and employees required for the
4 management of the correctional institutions or units,
5 including a sufficient number of correctional employees to
6 preserve order and enforce discipline among the inmates, to
7 prevent escapes, and to remove all persons convicted and
8 sentenced to the custody of the Division of Corrections and
9 Rehabilitation, from the place confined to a correctional
10 institution, all of whom shall be under the control of the
11 superintendent: *Provided*, That the number of the assistants
12 and employees, and their compensation, shall first be
13 approved by the commissioner.

14 All persons employed at a state-operated correctional
15 institution or correctional unit are subject to the supervision
16 and approval of the superintendent and the authority of the
17 commissioner, or his or her designee, except those persons
18 employed by the State Board of Education, pursuant to §18-
19 2-13f of this code.

§15A-5-6. Jail intake facilities; housing of adult inmates.

1 To the extent practicable, and in a manner consistent
2 with providing for the safety of the public, correctional
3 employees, and inmates, the commissioner will create space
4 in every adult institution for both jail and prison
5 populations: *Provided*, That in no case shall the
6 commissioner be required to provide jail space in every
7 institution in excess of space necessary for initial receiving,
8 booking, and holding of an inmate to await transport by the

9 Division of Corrections and Rehabilitation to the most
10 appropriate housing placement for that inmate. In no case
11 may a person who is a pretrial detainee, who is not currently
12 serving a felony sentence in the custody of the
13 commissioner, be held in a space designated as a prison unit.
14 Further, no convicted misdemeanor actively serving a
15 sentence on a misdemeanor shall be held in a space
16 designated as a prison unit.

§15A-5-7. Pretrial risk assessment.

1 (a) Within three calendar days of the arrest and
2 placement of any person in a jail, the division shall conduct
3 a pretrial risk assessment using a standardized risk
4 assessment instrument approved and adopted by the
5 Supreme Court of Appeals of West Virginia. The results of
6 all standardized risk and needs assessments are confidential
7 and shall only be provided to the court, court personnel, the
8 prosecuting attorney, defense counsel, and the person who
9 is the subject of the pretrial risk assessment. Upon
10 completion of the assessment, the Division of Corrections
11 and Rehabilitation shall provide it to the magistrate and
12 circuit clerks for delivery to the appropriate circuit judge or
13 magistrate.

14 (b) The pretrial risk assessment and all oral or written
15 statements made by an individual during risk assessment
16 shall be inadmissible evidence at any criminal or civil trial.

§15A-5-8. Jail processing fee.

1 (a) A person committed to be housed in jail by order of
2 magistrate, circuit judge, or by temporary commitment
3 order shall, at the time of initial booking into the jail, pay a
4 processing fee of \$30. If the person is unable to pay at the
5 time of booking, the fee shall be deducted, at a rate of 50
6 percent, from any new deposits made into the person's trust
7 account until the jail processing fee is paid in full. The fee
8 shall be credited to:

9 (1) The Jail's operating budget if the person is
10 committed to and housed in a jail;

11 (2) The county commission if the person is committed
12 to and housed in a county jail; or

13 (3) The municipality if the person is committed to and
14 housed in a municipal jail. The fee should be paid prior to
15 the offender being released.

16 (b) A refund of a fee collected under this section shall be
17 made to a person who has paid the fee if the person is not
18 convicted of the offense for which the person was booked and
19 the person provides documentation from the court showing
20 that all charges for which the person was booked were
21 dismissed, accurate current name and address and a valid
22 photographic identification. In the case of multiple offenses, if
23 the person is convicted of any of the offenses the fee may not
24 be refunded. If the person is convicted of a lesser included
25 offense or a related offense, no refund may be made.

§15A-5-9. Ability to refuse offenders.

1 Notwithstanding any other provision of this code, the
2 commissioner, or any employee of the division, having
3 authority to accept offenders in a jail is not required to accept
4 those offenders if an offender appears to be in need of
5 medical attention of a degree necessitating treatment by a
6 physician. If an offender is refused pursuant to the provisions
7 of this section, he or she may not be accepted for detention
8 until a written clearance from a licensed physician reflecting
9 that the offender has been examined and if necessary treated,
10 and which states that it is the physician's medical opinion that
11 the offender can be safely housed in a jail.

ARTICLE 6. BUREAU OF JUVENILE SERVICES.

**§15A-6-1. Creation of Bureau of Juvenile Services;
organization of facilities.**

1 (a) The Commissioner of Corrections and
2 Rehabilitation shall establish a Bureau of Juvenile Services.

3 This bureau shall manage any juvenile facilities or units, as
4 determined pursuant to §15A-3-12 of this code.

5 (b) The commissioner shall appoint an assistant
6 commissioner, who shall oversee the Bureau of Juvenile
7 Services.

8 (c) Where reference in this article is made to the
9 “division”, it shall mean the Division of Corrections and
10 Rehabilitation.

§15A-6-2. Transfer of duties and funds.

1 All prior conveyed responsibilities and duties of the
2 Division of Juvenile Services, and the Director of Juvenile
3 Services, outlined in §49-1-101 *et seq.* of this code, are
4 hereby transferred and conveyed to the Division of
5 Corrections and Rehabilitation, and to its Commissioner.
6 Any funds administered by the Division of Juvenile
7 Services are to be administered by the Division of
8 Corrections and Rehabilitation, and its Commissioner.

**§15A-6-3. Superintendents; duties and authority; bond;
residence.**

1 (a) The commissioner shall appoint a superintendent for
2 each institution under the control of the division. Each
3 superintendent shall be bonded by the Board of Risk and
4 Insurance Management.

5 (b) The superintendent shall be the chief executive
6 officer of his or her assigned correctional institution and,
7 subject to the direction of the commissioner, has the
8 responsibility for the overall management of all operations
9 within his or her assigned institution. The superintendent
10 shall be in charge of its internal police and management and
11 shall provide for feeding, clothing, working and taking care
12 of the inmates, subject to the control of the commissioner.

13 (c) The superintendent shall promptly enforce all orders
14 and rules made by the commissioner. He or she shall protect

15 and preserve the property of the state and may for that
16 purpose punish the inmates in the manner authorized by the
17 commissioner. The superintendent shall have the custody
18 and control of all the real and personal property at the
19 correctional institution, subject to the orders of the
20 commissioner.

21 (d) The commissioner may authorize the superintendent
22 to establish an imprest fund in accordance with the
23 provisions of §12-2-2 of this code for the sole purpose of
24 providing employees with funds to transport inmates for any
25 purpose as determined by the superintendent, and any of the
26 fund that currently exists is hereby continued. The employee
27 is required to complete a travel reimbursement form for the
28 travel within five days of returning to the correctional
29 facility. The funds shall be used to reimburse the imprest
30 fund for the amount expended by the employee.

**§15A-6-4. Appointment of deputy superintendent; duties;
bond.**

1 Each superintendent, with the approval of the
2 commissioner, may hire a deputy superintendent. The
3 deputy superintendent's duties shall be fixed by the
4 superintendent, as approved by the commissioner. In the
5 absence of the superintendent, the deputy superintendent
6 shall perform all the duties required of the superintendent.
7 The deputy superintendent shall be bonded by the Board of
8 Risk and Insurance Management.

**§15A-6-5. Hiring of other assistants and employees; duties of
correctional employees.**

1 The superintendent of each juvenile institution or unit
2 shall, in the manner provided in §15A-3-5 of this code, hire
3 all assistants and employees required for the management
4 of the juvenile institutions or units, including a sufficient
5 number of correctional employees to preserve order and
6 enforce internal rules among the juvenile inmates, to

7 prevent escapes, and carry out all other responsibilities as
8 outlined in chapter 49 of this code.

9 All persons employed at a state-operated juvenile
10 facility are subject to the supervision and approval of the
11 superintendent and the authority of the commissioner, or his
12 or her designee, except those persons employed by the State
13 Board of Education, pursuant to §18-2-13f of this code.

ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.

§15A-7-1. Creation of Bureau of Community Corrections; Organization of facilities.

1 (a) The commissioner shall establish a Bureau of
2 Community Corrections. The commissioner shall establish
3 which adult facilities or institutions shall appropriately be
4 managed by the Bureau of Community Corrections.

5 (b) The commissioner shall appoint an assistant
6 commissioner, who shall oversee the Bureau of Community
7 Corrections.

8 (c) Where reference in this article is made to the
9 “division”, it shall mean the Division of Corrections and
10 Rehabilitation.

§15A-7-2. Duties of superintendents; bond; residence.

1 The commissioner shall appoint a superintendent for
2 each institution under the control of the division. The
3 superintendent of a community corrections facility shall
4 have the same duties and responsibilities as described in
5 §15A-3-1 *et seq.* of this code.

§15A-7-3. Hiring of other assistants and employees; duties of employees.

1 (a) Each superintendent of a community corrections
2 facility shall, in the manner provided in §15A-3-5 of this
3 code, hire all assistants and employees required for the
4 management of these facilities or units, including a

5 sufficient number of correctional employees to preserve
6 order and enforce discipline among the inmates or parolees,
7 to prevent escapes, to enforce laws, rules, and policies, and
8 to protect the public. Any person employed by the office of
9 the Commissioner of the Division of Corrections and
10 Rehabilitation who on the effective date of this article is a
11 classified civil service employee shall, within the limits
12 contained in §29-6-1 *et seq.* of this code, remain in the civil
13 service system as a covered employee.

14 (b) The commissioner shall, in the manner provided in
15 §15A-3-5 of this code, hire all probation and parole officers,
16 assistants, and employees required to carry out the duties as
17 proscribed in this code for management of the parolee
18 population, and probation population, as set forth in §15A-
19 7-4 and §62-13-2(b) of this code, for the management of
20 parolees, to preserve order, and enforce discipline among
21 the parolees, to enforce laws, rules, and policies, and to
22 protect the public. Any person employed by the office of the
23 Commissioner of the Division of Corrections and
24 Rehabilitation who on the effective date of this article is a
25 classified civil service employee shall, within the limits
26 contained in §29-6-1 *et seq.* of this code, remain in the civil
27 service system as a covered employee. Nothing in this
28 section shall limit the abilities of the Supreme Court of
29 Appeals of this state to carry forth their responsibilities and
30 duties as proscribed in this code. All persons appointed or
31 employed by the director shall be paid all necessary
32 expenses incurred in the discharge of their duties.

**§15A-7-4. Supervision of probationers and parolees; final
determinations remaining with board of probation and
parole.**

1 The commissioner shall supervise all persons released
2 on parole and placed in the charge of a state parole officer
3 and all persons released on parole under any law of this
4 state. He or she shall also supervise all probationers and
5 parolees whose supervision may have been undertaken by
6 this state by reason of any interstate compact entered into

7 pursuant to the uniform act for out-of-state probation and
8 parolee supervision. The commissioner shall prescribe rules
9 for the supervision of probationers and parolees under his or
10 her supervision and control, and shall succeed to all
11 administrative and supervisory powers of the Parole Board
12 and the authority of the Parole Board in those matters only.

13 The commissioner shall administer all other laws
14 affecting the custody, control, treatment, and employment
15 of persons sentenced or committed to institutions under the
16 supervision of the department or affecting the operation and
17 administration of institutions or functions of the division.

18 The final determination regarding the release of inmates
19 from penal institutions and the final determination regarding
20 revocation of parolees from those institutions pursuant to
21 the provisions of §62-12-1 *et seq.* of this code shall remain
22 within the exclusive jurisdiction of the Parole Board.

§15A-7-5. Powers and duties of state parole officers.

1 (a) Each state probation and parole officer employed by
2 the Division of Corrections and Rehabilitation shall:

3 (1) Investigate all cases referred to him or her for
4 investigation by the Commissioner of Corrections and
5 Rehabilitation and report in writing on the investigation;

6 (2) Update the standardized risk and needs assessment
7 adopted by the Division of Corrections and Rehabilitation
8 pursuant to §62-12-13(h) of this code for each parolee for
9 whom an assessment has not been conducted for parole by
10 a specialized assessment officer;

11 (3) Supervise each parolee according to the assessment
12 and supervision standards determined by the Commissioner
13 of Corrections and Rehabilitation;

14 (4) Furnish to each parolee under his or her supervision
15 a written statement of the conditions of his or her parole
16 together with a copy of the rules prescribed by the

17 Commissioner of Corrections and Rehabilitation for the
18 supervision of parolees;

19 (5) Keep informed concerning the conduct and
20 condition of each parolee under his or her supervision and
21 report on the conduct and condition of each parolee in
22 writing as often as required by the Commissioner of
23 Corrections and Rehabilitation;

24 (6) Use all practicable and suitable methods to aid and
25 encourage a parolee and to bring about improvement in his
26 or her conduct and condition;

27 (7) Keep detailed records of his or her work;

28 (8) Keep accurate and complete accounts of, and give
29 receipts for, all money collected from parolees under his or
30 her supervision, and pay over the money to persons
31 designated by a circuit court or the Commissioner of
32 Corrections and Rehabilitation;

33 (9) Give bond with good security, to be approved by the
34 Commissioner of Corrections and Rehabilitation, in a
35 penalty of not less than \$1,000 nor more than \$3,000, as
36 determined by the Commissioner of Corrections and
37 Rehabilitation; and

38 (10) Perform any other duties required by the
39 Commissioner of Corrections and Rehabilitation.

40 (b) Each probation and parole officer, as described in
41 this article, may, with or without an order or warrant: (1)
42 Arrest or order confinement of any parolee or probationer
43 under his or her supervision; and (2) search a parolee or
44 probationer, or a parolee or probationer's residence or
45 property, under his or her supervision. A probation and
46 parole officer may apply for a search warrant, and execute
47 the search warrant, in connection to a parolee's
48 whereabouts, or a parolee's activities. He or she has all the
49 powers of a notary public, with authority to act anywhere
50 within the state.

51 (c) The Commissioner of Corrections and
52 Rehabilitation may issue a certificate authorizing any state
53 parole officer who has successfully completed the Division
54 of Corrections and Rehabilitation's training program for
55 firearms certification, which is the equivalent of that
56 required of any correctional employee under §15A-3-10 of
57 this code, to carry firearms or concealed weapons. Any
58 parole officer authorized by the Commissioner of
59 Corrections and Rehabilitation may, without a state license,
60 carry firearms and concealed weapons. Each state parole
61 officer, authorized by the Commissioner of Corrections and
62 Rehabilitation, shall carry with him or her a certificate
63 authorizing him or her to carry a firearm or concealed
64 weapon bearing the official signature of the Commissioner
65 of Corrections and Rehabilitation.

§15A-7-6. Parole supervision benefit fund.

1 (a) There is continued a special revenue account in
2 the State Treasury designated the "Parole Supervision
3 Benefit Fund". The fund is to be used by the Division of
4 Corrections and Rehabilitation for the benefit of parolee
5 supervision with approval of the commissioner. The fund
6 shall consist of moneys received from any source,
7 including, but not limited to, funds donated by the general
8 public or an organization dedicated to parole supervision
9 improvement, and funds seized from parolees that are
10 forfeited pursuant to the provisions of §60A-7-701 *et seq.*
11 of this code.

12 (b) Notwithstanding any other provision of this code to
13 the contrary, the commissioner may authorize use of the
14 money in the fund created pursuant to this section for
15 payment to a community corrections program established
16 pursuant to §62-11C-1 *et seq.* of this code for providing
17 enhanced supervision of parolees.

ARTICLE 8. REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY BOARD.

§15A-8-1. Powers and authority of the Regional Jail and Correctional Facility Authority Board; continuation of the Regional Jail and Correctional Facility Authority Board; payment of bonds; appeal of per diem rate.

1 (a) The Regional Jail and Correctional Facility
2 Authority Board is continued, as follows:

3 (1) The powers and authority of the Regional Jail and
4 Correctional Facility Authority Board, in relation to all
5 functions of correctional operations, are hereby abolished,
6 and these powers and authority are transferred to the
7 Division of Corrections and Rehabilitation as of July 1,
8 2018. The Regional Jail and Correctional Facility Authority
9 Board shall only retain the powers as now outlined in this
10 chapter. Where reference in this code is made to the
11 Regional Jail and Correctional Facility Authority, in
12 relation to operations of any of the regional jails, it shall be
13 construed to mean the Division of Corrections and
14 Rehabilitation.

15 (2) The following powers and authority of the Regional
16 Jail and Correctional Facility Board are hereby specifically
17 abolished:

18 (A) To mortgage or otherwise grant security interests in
19 its property;

20 (B) To borrow money and to issue its negotiable bonds,
21 security interests, or notes and to provide for and secure the
22 payment thereof, and to provide for the rights of the holders
23 thereof, and to purchase, hold, and dispose of any of its
24 bonds, security interests, or notes;

25 (C) To sell, at public or private sale, any bond or other
26 negotiable instrument, security interest or obligation of the
27 authority in a manner and upon terms that the authority
28 considers would best serve the purposes of this article;

29 (D) To issue its bonds, security interests, and notes
30 payable solely from the revenues or other funds available to
31 the authority therefor; and the authority may issue its bonds,
32 security interests, or notes in those principal amounts as it
33 considers necessary to provide funds for any purposes under
34 this article, including:

35 (i) The payment, funding, or refunding of the principal
36 of, interest on, or redemption premiums on, any bonds,
37 security interests, or notes issued by it whether the bonds,
38 security interests, notes, or interest to be funded or refunded
39 have or have not become due; and

40 (ii) The establishment or increase of reserves to secure
41 or to pay bonds, security interests, notes, or the interest
42 thereon and all other costs or expenses of the Division of
43 Corrections and Rehabilitation incident to and necessary or
44 convenient to carry out its purposes and powers. Any bonds,
45 security interests, or notes may be additionally secured by a
46 pledge of any revenues, funds, assets, or moneys of the
47 authority from any source whatsoever;

48 (E) To issue renewal notes or security interests, to issue
49 bonds to pay notes or security interests and, whenever it
50 considers refunding expedient, to refund any bonds by the
51 issuance of new bonds, whether the bonds to be refunded
52 have or have not matured except that no renewal notes shall
53 be issued to mature more than 10 years from date of
54 issuance of the notes renewed and no refunding bonds may
55 be issued to mature more than 25 years from the date of
56 issuance;

57 (F) To apply the proceeds from the sale of renewal
58 notes, security interests, or refunding bonds to the purchase,
59 redemption, or payment of the notes, security interests, or
60 bonds to be refunded; and

61 (G) To sell security interests in the loan portfolio of the
62 authority. The security interests shall be evidenced by
63 instruments issued by the authority.

64 (3) The powers and duties of the board in relation to
65 paying the current bond series, designated as The State
66 Building Commission of West Virginia Lease Revenue
67 Refunding Bonds (West Virginia Regional Jail and
68 Correctional Facility Authority) Series 1998A, Series
69 1998B, and Series 1998C are specifically continued. The
70 board, however, may not reissue these bonds, renegotiate
71 the terms of the current bonds, or refinance these bonds.
72 There is hereby created in the State Treasury a Regional Jail
73 and Correctional Facility Board Fund. The fund shall be
74 controlled by the board, and shall be utilized for the sole
75 purpose of payment of the outstanding bond series as
76 provided above. The Commissioner of the Division of
77 Corrections and Rehabilitation shall, on or before the fifth
78 day of every month, transfer to this fund the amount
79 necessary for the monthly payment of the bond, as set forth
80 by the yearly communication from the creditor of the bonds.
81 Further, on the effective date of this section, the
82 commissioner shall transfer to this fund the reserve amount
83 required by the bonds. On the date that the bonds are
84 satisfied in full, these obligations shall cease, and any funds
85 left in the board fund shall be transferred to the
86 Commissioner of the Division of Corrections and
87 Rehabilitation: *Provided*, That the funds can only be used in
88 the manner directed or established by the board. Further, the
89 board retains the authority to be able, and with consent of
90 the Secretary of the Department of Military Affairs and
91 Public Safety, to the extent permitted under its contracts
92 with the holders of bonds, security interests, or notes of the
93 authority, consent to any modification of the rate of interest,
94 time of payment of any installment of principal or interest,
95 security or any other term of any bond, security interest,
96 note, or contract or agreement of any kind to which the
97 authority is a party.

98 (4) The Regional Jail Authority shall review the per
99 diem cost set by the state Budget Office, pursuant to §15A-
100 3-16 of this code. If the authority believes that the amount
101 set by the state Budget Office is incorrect, or that the

102 amounts submitted by the Division of Corrections and
103 Rehabilitation include more than what should be attributed
104 to the efficient operation of jail facilities and units, the
105 authority may institute an action in regard to this pursuant
106 to §29A-5-1 *et seq.* of this code.

107 (5) The Regional Jail Authority retains the ability to sue,
108 as defined in this article, and to be sued.

109 (b) Where reference in this article is made to the
110 “division”, it shall mean the Division of Corrections and
111 Rehabilitation.

**§15A-8-2. West Virginia Regional Jail and Correctional
Facility Authority Board; composition; appointment;
terms; compensation and expenses.**

1 The West Virginia Regional Jail and Correctional
2 Facility Authority Board is continued. The members of the
3 board in office on the date this section takes effect shall,
4 unless sooner removed, continue to serve until their
5 respective terms expire and until their successors have been
6 appointed and qualified.

7 The authority shall be governed by a board of nine
8 members, seven of whom are entitled to vote on matters
9 coming before the authority. The complete governing board
10 shall consist of the Commissioner of the Division of
11 Corrections; the Assistant Commissioner for the Bureau of
12 Juvenile Services; the Secretary of the Department of
13 Military Affairs and Public Safety; the Secretary of the
14 Department of Administration, or his or her designated
15 representative; two county commissioners and one sheriff
16 appointed by the Governor, no more than two of which may
17 be of the same political party; and two citizens appointed by
18 the Governor to represent the areas of law and medicine.
19 The Commissioner of the Division of Corrections and
20 Rehabilitation and the Assistant Commissioner for the
21 Bureau of Juvenile Services shall serve in an advisory
22 capacity and are not entitled to vote on matters coming

23 before the authority. Members of the Legislature are not
24 eligible to serve on the board.

25 The Governor shall nominate and, by and with the
26 advice and consent of the Senate, appoint the five appointed
27 members of the authority for staggered terms of four years.

28 Any appointed member whose term has expired shall
29 serve until his or her successor has been duly appointed and
30 qualified. Any person appointed to fill a vacancy shall serve
31 only for the unexpired term. Any appointed member is
32 eligible for reappointment. Members of the board are not
33 entitled to compensation for services performed as
34 members, but are entitled to reimbursement for all
35 reasonable and necessary expenses actually incurred in the
36 performance of their duties.

37 All members of the board shall execute an official bond
38 in a penalty of \$10,000, conditioned as required by law.
39 Premiums on the bond shall be paid from funds accruing to
40 the Division of Corrections and Rehabilitation. The bond
41 shall be approved as to form by the Attorney General and as
42 to sufficiency by the Governor and, when fully executed and
43 approved, shall be filed in the office of the Secretary of
44 State.

**§15A-8-3. Governing body; organization and meetings;
quorum; administrative expenses.**

1 (a) The board shall consist of the voting members of the
2 board as provided for in §15A-8-2 of this code and shall
3 exercise all the powers given to the authority in this article.
4 On the second Monday of July of each odd-numbered year,
5 the board shall meet to elect a chairman and a secretary from
6 among its own members. The Secretary of the Department
7 of Administration or his or her designated representative
8 shall serve as treasurer of the board. The board shall
9 otherwise meet two times a year, unless a special meeting is
10 called by its chairman.

11 (b) A majority of the members of the board constitute a
12 quorum, and a quorum must be present for the board to
13 conduct business. Unless the bylaws require a larger
14 number, action may be taken by majority vote of the
15 members present.

16 (c) The board shall prescribe, amend, and repeal bylaws
17 and rules governing the manner in which the business of the
18 authority is conducted and shall review and approve the
19 budget prepared by the executive director annually.

20 (d) All costs incidental to the administration of the board
21 shall be paid from the jail operation fund by the
22 Commissioner of Corrections and Rehabilitation.

CHAPTER 19. AGRICULTURE.

ARTICLE 12A. LAND DIVISION.

§19-12A-5. Powers, duties and responsibilities of commission.

1 (a) On or before July 1, 1990, the commission shall meet
2 and confer with respect to the development of a
3 management plan to determine the optimum use or
4 disposition of all institutional farms, at which time the Farm
5 Management Director shall provide the commission with a
6 complete inventory of all institutional farms, and such
7 information relating to easements, mineral rights,
8 appurtenances, farm equipment, agricultural products,
9 livestock, inventories, and farm facilities as may be
10 necessary to develop such management plan. The
11 commission shall complete and provide to the Governor a
12 management plan, which plan shall set forth the objectives
13 of the commission with respect to institutional farms, the
14 criteria by which the commission shall determine the
15 optimum use or disposition of such property, and
16 determinations as to whether each institutional farm shall be
17 used in production, sold, or leased, in whole or in part. Prior
18 to the adoption of any plan, the commission shall consult
19 with the secretaries of the various departments of state
20 government and shall request from such secretaries

21 suggestions for land use and resource development on farm
22 commission lands. On or before December 1, 1990, such
23 management plan shall be presented to the Legislature, by
24 providing a copy to the President of the Senate and the
25 Speaker of the House of Delegates. The commission may
26 confer with any other agency or individual in implementing
27 and adjusting its management plan. The management plan
28 established pursuant to this subsection may be amended,
29 from time to time, as may be necessary.

30 (b) The commission shall manage its institutional farms,
31 equipment, and other property in order to most efficiently
32 produce food products for state institutions and shall
33 implement the intent of the Legislature as set forth by this
34 article. From the total amount of food, milk and other
35 commodities produced on institutional farms, the
36 commission shall sell, at prevailing wholesale prices, and
37 each of the institutions under the control of the Bureau of
38 Public Health shall purchase, a proportionate amount of
39 these products based on the dietary needs of each institution.

40 (c) If requested by the Commissioner of Corrections and
41 Rehabilitation, the commission may authorize the Division
42 of Corrections and Rehabilitation to operate a farm or other
43 enterprise using inmates as labor on those lands. The
44 Commissioner of Corrections and Rehabilitation is
45 responsible for the selection, direction, and supervision of
46 the inmates and shall assign the work to be performed by
47 inmates.

48 (d) The commission is hereby authorized and
49 empowered to:

50 (1) Lease to public or private parties, for purposes
51 including agricultural production or experimentation, public
52 necessity, or other purposes permitted by the management
53 plan, any land, easements, equipment, or other property,
54 except that property may not be leased for any use in any
55 manner that would render the land toxic for agricultural use,
56 nor may toxic or hazardous materials as identified by the

57 Commissioner of Agriculture be used or stored upon such
58 property unless all applicable state and federal permits
59 necessary are obtained. Any lease for an annual consideration
60 of \$1,000 or more shall be by sealed bid auction and the
61 commission shall give notice of such auction by publication
62 thereof as a Class II-0 legal advertisement in compliance with
63 the provisions of §59-3-1 *et seq.* of this code, and the
64 publication area for such publication is the county in which
65 the property to be leased is located;

66 (2) Transfer to the public land corporation land
67 designated in its management plan as land to be disposed of,
68 which land shall be sold, exchanged, or otherwise
69 transferred pursuant to §5A-11-4 and §5A-11-5 of this code:
70 *Provided*, That the net proceeds of the sale of farm
71 commission lands shall be deposited in the General
72 Revenue Fund of the state: *Provided, however*, That no sale
73 may be concluded until on or after March 15, 1991, except
74 with respect to: (A) Properties located at institutions closed
75 on or before the effective date of this section, March 10,
76 1990; or (B) properties conveyed to or from the farm
77 management commission to or from any other entity in
78 order to facilitate the construction of a regional jail or
79 correctional facility by the Regional Jail and Correctional
80 Facilities Authority or the State Building Commission, with
81 the decision to execute any such conveyance being solely
82 within the discretion of, and at the direction of, the Regional
83 Jail and Correctional Facilities Authority;

84 (3) Develop lands to which it has title for the public use
85 including forestation, recreation, wildlife, stock grazing,
86 agricultural production, rehabilitation and/or other
87 conservation activities and may contract or lease for the
88 proper development of timber, oil, gas, or mineral
89 resources, including coal by underground mining or by
90 surface mining where reclamation as required by
91 specifications of the Division of Environmental Protection
92 will increase the beneficial use of such property. Any such
93 contract or lease shall be by sealed bid auction as provided
94 for in subdivision (1) above;

95 (4) Exercise all other powers and duties necessary to
96 effectuate the purposes of this article.

97 (e) Notwithstanding the provisions of subsection (d) of this
98 section, no timberland may be leased, sold, exchanged, or
99 otherwise disposed of unless the Division of Forestry of the
100 Department of Commerce, Labor and Environmental
101 Resources certifies that there is no commercially salable
102 timber on the timberland, an inventory is provided, an
103 appraisal of the timber is provided, and the sale, lease,
104 exchange, or other disposition is accomplished by the sealed
105 bid auction procedure provided above in subdivisions (1) or
106 (2), as applicable.

107 (f) The commission shall promulgate, pursuant to §29-1-1
108 *et seq.* of this code, rules and regulations relating to the powers
109 and duties of the commission as enumerated in this section.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-1. Office of commissioner of public institutions abolished; department and commissioner of corrections established; qualifications, oath and bond.

1 [Repealed.]

§25-1-1a. Purpose and legislative intent.

1 [Repealed.]

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units; contracting with certain entities for reentry and direct placement services; reports to Governor.

1 [Repealed.]

§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.

1 [Repealed.]

§25-1-3b. Inmate benefit funds.

1 [Repealed.]

§25-1-3c. Financial responsibility program for inmates.

1 [Repealed.]

§25-1-4. Limitation on reimbursement rate to medical service providers for services provided for services outside division facilities.

1 [Repealed.]

§25-1-5. Rules and regulations.

1 [Repealed.]

§25-1-5a. Mutual aid agreements.

1 [Repealed.]

§25-1-6. Title to property of state institutions; custody of deeds and other muniments of title; authority of commissioner.

1 [Repealed.]

§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.

1 [Repealed.]

§25-1-8. Charges assessed against inmates for services provided by state.

1 [Repealed.]

§25-1-11. Officers and employees of corrections institutions.

1 [Repealed.]

§25-1-11a. Duties of wardens and administrators; bond; residence.

1 [Repealed.]

§25-1-11b. Appointment of deputy warden; duties; bond.

1 [Repealed.]

§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.

1 [Repealed.]

§25-1-11d. Compensation of employees approved by commissioner; traveling and other expenses; payment of salaries.

1 [Repealed.]

§25-1-11e. Unauthorized use of uniform, badge, identification card or other insignia; impersonation of member; and penalty.

1 [Repealed.]

§25-1-11f. Hiring of correctional officer without regard to position on the register.

1 [Repealed.]

§25-1-13. Furlough programs.

1 [Repealed.]

§25-1-14. Electronic monitoring of offenders; special account.

1 [Repealed.]

§25-1-15. Diagnostic and classification divisions.

1 [Repealed.]

§25-1-16. Transfer of inmates of state institutions or facilities.

1 [Repealed.]

§25-1-16a. Governor's authority to authorize commissioner of corrections to consent to transfer of inmates under a federal treaty.

1 [Repealed.]

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

1 [Repealed.]

§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

1 [Repealed.]

§25-1-19. Reports by Commissioner of Public Institutions and chief officers of institutions to Auditor.

1 [Repealed.]

§25-1-20. Reports to Governor.

1 [Repealed.]

§25-1-21. Employment of displaced correctional employees at other facilities.

1 [Repealed.]

§25-1-22. Task Force to Study the Feasibility of Establishing a Correctional Facility for the Incarceration and Treatment of Sex Offenders; members; duties.

1 [Repealed.]

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-7. Record of convict.

1 [Repealed.]

§28-5-8a. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.

1 [Repealed.]

§28-5-23. Special compensation of officers and employees prohibited; penalty.

1 [Repealed.]

§28-5-24. Gifts to or dealings with convicts.

1 [Repealed.]

§28-5-27. Deduction from sentence for good conduct; mandatory supervision.

1 [Repealed.]

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-1. Short title.

1 [Repealed.]

§31-20-1a. Legislative findings and purposes.

1 [Repealed.]

§31-20-2. Definitions.

1 [Repealed.]

§31-20-3. West Virginia Regional Jail and Correctional Facility Authority; composition; appointment; terms; compensation and expenses.

1 [Repealed.]

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

1 [Repealed.]

§31-20-5. Powers and duties of the authority; bidding procedures.

1 [Repealed.]

§31-20-5a. Bidding procedures.

1 [Repealed.]

§31-20-5b. Prohibition against use or possession of tobacco products by inmates held by regional facility authority in regional jails operated solely by the authority; authorization to establish smoking cessation program.

1 [Repealed.]

§31-20-5c. Additional powers and duties of the authority; juvenile detention facilities.

1 [Repealed.]

§31-20-5d. Good-time credit.

1 [Repealed.]

§31-20-5e. Monitoring of inmate telephone calls and electronic communications; procedures and restrictions; attorney-client privilege protected and exempted.

1 [Repealed.]

§31-20-5f. Charges assessed against inmates for services provided by the authority.

1 [Repealed.]

§31-20-5g. Pretrial risk assessment.

1 [Repealed.]

§31-20-5h. Programs for inmates committed to prison.

1 [Repealed.]

§31-20-8. Jail facilities standards commission; appointment; compensation; vacancies; quorum.

1 [Repealed.]

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

1 [Repealed.]

§31-20-9. Jail facilities standards commission: Purpose, powers and duties.

1 [Repealed.]

§31-20-9a. Juvenile facilities standards commission; purpose; powers; and duties.

1 [Repealed.]

§31-20-10. Regional jail and correctional facility authority funds.

1 [Repealed.]

§31-20-10a. Criteria and procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority and allocating cost.

1 [Repealed.]

§31-20-10b. Regional Jail Operations Partial Reimbursement Fund.

1 [Repealed.]

§31-20-11. Borrowing of money.

1 [Repealed.]

§31-20-12. Notes, security interests and bonds as general obligations of authority.

1 [Repealed.]

§31-20-13. Notes, security interests and bonds as negotiable instruments.

1 [Repealed.]

§31-20-14. Authorizing resolutions.

1 [Repealed.]

§31-20-15. Redemption of notes, security interests or bonds.

1 [Repealed.]

§31-20-20. Authorized limit on borrowing.

1 [Repealed.]

§31-20-22. Money of the authority.

1 [Repealed.]

§31-20-23. Conflict of interest; when contracts void.

1 [Repealed.]

§31-20-24. Agreement with federal agencies not to alter or limit powers of authority.

1 [Repealed.]

§31-20-27. Correctional officers; regional jails; priority of hiring.

1 [Repealed.]

§31-20-27a. Regional jail employees right to carry firearm; arrest authority of correctional officers.

1 [Repealed.]

§31-20-28. Limitations on contracts for sale of bonds or other securities.

1 [Repealed.]

§31-20-29. Furlough program.

1 [Repealed.]

§31-20-30. Limitation on reimbursement rate to medical service providers for services outside regional jail facilities.

1 [Repealed.]

§31-20-30a. Mechanical restraints during pregnancy.

1 [Repealed.]

§31-20-31. Work program.

1 [Repealed.]

§31-20-32. Jail processing fee.

1 [Repealed.]

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2. Costs in criminal proceedings.

1 (a) In each criminal case before a magistrate court in
2 which the defendant is convicted, whether by plea or at trial,

3 there is imposed, in addition to other costs, fines, forfeitures
4 or penalties as may be allowed by law: (1) Costs in the
5 amount of \$60, of which \$5 of that amount shall be
6 deposited in the Courthouse Facilities Improvement Fund
7 created by section six, article twenty-six, chapter twenty-
8 nine of this code; (2) an amount equal to the one-day per
9 diem provided for in §15A-3-16(g) of this code; and (3)
10 costs in the amount of \$30 to be deposited in the Regional
11 Jail Operations Partial Reimbursement Fund created by
12 §15A-3-16 of this code. A magistrate may not collect costs
13 in advance. Notwithstanding any other provision of this
14 code, a person liable for fines and court costs in a criminal
15 proceeding in which the defendant is confined in a jail or
16 prison and not participating in a work release program shall
17 not be held liable for the fines and court costs until one
18 hundred eighty days after completion of the term in jail or
19 prison. A magistrate court shall deposit \$5 from each of the
20 criminal proceedings fees collected pursuant to this section
21 in the Court Security Fund created in section fourteen,
22 article three, chapter fifty-one of this code. A magistrate
23 court shall, on or before the tenth day of the month
24 following the month in which the fees imposed in this
25 section were collected, remit an amount equal to the one-
26 day per diem provided for in §15A-3-16(g) of this code from
27 each of the criminal proceedings in which the fees specified
28 in this section were collected to the magistrate court clerk,
29 or if there is no magistrate court clerk to the clerk of the
30 circuit, together with information as may be required by the
31 rules of the Supreme Court of Appeals and the rules of the
32 Office of Chief Inspector. These moneys are paid to the
33 sheriff who shall distribute the moneys solely in accordance
34 with the provisions of section fifteen, article five, chapter
35 seven of this code. Amendments made to this section during
36 the 2001 regular session of the Legislature, are effective
37 after June 30, 2001.

38 (b) A magistrate shall assess costs in the amount of
39 \$2.50 for issuing a sheep warrant and the appointment and
40 swearing appraisers and docketing the proceedings.

41 (c) In each criminal case which must be tried by the
42 circuit court but in which a magistrate renders some service,
43 costs in the amount of \$10 shall be imposed by the
44 magistrate court and is certified to the clerk of the circuit
45 court in accordance with the provisions of section six,
46 article five, chapter sixty-two of this code.

§50-3-4a. Disposition of criminal costs and civil filing fees into State Treasury account for Regional Jail and Prison Development Fund.

1 (a) The clerk of each magistrate court shall, at the end
2 of each month, pay into the Regional Jail and Prison
3 Development Fund in the state Treasury an amount equal to
4 \$40 of the costs collected in each criminal proceeding and
5 all but \$10 of the costs collected for the filing of each civil
6 action.

7 (b) The clerk of each magistrate court shall, at the end
8 of each month, pay into the Regional Jail Operations Partial
9 Reimbursement Fund established in §15A-3-17 of this code
10 the fees collected pursuant to subsection (g), section one and
11 subdivision (3), subsection (a), section two of this article.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-14. Appointment of probation and parole officers and clerical assistants; qualifications of officers; salaries and expenses.

1 [Repealed.]

§62-12-14a. Director of employment; director of housing; released inmates; duties.

1 [Repealed.]

§62-12-15. Powers and duties of state parole officers.

1 [Repealed.]

§62-12-25. Parole supervision benefit fund.

1 [Repealed.]

ARTICLE 13. CORRECTIONS MANAGEMENT.

§62-13-3. Appointment and qualifications of director.

1 [Repealed.]

§62-13-4. Powers and duties of commissioner or director generally; compensation and funds of inmates.

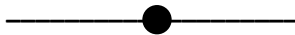
1 [Repealed.]

§62-13-5. Commitments; transfers.

1 [Repealed.]

§62-13-6a. Payment of jail fees to county commissions.

1 [Repealed.]



CHAPTER 108

(Com. Sub. for H. B. 4347 - By Delegates Moore, Shott, Hanshaw, Kessinger, Harshbarger, Summers, Sobonya, Fast, Queen, Byrd and Capito)

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-2-6a, relating to voluntary contributions to the West Virginia State Police Forensic Laboratory Fund; permitting each person applying for the issuance of or renewal of a driver's license to voluntarily contribute to the State Police Forensic Laboratory

Fund; requiring the Division of Motor Vehicles to provide a form through which such voluntary contributions can be made; and requiring the Division of Motor Vehicles to remit the voluntary contributions on a monthly basis to the State Treasurer for deposit in the State Police Forensic Laboratory Fund.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION,
AND RENEWAL.**

**§17B-2-6a. Voluntary contribution to State Police Forensic
Laboratory Fund.**

1 (a) Each person applying for the issuance or renewal of
2 a driver's license under this article, when paying the fee
3 therefor may voluntarily contribute an additional amount to
4 the State Police Forensic Laboratory Fund established in
5 §15-2-24d of this code by designating the additional amount
6 on the form provided by the Division of Motor Vehicles.

7 (b) The Division of Motor Vehicles shall prepare and
8 provide to each applicant for the issuance or renewal of a
9 driver's license under this article, a form through which the
10 applicant may voluntarily contribute an additional amount
11 to the State Police Forensic Laboratory Fund. The applicant
12 may include an additional amount as part of the payment
13 made for the fee or may make a separate payment.

14 (c) The Division of Motor Vehicles shall remit
15 voluntary contributions made under this section on a
16 monthly basis to the State Treasurer for deposit into the
17 State Police Forensic Laboratory Fund.

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CHAPTER 109

(H. B. 4410 - By Delegates Moore, Westfall, Lane and White)

[Passed March 5, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §29-22B-1107 of the Code of West Virginia, 1931, as amended, relating to removing the requirement that the State Auditor receive copies of the Limited Video Lottery bids.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1107. Bidding process.

1 (a) Bids for issuance of permits shall be obtained by
2 public notice published as a Class II-0 legal advertisement
3 in compliance with the provisions of §59-3-1 *et seq.* of this
4 code.

5 (b) The second publication of the notice shall appear
6 more than 60 days next preceding the final day for
7 submitting bids.

8 (c) Each bid shall indicate the number of video lottery
9 terminals for which the permit is sought. The bid shall state
10 the amount bid for each video lottery terminal for which the
11 permit is sought.

12 (d) No bid may be altered or withdrawn after the
13 appointed hour for the opening of the bids.

14 (e) Subject to the provisions of subsection (f) of this
15 section, permits shall be awarded to the persons submitting
16 the highest per terminal bids, except that no person may be
17 authorized to directly or indirectly own or lease more than
18 seven and one half percent of the total number of video
19 lottery terminals authorized in §29-22B-1101 of this code.
20 If a high bidder already holds a permit issued under this
21 section, the bid shall be awarded to that bidder, but only to
22 the extent the total number of video lottery terminals the
23 operator or limited video lottery retailer is authorized to
24 directly or indirectly own or lease does not exceed seven
25 and one half percent of the number of video lottery terminals
26 authorized for the entire state specified in §29-22B-1101 of
27 this code.

28 (f) No bid shall be considered unless the bond required
29 by §29-22B-1109 of this code accompanies the bid or was
30 submitted to the State Treasurer before the time designated
31 for opening of the bid.

32 (g) No bid shall be considered unless the amount of the
33 bid equals or exceeds the minimum bid amount for a video
34 lottery terminal specified by the commission.

35 (h) All bids for a permit may be rejected by the
36 commission if the commission determines that the bids are
37 inadequate. In this event, the director shall begin anew the
38 bidding process for the permits.

39 (i) Whenever there are two or more bids of the same
40 dollar amount and the number of authorizations for which
41 the bids were submitted exceeds the number of
42 authorizations still available to fill the bids, the director
43 shall award the permit based upon the drawing of lots
44 among the bidders.

45 (j) A person submitting a bid under this article shall
46 deliver one copy to the director of purchasing of the
47 Purchasing Division within the Department of
48 Administration. The bid must be received at the designated

49 office location prior to the specified date and time of the bid
50 opening.

51 (k) The failure to deliver or the nonreceipt of the bid
52 forms at the designated office location prior to the appointed
53 date and hour are grounds for rejection of the bid.

54 (l) After the award of a permit, the director of the lottery
55 shall indicate upon the successful bid that it was the
56 successful bid and the number of video lottery terminals for
57 which a permit is awarded to the bidder. This shall be the
58 number of video lottery terminals for which the bid was
59 submitted, or the remaining number of video lottery
60 terminals to be awarded when the number of video lottery
61 terminals remaining is less than the number of terminals for
62 which the bid was submitted. Thereafter, a copy of the bid
63 and the bidder's application for an operator's license or a
64 limited video lottery retailer license shall be maintained as
65 a public record at the commissions' offices and shall be
66 open to public inspection during its normal business hours.
67 These documents may not be destroyed without the prior
68 written consent of the Legislative Auditor.

69 (m) Prior to issuing a permit to a successful bidder, the
70 bid price for the number of video lottery terminals
71 authorized in the permit plus the amount of the operator's
72 annual license fee or the limited video lottery retailer's
73 annual license fee for the first license year, as specified in
74 §29-22B-518 of this code shall be paid to the commission
75 by money order, certified check or cashier's check. If the
76 operator's annual license fee or the limited video lottery
77 retailer's license fee was paid for the current license year
78 before the due date of the bid amount, the license fee shall
79 not be collected a second time for the same license year. The
80 amount paid shall be deposited into the fund established in
81 §29-22-18a of this code.

82 (n) All permits shall be signed by the director of the
83 lottery in the name of the state.

84 (o) If the successful bidder fails to pay to the
85 commission the bid price and the operator's annual license
86 fee or the limited video lottery retailer's license fee for the
87 first license year, at the time specified by the commission,
88 the bond provided for in §29-22B-1109 of this code shall be
89 forfeited and the bidder shall not be issued the permit.

90 (p) In the event of a default, as provided in subsection
91 (h) of this section, the commission shall then issue the
92 permit to the next highest bidder for video lottery terminals,
93 or reject all remaining bids and start anew the bidding
94 procedure for the remaining number of video lottery
95 terminals.

96 (q) If after a permit is awarded, an operator or limited
97 video lottery retailer surrenders the permit, in whole or in
98 part, or the permit is revoked or canceled by operation of
99 law, the commission may seek bids for video lottery
100 terminals for which authorization was surrendered or
101 revoked, subject to the limitations and requirements of this
102 article.

103 (r) During the fiscal year of the state ending June 30,
104 2011, the commission shall seek bids for the 10-year period
105 beginning July 1, 2011, and ending June 30, 2021.



CHAPTER 110

**(Com. Sub. for H. B. 4236 - By Delegates Nelson,
Hanshaw and Shott)
[By Request of the Department of Administration]**

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §5A-10-9 of the Code of West Virginia, 1931, as amended, relating to requiring agencies to

provide an annual inventory of real property holdings to the Real Estate Division; removing the exemption of certain agencies from reporting property holdings to the Real Estate Division; clarifying the information to be reported annually by agencies; and requiring an annual report by the Real Estate Division to the Governor and Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-9. Real property accounting and records.

1 (a) All real property owned or leased by the state shall
2 be accounted for by the state spending unit that owns, leases
3 or is in the possession of the real property.

4 (b) Each state spending unit shall establish and maintain
5 a record of each item of real property it owns and/or leases
6 and annually furnish its records to the Real Estate Division.

7 (c) Beginning July 1, 2019, and every year thereafter,
8 the Real Estate Division shall report to the Governor and
9 Joint Committee on Government and Finance those
10 agencies that have not provided a complete annual record
11 pursuant to subsection (b).

12 (d) With regard to public lands, rivers or streams, that
13 may be by law specifically allocated to and used by any state
14 agency, institution, division or department, such agency,
15 institution, division or department shall provide an
16 inventory of such public land(s), rivers or streams, to the
17 Public Land Corporation in accordance with the provisions
18 of §5A-11-1 *et seq.* of this code.

19 (e) The records furnished to the Real Estate Division
20 shall include a description of each item of real property
21 including address, lot number, and if available, the
22 following identifying information:

23 (1) The date of purchase and the purchase price of the
24 real property;

25 (2) If the state is leasing real property, the date of lease
26 and the rental costs of the real property;

27 (3) The name of the state spending unit holding title to
28 the real property for the state;

29 (4) A description of the current uses of the real property
30 and the projected future use of the real property; and

31 (5) A description of each building or other improvement
32 located on the real property.

33 (f) The records furnished to the Real Estate Division
34 regarding rivers and streams shall include a description of
35 each river or stream, including the applicable county, tax
36 district, and if the interest or property is under the Ohio
37 River, the applicable mile post.

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CHAPTER 111

**(Com. Sub. for H. B. 4444 - By Delegates Frich, Byrd,
Cooper, A. Evans, Hamilton, Love, Maynard,
Pushkin, Statler, Butler and Paynter)
[By Request of the Fire Marshal]**

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §29-3-5b of the Code of West Virginia, 1931, as amended, relating to clarifying the authority of the State Fire Commission; modifying requirement that State Fire Commission propose certain building energy codes; and making stylistic and technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules and statewide building code.

1 (a) The State Fire Commission shall propose rules for
2 legislative approval in accordance with the provisions of
3 §29A-3-1 *et seq.* of this code to safeguard life and property
4 and to ensure the quality of construction of all structures
5 erected or renovated throughout this state through the
6 adoption of a State Building Code. The rules shall be in
7 accordance with standard safe practices so embodied in
8 widely recognized standards of good practice for building
9 construction and all aspects related thereto and have force
10 and effect in those counties and municipalities adopting the
11 State Building Code: *Provided*, That each county or
12 municipality may adopt the code to the extent that it is only
13 prospective and not retroactive in its application.

14 (b) The State Fire Commission may propose rules for
15 legislative approval in accordance with the provisions of
16 §29A-3-1 *et seq.* of this code, regarding building
17 construction, renovation and all other aspects as related to
18 the construction and mechanical operations of a structure.
19 The rules shall be known as the State Building Code.

20 (c) The State Fire Commission shall propose a rule for
21 legislative approval in accordance with the provisions of
22 article three, chapter twenty-nine-a of this code to include
23 building energy codes in the State Building Code.

24 (d) (1) The State Fire Commission may propose rules
25 for legislative approval, in accordance with the provisions
26 of §29A-3-1 *et seq.* of this code, establishing state standards
27 and fee schedules for the licensing, registration,
28 certification, regulation and continuing education of persons
29 which will conduct inspections relating to the State Building
30 Code, which include, but are not limited to, building code
31 officials, inspectors, plans examiners and home inspectors.

32 (2) The State Fire Commission shall propose rules for
33 legislative approval requiring applicants for home inspector

34 licensing, registration or certification to submit to a state
35 and national criminal history record check as set forth in
36 this section and may deny licensing, registration or
37 certification based upon the results of the criminal history
38 record check.

39 (e) The State Fire Commission may establish advisory
40 boards as it considers appropriate to encourage
41 representative participation in subsequent rulemaking from
42 groups or individuals with an interest in any aspect of the
43 State Building Code or related construction or renovation
44 practices.

45 (f) For the purpose of this section, the term “building
46 code” is intended to include all aspects of safe building
47 construction and mechanical operations and all safety
48 aspects related thereto. Whenever any other state law,
49 county or municipal ordinance or regulation of any agency
50 thereof is more stringent or imposes a higher standard than
51 is required by the State Building Code, the provisions of the
52 state law, county or municipal ordinance or regulation of
53 any agency thereof governs if they are not inconsistent with
54 the laws of West Virginia and are not contrary to recognized
55 standards and good engineering practices. In any question,
56 the decision of the State Fire Commission determines the
57 relative priority of any such state law, county or municipal
58 ordinance or regulation of any agency thereof and
59 determines compliance with State Building Code by
60 officials of the state, counties, municipalities and political
61 subdivisions of the state.

62 (g) Enforcement of the provisions of the State Building
63 Code is the responsibility of the respective local
64 jurisdiction. Also, any county or municipality may enter
65 into an agreement with any other county or municipality to
66 provide inspection and enforcement services: *Provided*,
67 That any county or municipality may adopt the State
68 Building Code with or without adopting the BOCA National
69 Property Maintenance Code.

70 (h) After the State Fire Commission has promulgated
71 rules as provided in this section, each county or
72 municipality intending to adopt the State Building Code
73 shall notify the State Fire Commission of its intent.

74 (i) The State Fire Commission may conduct public
75 meetings in each county or municipality adopting the State
76 Building Code to explain the provisions of the rules.

77 (j) The provisions of the State Building Code relating to
78 the construction, repair, alteration, restoration and
79 movement of structures are not mandatory for existing
80 buildings and structures identified and classified by the
81 State Register of Historic Places under the provisions of
82 section eight, article one of this chapter or the National
83 Register of Historic Places, pursuant to 16 U. S. C. §470a.
84 Prior to renovations regarding the application of the State
85 Building Code, in relation to historical preservation of
86 structures identified as such, the authority having
87 jurisdiction shall consult with the Division of Culture and
88 History, State Historic Preservation Office. The final
89 decision is vested in the State Fire Commission. Additions
90 constructed on a historic building are not excluded from
91 complying with the State Building Code.



CHAPTER 112

(Com. Sub. for H. B. 4618 - By Delegates Shott and Hanshaw)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §61-6-1, §61-6-1a, §61-6-3, §61-6-4, and §61-6-5 of the Code of West Virginia, 1931, as amended, relating to the authority of the Division of

Protective Services to compel dispersal of a riot or unlawful assemblage; to the authority of the Division of Protective Services to control riots and unlawful assemblages; to include officers of the Division of Protective Services among those officers on whom the penalty for failure to exercise power at riots and unlawful assemblages may be imposed; allowing Division of Protective Services officers to summon persons to suppress unlawful assemblages; to hold harmless Division of Protective Services officers from liability for the death of persons in riots and unlawful assemblages; correcting references to the State Police; removing language making all persons unlawfully assembled criminally liable for deaths of persons quelling unlawful assembly or riot; and to make technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-1. Suppression of riots and unlawful assemblages.

1 All members of the West Virginia State Police, the
2 Division of Protective Services, all sheriffs within their
3 respective counties and all mayors within their respective
4 jurisdiction, may suppress riots, routs and unlawful
5 assemblages. It shall be the duty of each of them to go
6 among, or as near as may be with safety, to persons
7 riotously, tumultuously, or unlawfully assembled, and in the
8 name of the law command them to disperse; and if they shall
9 not thereupon immediately and peaceably disperse, such
10 member of the West Virginia State Police, or of the Division
11 of Protective Services, sheriff or mayor giving the
12 command, and any other present, shall command the
13 assistance of all persons present, and of all or any part of
14 other law-enforcement personnel available to him or her, as
15 need be, in arresting and securing those so assembled. If any
16 person present, on being required to give his or her
17 assistance, depart, or fail to obey, he or she shall be deemed
18 a rioter.

§61-6-1a. Control of riots and unlawful assemblages.

1 Members of the West Virginia State Police, the Division
2 of Protective Services, sheriffs and mayors, and those acting
3 under their order, may, when engaged in suppressing a riot,
4 rout or unlawful assemblage, cordon off any area or areas
5 threatened by such riot, rout or unlawful assemblage, and
6 may take all actions which are necessary and reasonable
7 under the emergency to restore law and order, and such
8 actions may be, but are not limited to, the following:

9 (a) Prohibit the sale, offering for sale, dispensing,
10 furnishing, or transportation of firearms or other dangerous
11 weapons, ammunition, dynamite, or other dangerous
12 explosives in, to or from such areas.

13 (b) Prohibit the sale, offering for sale, dispensing,
14 furnishing, or consumption of alcoholic beverages or
15 nonintoxicating beer in a public place in such areas, and
16 prohibit the transportation of alcoholic beverages or
17 nonintoxicating beer in, to, or from such areas.

18 (c) Impose curfews, as required, to control movement of
19 persons in, to, and from such areas.

20 (d) Enter a private dwelling or other building or other
21 private place in such areas when in fresh pursuit of a rioter,
22 when in search of a sniper who has fired upon a person from
23 such a dwelling or other building or place or when in search
24 of firearms, other dangerous weapons, ammunition,
25 dynamite, or other dangerous explosives when there is
26 reason to believe that such items are stored in the said
27 dwelling, building, or place and that they will be removed
28 therefrom before a search warrant could be obtained.

29 No person shall willfully fail to obey a lawful order of
30 any mayor, sheriff, deputy sheriff, municipal police officer,
31 member of the West Virginia State Police, or the Division
32 of Protective Services, or other officer, given pursuant to
33 this section.

34 Any person who violates an order given pursuant to the
35 authority of this section shall be guilty of a misdemeanor,
36 and, upon conviction thereof, shall be fined not more than
37 \$500, or imprisoned in the county jail not more than six
38 months, or both fined and imprisoned.

§61-6-3. Failure of member of West Virginia State Police officer, officer of the Division of Protective Services, mayor, or sheriff to exercise powers at riots and unlawful assemblages; penalty.

1 If any member of the West Virginia State Police, the
2 Division of Protective Services, sheriff, or mayor have
3 notice of a riotous, tumultuous, or unlawful assemblage in
4 his or her respective jurisdiction as provided in section one
5 of this article, and fail to proceed immediately to the place
6 of such assemblage, or as near as he or she may safely go,
7 or fail to exercise his or her authority for suppressing it and
8 arresting the offenders, he or she shall be fined not to exceed
9 \$100.

§61-6-4. Summoning of persons to aid in suppressing riots and unlawful assemblages.

1 If any person engaged in such assemblage, being
2 commanded, as hereinbefore provided, to disperse or to
3 peaceably leave the scene of such assemblage, fail to do so
4 without delay, any such member of the West Virginia State
5 Police, the Division of Protective Services, sheriff or mayor
6 may require the aid of a sufficient number of persons, in
7 arms or otherwise, and proceed, in such manner as he or she
8 may deem expedient, to disperse and suppress such
9 assemblage, and arrest and secure those engaged in it.

§61-6-5. Death of person in suppression of riots and unlawful assemblages.

1 If, by any means taken under the authority of this article
2 to disperse any such assemblage or arrest those engaged in
3 it, any person present, as spectator or otherwise, be killed or

4 wounded, and neither malice, nor premeditation be present,
5 any member of the West Virginia State Police, the Division
6 of Protective Services, sheriff, or mayor exercising such
7 authority, and everyone acting under his or her order, shall
8 be held guiltless.

●

CHAPTER 113

**(Com. Sub. for S. B. 319 - By Senators Rucker,
Azinger, Drennan, Gaunch, Karnes, Smith, Sypolt,
Trump, Unger, Cline, Boso, Plymale, Clements,
Maroney and Takubo)**

[Passed March 7, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §18C-7-6 of the Code of West Virginia, 1931, as amended, relating to allowing, in certain instances, individuals completing a secondary education program in a public, private, or home school and individuals obtaining a GED or equivalent to be eligible for the PROMISE scholarship.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-6. PROMISE Scholarship Program requirements; legislative rule.

1 (a) A PROMISE scholarship annual award shall meet
2 the following conditions:

3 (1) For a student enrolled in a state institution of higher
4 education, the annual award is equal to the lesser of the cost
5 of tuition or \$4,750, except that a student who was awarded

6 and used a PROMISE scholarship annual award prior to
7 January 1, 2010, shall continue to receive the annual award
8 calculated under the same terms and conditions that applied
9 on the day before the effective date of this article;

10 (2) For a student enrolled in an eligible institution other
11 than a state institution of higher education, the annual award
12 is equal to, but may not exceed, the lesser of the cost of
13 tuition or \$4,750, except that a student who was awarded
14 and used a PROMISE scholarship annual award prior to
15 January 1, 2010, shall continue to receive the annual award
16 calculated under the same terms and conditions that applied
17 on the day before the effective date of this article;

18 (3) The annual award may exceed \$4,750, if the
19 commission determines that adequate funds are available,
20 but in any case may not be greater than the actual cost of
21 tuition;

22 (4) The annual award shall be used by an eligible
23 institution to supplement, but may not supplant, a tuition
24 and fee waiver for which the individual is eligible pursuant
25 to §18B-10-5, §18B-10-6a, §18B-10-7, or §18B-10-7b of
26 this code.

27 (b) The total cost of all scholarships awarded by the
28 commission in any year may not exceed the amount of funds
29 available to the commission during that fiscal year.

30 (c) In order to be eligible to receive a PROMISE
31 scholarship award, an individual shall:

32 (1) Submit a scholarship award application to the
33 commission:

34 (A) Within two years of completing a secondary
35 education program in a public, private, or home school or
36 within two years of obtaining a GED or equivalent; or

37 (B) Within seven years of initially entering military
38 service, and within one year of discharge from military

39 service, if the individual has entered the United States
40 armed services within two years after completing a
41 secondary education program in a public, private, or home
42 school or obtaining a GED or equivalent;

43 (2) Apply for and submit a Free Application for Federal
44 Student Aid;

45 (3) Maintain a grade point average of at least 3.0 on a
46 4.0 grading scale in the required core and elective course
47 work necessary to prepare students for success in post-
48 secondary education at the associate and baccalaureate
49 degree levels as determined by the commission, if the
50 individual has completed not more than one semester or
51 term at an institution of higher education, excluding credits
52 earned in advanced placement, international baccalaureate,
53 dual credit, and comparable courses while the student is
54 enrolled in high school;

55 (4) Maintain appropriate academic progress toward the
56 completion of a degree at the undergraduate education level
57 as determined by the commission if the individual has
58 completed more than one semester or term at an institution
59 of higher education, excluding credits earned in advanced
60 placement, international baccalaureate, dual credit and
61 comparable courses while the student is enrolled in high
62 school;

63 (5) Be a United States citizen or legal immigrant to the
64 United States;

65 (6) Meet additional objective standards the commission
66 considers necessary to promote academic excellence and to
67 maintain the financial stability of the fund; and

68 (7) Enroll in an eligible institution. A student enrolled
69 at an eligible institution who receives a PROMISE
70 scholarship award may retain and renew the scholarship to
71 complete his or her undergraduate education at that

72 institution or any other eligible institution under the
73 following circumstances:

74 (A) The institution at which the student is enrolled loses
75 its status as an eligible institution pursuant to the provisions
76 of §18B-7-3(b)(1) of this code; and

77 (B) The student meets all other renewal requirements of
78 this code and of commission rules.

79 (d) It is the intent of the Legislature that the commission
80 shall strongly encourage prospective candidates for the
81 PROMISE scholarship to perform at least 20 hours of
82 unpaid community service while in high school to help
83 prepare them for success in post-secondary education. The
84 community service may include, but is not limited to,
85 participation with nonprofit, governmental or community-
86 based organizations designed with any or all of the
87 following purposes:

88 (1) Improving the quality of life for community
89 residents;

90 (2) Meeting the needs of community residents; or

91 (3) Fostering civic responsibility.

92 (e) The commission shall promulgate a legislative rule
93 in accordance with the provisions of §29A-3A-1 *et seq.* of
94 this code.

95 (1) The rule shall include at least the following
96 provisions:

97 (A) The amount of a PROMISE scholarship award in
98 combination with aid from all other sources may not exceed
99 the cost of education at the institution the recipient is
100 attending. This provision does not apply to members of the
101 West Virginia National Guard, recipients of an Underwood-
102 Smith teacher scholarship and recipients of a West Virginia
103 engineering, science and technology scholarship;

104 (B) Additional objective standards the commission
105 considers necessary:

106 (i) To promote academic excellence;

107 (ii) To maintain the financial stability of the fund; and

108 (iii) To operate the program within the limits of
109 available funds;

110 (C) Provisions for making the highest and best use of
111 the PROMISE Scholarship Program in conjunction with the
112 West Virginia College Prepaid Tuition and Savings
113 Program Act set forth in §18-30-1 *et seq.* of this code;

114 (D) A provision defining the relationship of PROMISE
115 scholarship awards to all other sources of student financial
116 aid to ensure maximum coordination. The provision shall
117 include the following:

118 (i) Methods to maximize student eligibility for federal
119 student financial aid;

120 (ii) A requirement that PROMISE scholarship awards
121 not supplant tuition and fee waivers; and

122 (iii) Clarification of the relationship between the
123 PROMISE Scholarship Program, tuition savings plans and
124 other state-funded student financial aid programs;

125 (E) A method for awarding scholarships within the
126 limits of available appropriations, including circumstances
127 when program funds are not sufficient to provide awards to
128 all eligible applicants. The commission may not use any of
129 the following methods:

130 (i) Providing for an annual PROMISE scholarship
131 award that is less than the amounts provided for in this
132 section; or

133 (ii) Eliminating any current recipient from eligibility;
134 and

135 (F) A method for applicants to appeal determinations of
136 eligibility and renewal.

137 (2) The rule may provide for or require the following at
138 the commission's discretion:

139 (A) Requiring repayment of the amount of the
140 scholarship, in whole or in part, if a scholarship recipient
141 chooses to work outside the state after graduation. The rule
142 may not require a recipient to repay a scholarship, in whole
143 or in part, unless the prospective recipient has been
144 informed of this requirement in writing before initial
145 acceptance of the PROMISE scholarship award;

146 (B) Targeting a portion of the scholarship funds to be
147 used for applicants enrolled in an engineering, science,
148 technology or other designated program;

149 (C) Determining what other sources of funding for
150 higher education are to be deducted from the PROMISE
151 scholarship award; and

152 (D) Providing additional criteria as determined by the
153 commission.

154 (3) The Legislature finds that an emergency exists and,
155 therefore, the commission shall file a rule to implement the
156 provisions of this section as an emergency rule pursuant to
157 the provisions of §29A-3A-1 *et seq.* of this code. The rule is
158 subject to the prior approval of the Legislative Oversight
159 Commission on Education Accountability.

160 (4) Any rule promulgated by the commission pursuant
161 to previous enactments of this article in effect on the
162 effective date of the amendment and reenactment of this
163 article in the year 2009 remains in effect until amended,
164 modified, repealed, or replaced by the commission.

●

CHAPTER 114

**(Com. Sub. for H. B. 4251 - By Delegates Shott,
Ellington and Gearheart)**

[Passed March 10, 2018; in effect from passage.]

[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §18B-2A-1 of the Code of West Virginia, 1931, as amended, relating to certain higher education institution boards of governors membership; permitting officers, employees, or members of any other board of governors outside of this state and employees of any institution of higher education outside of this state to be appointed to a board of governors; and including, for institutions that have no classified employees, a member from the nonclassified employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

1 (a) *Findings.* –

2 The Legislature finds that the State of West Virginia is
3 served best when the membership of each governing board
4 includes the following:

5 (1) The academic expertise and institutional experience
6 of faculty members and a student of the institution governed
7 by the board;

8 (2) The technical or professional expertise and
9 institutional experience of a classified employee or, as
10 appropriate, nonclassified employee of the institution
11 governed by the board;

12 (3) An awareness and understanding of the issues facing
13 the institution governed by the board; and

14 (4) The diverse perspectives that arise from a
15 membership that is balanced in terms of gender and varied
16 in terms of race and ethnic heritage.

17 (b) *Boards of governors established.* –

18 A board of governors is continued at each of the
19 following institutions: Bluefield State College, Blue Ridge
20 Community and Technical College, Bridgemont
21 Community and Technical College, Concord University,
22 Eastern West Virginia Community and Technical College,
23 Fairmont State University, Glenville State College,
24 Kanawha Valley Community and Technical College,
25 Mountwest Community and Technical College, Marshall
26 University, New River Community and Technical College,
27 Pierpont Community and Technical College, Shepherd
28 University, Southern West Virginia Community and
29 Technical College, West Liberty University, West Virginia
30 Northern Community and Technical College, the West
31 Virginia School of Osteopathic Medicine, West Virginia
32 State University, West Virginia University and West
33 Virginia University at Parkersburg.

34 (c) *Board membership.* –

35 (1) An appointment to fill a vacancy on the board or
36 reappointment of a member who is eligible to serve an
37 additional term is made in accordance with the provisions
38 of this section.

39 (2) The Board of Governors for Marshall University
40 consists of sixteen persons. The Board of Governors for
41 West Virginia University consists of seventeen persons. The

42 boards of governors of the other state institutions of higher
43 education consist of twelve persons.

44 (3) Each board of governors includes the following
45 members:

46 (A) A full-time member of the faculty with the rank of
47 instructor or above duly elected by the faculty of the
48 respective institution;

49 (B) A member of the student body in good academic
50 standing, enrolled for college credit work and duly elected
51 by the student body of the respective institution; and

52 (C) A member from the institutional classified
53 employees duly elected by the classified employees of the
54 respective institution or, if the respective institution does not
55 have classified employees, a member from the institutional
56 nonclassified employees duly elected by the nonclassified
57 employees of the respective institution.

58 (4) For the Board of Governors at Marshall University,
59 thirteen lay members appointed by the Governor, by and
60 with the advice and consent of the Senate, pursuant to this
61 section;

62 (5) For the Board of Governors at West Virginia
63 University, twelve lay members appointed by the Governor,
64 by and with the advice and consent of the Senate, pursuant
65 to this section, and additionally:

66 (A) The Chairperson of the Board of Visitors of West
67 Virginia University Institute of Technology;

68 (B) A full-time faculty member representing the
69 extension service at the institution or a full-time faculty
70 member representing the health sciences, selected by the
71 faculty senate.

72 (6) For each board of governors of the other state
73 institutions of higher education, nine lay members

74 appointed by the Governor, by and with the advice and
75 consent of the Senate, pursuant to this section.

76 (A) Of the nine members appointed by the Governor, no
77 more than five may be of the same political party. Of the
78 thirteen members appointed by the Governor to the
79 governing board of Marshall University, no more than eight
80 may be of the same political party. Of the twelve members
81 appointed by the Governor to the governing board of West
82 Virginia University, no more than seven may be of the same
83 political party.

84 (B) Of the nine members appointed by the Governor, at
85 least five shall be residents of the state. Of the thirteen
86 members appointed by the Governor to the governing board
87 of Marshall University, at least eight shall be residents of
88 the state. Of the twelve members appointed by the Governor
89 to the governing board of West Virginia University, at least
90 seven shall be residents of the state.

91 (7) In making lay appointments, the Governor shall
92 consider the institutional mission and membership
93 characteristics including the following:

94 (A) The need for individual skills, knowledge and
95 experience relevant to governing the institution;

96 (B) The need for awareness and understanding of
97 institutional problems and priorities, including those related
98 to research, teaching and outreach;

99 (C) The value of gender, racial and ethnic diversity; and

100 (D) The value of achieving balance in gender and
101 diversity in the racial and ethnic characteristics of the lay
102 membership of each board.

103 (d) *Board member terms.* –

104 (1) The student member serves for a term of one year.
105 Each term begins on July 1.

106 (2) The faculty member serves for a term of two years.
107 Each term begins on July 1. Faculty members are eligible to
108 succeed themselves for three additional terms, not to exceed
109 a total of eight consecutive years.

110 (3) The member representing classified employees or,
111 as appropriate, nonclassified employees serves for a term of
112 two years. Each term begins on July 1. Members
113 representing classified employees or, as appropriate,
114 nonclassified employees are eligible to succeed themselves
115 for three additional terms, not to exceed a total of eight
116 consecutive years.

117 (4) The appointed lay citizen members serve terms of
118 four years each and are eligible to succeed themselves for
119 no more than one additional term, except that citizen
120 members who are appointed to fill unexpired terms are
121 eligible to succeed themselves for two full terms after
122 completing an unexpired term.

123 (5) A vacancy in an unexpired term of a member shall
124 be filled for the unexpired term within thirty days of the
125 occurrence of the vacancy in the same manner as the
126 original appointment or election. Except in the case of a
127 vacancy, all elections are held and all appointments are
128 made no later than June 30 preceding the commencement of
129 the term. Each board of governors shall elect one of its
130 appointed lay members to be chairperson in June of each
131 year. A member may not serve as chairperson for more than
132 four consecutive years.

133 (6) The appointed members of the boards of governors
134 serve staggered terms of up to four years except that four of
135 the initial appointments to the governing boards of
136 community and technical colleges that became independent
137 July 1, 2008, are for terms of two years and five of the initial
138 appointments are for terms of four years.

139 (e) *Board member eligibility, expenses.* –

140 (1) A person is ineligible for appointment to
141 membership on a board of governors of a state institution of
142 higher education under the following conditions:

143 (A) For a baccalaureate institution or university, a
144 person is ineligible for appointment who is an officer,
145 employee or member of any other board of governors within
146 this state; an employee of any institution of higher education
147 within this state; an officer or member of any political party
148 executive committee; the holder of any other public office
149 or public employment under the government of this state or
150 any of its political subdivisions; an employee of any
151 affiliated research corporation created pursuant to article
152 twelve of this chapter; an employee of any affiliated
153 foundation organized and operated in support of one or
154 more state institutions of higher education; or a member of
155 the council or commission: *Provided*, That if an appointee
156 is an employee or board member of an out-of-state higher
157 education institution, there is no apparent conflict of interest
158 caused by the individual serving in both capacities. This
159 subsection does not prevent the representative from the
160 faculty, classified employees or, as appropriate,
161 nonclassified employees, students or the superintendent of
162 a county board of education from being members of the
163 governing boards.

164 (B) For a community and technical college, a person is
165 ineligible for appointment who is an officer, employee or
166 member of any other board of governors within this state; a
167 member of a board of visitors of any public institution of
168 higher education; an employee of any institution of higher
169 education within this state; an officer or member of any
170 political party executive committee; the holder of any other
171 public office, other than an elected county office, or public
172 employment, other than employment by the county board of
173 education, under the government of this state or any of its
174 political subdivisions; an employee of any affiliated
175 research corporation created pursuant to §18B-12-1 *et seq.*
176 of this code; an employee of any affiliated foundation

177 organized and operated in support of one or more state
178 institutions of higher education; or a member of the council
179 or commission: *Provided*, That if an appointee is an
180 employee or board member of an out-of-state higher
181 education institution, there is no apparent conflict of interest
182 caused by the individual serving in both capacities. This
183 subsection does not prevent the representative from the
184 faculty, classified employees or, as appropriate,
185 nonclassified employees or students from being members of
186 the governing boards.

187 (2) Before exercising any authority or performing any
188 duties as a member of a governing board, each member shall
189 qualify as such by taking and subscribing to the oath of
190 office prescribed by section five, article IV of the
191 Constitution of West Virginia and the certificate thereof
192 shall be filed with the Secretary of State.

193 (3) A member of a governing board appointed by the
194 Governor may not be removed from office by the Governor
195 except for official misconduct, incompetence, neglect of
196 duty or gross immorality and then only in the manner
197 prescribed by law for the removal of the state elective
198 officers by the Governor.

199 (4) The members of the board of governors serve
200 without compensation, but are reimbursed for all reasonable
201 and necessary expenses actually incurred in the
202 performance of official duties under this article upon
203 presentation of an itemized sworn statement of expenses.

204 (5) The president of the institution shall make available
205 resources of the institution for conducting the business of its
206 board of governors. All expenses incurred by the board of
207 governors and the institution under this section are paid
208 from funds allocated to the institution for that purpose.

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CHAPTER 115

**(H. B. 4622 - By Delegates Espinosa, Rohrbach,
Upson, Kelly, Hicks, Statler, Higginbotham, Pyles, E.
Evans, Hornbuckle and Rodighiero)**

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding Tuition and Fee Policy, Human Resources Administration, and Capital Project Management; and authorizing legislative rules for the Council for Community and Technical College Education regarding Human Resources Administration, and Capital Project Management.

Be it enacted by the Legislature of West Virginia:

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

1 (a) The legislative rule filed in the State Register on
2 October 15, 2004, relating to the Higher Education Policy
3 Commission (Underwood-Smith Teacher Scholarship
4 Program rule) is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 15, 2004, relating to the Higher Education Policy
7 Commission (West Virginia Engineering, Science and
8 Technology Scholarship Program rule) is authorized.

9 (c) The legislative rule filed in the State Register on
10 October 15, 2004, relating to the Higher Education Policy
11 Commission (Medical Education Fee and Medical Student
12 Loan Program rule) is authorized.

13 (d) The legislative rule filed in the State Register on
14 October 27, 2005, relating to the Higher Education Policy
15 Commission (Authorization of degree-granting institutions)
16 is authorized.

17 (e) The legislative rule filed in the State Register on
18 August 23, 2006, relating to the Higher Education Policy
19 Commission (West Virginia Higher Education Grant
20 Program) is authorized.

21 (f) The legislative rule filed in the State Register on
22 January 4, 2008, relating to the Higher Education Policy
23 Commission (Providing Real Opportunities for Maximizing
24 In-state Student Excellence - PROMISE) is authorized.

25 (g) The legislative rule filed in the State Register on
26 August 25, 2008, relating to the Higher Education Policy
27 Commission (Research Trust Program) is authorized.

28 (h) The legislative rule filed in the State Register on
29 January 8, 2009, relating to the Higher Education Policy
30 Commission (Guidelines for Governing Boards in
31 Employing and Evaluating Presidents) is authorized.

32 (i) The legislative rule filed in the State Register on
33 September 10, 2008, relating to the Higher Education Policy
34 Commission (Medical Student Loan Program) is
35 authorized, with the following amendment:

36 On page 2, subsection 5.1, following the words
37 “financial aid office” by inserting a new subdivision 5.1.3
38 to read as follows: “United States citizenship or legal
39 immigrant status while actively pursuing United States
40 citizenship.”

41 (j) The legislative rule filed in the State Register on
42 December 1, 2008, relating to the Higher Education Policy
43 Commission (West Virginia Higher Education Grant
44 Program) is authorized.

45 (k) The legislative rule filed in the State Register on
46 January 26, 2009, relating to the Higher Education Policy
47 Commission (Accountability System) is authorized.

48 (l) The legislative rule filed in the State Register on May
49 20, 2009, relating to the Higher Education Policy
50 Commission (Energy and Water Savings Revolving Loan
51 Fund Program) is authorized.

52 (m) The legislative rule filed in the State Register on
53 January 27, 2010, relating to the Higher Education Policy
54 Commission (Providing Real Opportunities for Maximizing
55 In-state Student Excellence - PROMISE) is authorized.

56 (n) The legislative rule filed in the State Register on
57 December 8, 2010, relating to the Higher Education Policy
58 Commission (Authorization of Degree Granting
59 Institutions) is authorized.

60 On page 28, subsection 9.1.b, following the words
61 “Good cause shall consist of” by inserting the words “any
62 one or more of the following”.

63 (o) The legislative rule filed in the State Register on
64 December 12, 2011, relating to the Higher Education Policy
65 Commission (Tuition and Fee Policy) is authorized.

66 (p) The legislative rule filed in the State Register on
67 August 10, 2012, relating to the Higher Education Policy
68 Commission (Authorization of Degree Granting
69 Institutions) is authorized.

70 (q) The legislative rule filed in the State Register on
71 August 10, 2012, relating to the Higher Education Policy
72 Commission (Annual Reauthorization of Degree Granting
73 Institutions) is authorized.

74 (r) The legislative rule filed in the State Register on
75 March 20, 2013, relating to the Higher Education Policy
76 Commission (Human Resources Administration) is
77 authorized.

78 (s) The legislative rule filed in the State Register on
79 January 24, 2014, relating to the Higher Education Policy
80 Commission (Capital Project Management) is authorized.

81 (t) The legislative rule filed in the State Register on
82 April 4, 2014, relating to the Higher Education Policy
83 Commission (Underwood-Smith Teacher Scholarship
84 Program) is authorized.

85 (u) The legislative rule filed in the State Register on
86 August 4, 2014, relating to the Higher Education Policy
87 Commission (Nursing Scholarship Program) is authorized.

88 (v) The legislative rule filed in the State Register on
89 October 28, 2015, relating to the Higher Education Policy
90 Commission (Underwood-Smith Teacher Scholarship
91 Program) is authorized.

92 (w) The legislative rule filed in the State Register on
93 October 28, 2015, relating to the Higher Education Policy
94 Commission (Nursing Scholarship Program) is authorized.

95 (x) The legislative rule filed in the State Register on
96 December 20, 2016, relating to the Higher Education Policy
97 Commission (West Virginia Higher Education Grant
98 Program) is authorized.

99 (y) The legislative rule filed in the State Register on
100 December 20, 2016, relating to the Higher Education Policy
101 Commission (Providing Real Opportunities for Maximizing
102 In-state Student Excellence - PROMISE) is authorized.

103 (z) The legislative rule filed in the State Register on
104 December 20, 2016, relating to the Higher Education Policy
105 Commission (Research Trust Fund Program) is authorized.

106 (aa) The legislative rule filed in the State Register on
107 December 20, 2016, relating to the Higher Education Policy
108 Commission (Annual Reauthorization of Degree-Granting
109 Institutions) is authorized.

110 (bb) The legislative rule filed in the State Register on
111 January 16, 2018, relating to the Higher Education Policy
112 Commission (Tuition and Fee Policy) is authorized.

113 (cc) The legislative rule filed in the State Register on
114 January 16, 2018, relating to the Higher Education Policy
115 Commission (Human Resources Administration) is
116 authorized.

117 (dd) The legislative rule filed in the State Register on
118 January 22, 2018, relating to the Higher Education Policy
119 Commission (Capital Project Management) is authorized,
120 with the following amendments:

121 On page 1, subsection 2.1, by striking out all of
122 subdivision 2.1.d. and inserting in lieu thereof a new
123 subdivision 2.1.d., to read as follows: “Efficient use of
124 existing classroom and other space by institutions, while
125 maintaining an appropriate deference to the value
126 judgments of the institutional governing boards.”;

127 On page 7, subsection 4.2, by striking out all of
128 subdivision 4.2.d.5. and inserting in lieu thereof a new
129 subdivision 4.2.d.5., to read as follows: “Funding will be
130 prioritized for each institution in accordance with
131 institutional plans confirmed by the Commission or
132 approved by the Council.”;

133 On page 7, subsection 4.2, by striking out all of
134 subdivision 4.2.d.6. and inserting in lieu thereof a new
135 subdivision 4.2.d.6., to read as follows: “Facility utilization
136 rates will be an important factor in prioritizing capital
137 projects across the systems.”

138 On page 7, subsection 4.2, by striking out all of
139 subdivision 4.2.d.7. and inserting in lieu thereof a new

140 subdivision 4.2.d.7., to read as follows: “Institutions with
141 overall net asset values and capacity utilization rates that
142 exceed or equal thresholds set annually by the Commission
143 and Council are the presumptive priority for new facilities.
144 If these projects do not replace an existing facility, they
145 would be included in the Program Improvement category.”;
146 and

147 On pages 10-11, section 5, by striking out all of
148 subdivision 5.6. and inserting in lieu thereof a new
149 subdivision 5.6., to read as follows: “A governing board
150 may not implement a campus development plan or plan
151 update that has not been confirmed by the Commission or
152 approved by the Council, as appropriate. The purchase of
153 any property for the construction of a facility that is not
154 included in the campus development plan creates an update
155 to the campus development plan that must be confirmed by
156 the Commission or approved by the Council, as appropriate,
157 prior to its purchase. In the case of institutions governed by
158 the Council, this provision applies equally to property
159 acquired by any means, whether by purchase or otherwise.”.

**§18B-17-3. Authorizing rules of the Council for Community
and Technical College Education.**

1 (a) The legislative rule filed in the State Register on
2 September 29, 2004, relating to the West Virginia Council
3 for Community and Technical College Education
4 (performance indicators) is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 13, 2005, relating to the West Virginia Council for
7 Community and Technical College Education
8 (Authorization of degree-granting institutions) is
9 authorized.

10 (c) The legislative rule filed in the State Register on
11 October 30, 2006, relating to the West Virginia Council for
12 Community and Technical College Education (Workforce
13 Development Initiative Program) is authorized.

14 (d) The legislative rule filed in the State Register on
15 December 4, 2008, relating to the West Virginia Council for
16 Community and Technical College Education (Employing
17 and Evaluating Presidents) is authorized.

18 (e) The legislative rule filed in the State Register on
19 December 23, 2008, relating to the West Virginia Council
20 for Community and Technical College Education
21 (Performance Indicators) is authorized.

22 (f) The legislative rule filed in the State Register on
23 February 5, 2009, relating to the West Virginia Council for
24 Community and Technical College Education (Finance) is
25 authorized.

26 (g) The legislative rule filed in the State Register on
27 February 5, 2009, relating to the West Virginia Council for
28 Community and Technical College Education
29 (Accountability System) is authorized.

30 (h) The legislative rule filed in the State Register on
31 June 15, 2011, relating to the West Virginia Council for
32 Community and Technical College Education (Workforce
33 Development Initiative Program) is authorized.

34 (i) The legislative rule filed in the State Register on
35 October 26, 2011, relating to the West Virginia Council for
36 Community and Technical College Education (Tuition and
37 Fees) is authorized.

38 (j) The legislative rule filed in the State Register on
39 October 17, 2012, relating to the West Virginia Council for
40 Community and Technical College Education
41 (Authorization of Degree Granting Institutions) is
42 authorized.

43 (k) The legislative rule filed in the State Register on
44 October 17, 2012, relating to the West Virginia Council for
45 Community and Technical College Education (Annual
46 Reauthorization of Degree Granting Institutions) is
47 authorized.

48 (l) The legislative rule filed in the State Register on
49 March 21, 2013, relating to the West Virginia Council for
50 Community and Technical College Education (Human
51 Resources Administration) is authorized.

52 (m) The legislative rule filed in the State Register on
53 August 21, 2012, relating to the West Virginia Council for
54 Community and Technical College Education (West
55 Virginia EDGE Program) is authorized.

56 (n) The legislative rule filed in the State Register on
57 January 28, 2014, relating to the West Virginia Council for
58 Community and Technical College Education (Capital
59 Project Management) is authorized.

60 (o) The legislative rule filed in the State Register on
61 January 18, 2017, relating to the West Virginia Council for
62 Community and Technical College Education (Annual
63 Reauthorization of Degree-Granting Institutions) is
64 authorized.

65 (p) The legislative rule filed in the State Register on
66 January 18, 2017, relating to the West Virginia Council for
67 Community and Technical College Education (Business,
68 Occupational and Trade Schools) is authorized.

69 (q) The legislative rule filed in the State Register on
70 January 26, 2018, relating to the West Virginia Council for
71 Community and Technical College Education (Human
72 Resources Administration) is authorized.

73 (r) The legislative rule filed in the State Register on
74 January 26, 2018, relating to the West Virginia Council for
75 Community and Technical College Education (Capital
76 Project Management) is authorized, with the following
77 amendments:

78 On page 1, subsection 2.1, by striking out all of
79 subdivision 2.1.d. and inserting in lieu thereof a new
80 subdivision 2.1.d., to read as follows: "Efficient use of
81 existing classroom and other space by institutions, while

82 maintaining an appropriate deference to the value
83 judgments of the institutional governing boards.”;

84 On page 7, subsection 4.2, by striking out all of
85 subdivision 4.2.d.5. and inserting in lieu thereof a new
86 subdivision 4.2.d.5., to read as follows: “Funding will be
87 prioritized for each institution in accordance with
88 institutional plans confirmed by the Commission or
89 approved by the Council.”;

90 On page 7, subsection 4.2, by striking out all of
91 subdivision 4.2.d.6. and inserting in lieu thereof a new
92 subdivision 4.2.d.6., to read as follows: “Facility utilization
93 rates will be an important factor in prioritizing capital
94 projects across the systems.”

95 On page 7, subsection 4.2, by striking out all of
96 subdivision 4.2.d.7. and inserting in lieu thereof a new
97 subdivision 4.2.d.7., to read as follows: “Institutions with
98 overall net asset values and capacity utilization rates that
99 exceed or equal thresholds set annually by the Commission
100 and Council are the presumptive priority for new facilities.
101 If these projects do not replace an existing facility, they
102 would be included in the Program Improvement category.”;
103 and

104 On pages 10-11, section 5, by striking out all of
105 subdivision 5.6. and inserting in lieu thereof a new
106 subdivision 5.6., to read as follows: “A governing board
107 may not implement a campus development plan or plan
108 update that has not been confirmed by the Commission or
109 approved by the Council, as appropriate. The purchase of
110 any property for the construction of a facility that is not
111 included in the campus development plan creates an update
112 to the campus development plan that must be confirmed by
113 the Commission or approved by the Council, as appropriate,
114 prior to its purchase. In the case of institutions governed by
115 the Council, this provision applies equally to property
116 acquired by any means, whether by purchase or otherwise.”.

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CHAPTER 116

**(Com. Sub. for S. B. 261 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 10, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2018.]

AN ACT to repeal §31-18D-1, §31-18D-2, §31-18D-3, §31-18D-4, §31-18D-5, §31-18D-6, §31-18D-7, §31-18D-8, §31-18D-9, §31-18D-10, §31-18D-11, §31-18D-12, §31-18D-13, §31-18D-14, and §31-18D-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-4c of said code; to amend and reenact §11-22-2 of said code; to amend and reenact §31-18-3, §31-18-6, §31-18-22, and §31-18-24 of said code; and to amend said code by adding thereto two new sections, designated §31-18-20d and §31-18-29, all relating generally to the elimination of the West Virginia Affordable Housing Trust Fund; transferring current responsibilities and duties of West Virginia Housing Trust Fund to the West Virginia Housing Development Fund; eliminating the West Virginia Affordable Housing Trust Fund and the West Virginia Affordable Housing Trust Fund Board of Directors; creating Affordable Housing Fund of the West Virginia Housing Development Fund and providing for uses therefor; providing for assessment of fees on all sales by licensed dealers of factory-built homes to be deposited in the Affordable Housing Fund of the West Virginia Housing Development Fund; providing for assessment of fees upon the privilege of transferring real estate for consideration to be deposited in the Affordable Housing Fund of the West Virginia Housing Development Fund; prohibiting use of funds in Affordable Housing Fund from being used to defray administrative and operating costs and expenses of Housing

Development Fund; defining “Affordable Housing Fund”; authorizing the West Virginia Housing Development Fund to provide funding to increase the capacity of nonprofit community housing organizations; providing for uses of funds in the Affordable Housing Fund; providing for disposition of the Affordable Housing Fund in the event of termination or dissolution of West Virginia Housing Development Fund; providing for windup of West Virginia Affordable Housing Trust Fund; repealing code related to West Virginia Affordable Housing Trust Fund; eliminating obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-4c. Collection of fee in addition to the consumers sales tax for sales of mobile factory-built homes; deposit of additional fee in West Virginia Affordable Housing Trust Fund.

1 (a) There is imposed, in addition to the sales tax
2 imposed by the provisions of this article and §11-15A-1 *et*
3 *seq.* of this code, a fee of \$20 on all sales by licensed dealers
4 of factory-built homes as that term is defined in §37-15-2 of
5 this code to be collected as provided in §11-15B -1 *et seq.*
6 of this code and remitted to the Tax Commissioner to be
7 deposited by the commissioner in the Affordable Housing
8 Fund, as provided in §31-18-20d of this code.

9 (b) The moneys collected from this additional fee shall
10 be segregated from other funds of the West Virginia
11 Housing Development Fund and shall be accounted for
12 separately. None of these moneys may be expended by the
13 West Virginia Housing Development Fund to defray
14 administrative and operating costs and expenses actually
15 incurred by the West Virginia Housing Development Fund.

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 §11-22-1 of this code. The state tax is payable at the time
9 of delivery, acceptance, or presenting for recording of the
10 document. In addition to the state excise tax described in
11 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 Affordable Housing Fund as provided in §31-18-20d of this
17 code. The moneys collected from this additional fee shall be
18 segregated from other funds of the West Virginia Housing
19 Development Fund and shall be accounted for separately.
20 None of these moneys may be expended by the West
21 Virginia Housing Development Fund to defray
22 administrative and operating costs and expenses actually
23 incurred by the West Virginia Housing Development Fund.
24 The West Virginia Housing Development Fund shall
25 publish monthly on the Internet site an accounting of all
26 revenue deposited into the fund during the month and a full
27 disclosure of all expenditures from the fund including the
28 group receiving funds, their location and any contractor
29 awarded the construction contract.

30 (b) Effective January 1, 1968, and thereafter, there is
31 imposed an additional county excise tax for the privilege of
32 transferring title to real estate at the rate of 55 cents for each
33 \$500 value or fraction thereof as represented by such

34 document as defined in §11-22-1 of this code, which county
35 tax shall be payable at the time of delivery, acceptance, or
36 presenting for recording of such document: *Provided*, That
37 after July 1, 1989, the county may increase said excise tax to
38 an amount equal to the state excise tax. The additional tax
39 hereby imposed is declared to be a county tax and to be used
40 for county purposes: *Provided, however*, That after July 1,
41 2017, the county may increase the excise tax to an amount
42 not to exceed \$1.65 for each \$500 value, or fraction thereof,
43 as represented by a document as defined in §11-22-1 of this
44 code: *Provided further*, That only one such state tax and one
45 such county tax shall be paid on any one document and shall
46 be collected in the county where the document is first
47 admitted to record and the tax shall be paid by the grantor
48 therein unless the grantee accepts the document without such
49 tax having been paid, in which event such tax shall be paid
50 by the grantee: *And provided further*, That on any transfer of
51 real property from a trustee or a county clerk transferring real
52 estate sold for taxes, such tax shall be paid by the grantee.
53 The county excise tax imposed under this section may not be
54 increased in any county unless the increase is approved by a
55 majority vote of the members of the county commission of
56 such county. Any county commission intending to increase
57 the excise tax imposed in its county shall publish a notice of
58 its intention to increase such tax not less than 30 days nor
59 more than 60 days prior to the meeting at which such increase
60 will be considered, such notice to be published as a Class I
61 legal advertisement in compliance with the provisions of §59-
62 3-1 *et seq.* of this code and the publication area shall be the
63 county in which such county commission is located.

CHAPTER 31. CORPORATIONS.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-3. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) “Affordable Housing Fund” means the affordable
4 housing fund created and established by the Housing
5 Development Fund in accordance with §31-18-20d of this
6 code.

7 (2) “Annual sinking fund payment” means the amount
8 of money specified in the resolution or resolutions
9 authorizing term bonds as payable into a sinking fund
10 during a particular calendar year for the retirement of term
11 bonds at maturity after such calendar year, but shall not
12 include any amount payable by reason only of the maturity
13 of a bond.

14 (3) “Development costs” means the costs approved by
15 the Housing Development Fund as appropriate expenditures
16 by the Housing Development Fund or by sponsors, for land
17 development, residential housing, or nonresidential projects
18 within this state, including, but not limited to:

19 (a) Payments for options to purchase proposed sites,
20 necessary easements, and other related property rights,
21 deposits on contracts of purchase, or, with prior approval of
22 the Housing Development Fund, payments for the purchase
23 of such properties;

24 (b) Legal and organizational expenses, including
25 payments of attorneys’ fees, utility and governmental
26 application and filing fees and expenses, project manager
27 and clerical staff salaries, office rent, and other incidental
28 expenses;

29 (c) Payment of fees and expenses for preliminary
30 feasibility studies and costs estimates and advances for
31 planning, engineering, and architectural work;

32 (d) Expenses for tenant surveys and market analyses;
33 and

34 (e) Necessary application, approval, and other fees.

35 (4) “Eligible persons and families” means:

36 (a) Persons and families of low and moderate income;
37 or

38 (b) Persons or families of higher income to the extent
39 the Housing Development Fund shall find and determine,
40 by resolution, that construction of new or rehabilitated
41 residential housing for occupancy by them will cause to be
42 vacated existing sanitary, decent, and safe residential
43 housing available at prices or rentals which persons and
44 families of low and moderate income can afford; or

45 (c) Persons or families of higher income to the extent
46 the Housing Development Fund shall find and determine,
47 by resolution, that construction of new or rehabilitated
48 multifamily rental housing or new, rehabilitated, or existing
49 home ownership housing in the state for occupancy by them
50 will further economic growth, increase the housing stock in
51 the state by eliminating substandard or deteriorating
52 housing conditions, or provide additional housing
53 opportunities in the state; or

54 (d) Persons who because of age or physical disability
55 are found and determined by the Housing Development
56 Fund, by resolution, to require residential housing of a
57 special location or design in order to provide them with
58 sanitary, decent, and safe residential housing; or

59 (e) Persons and families for whom, as found and
60 determined by the Housing Development Fund by
61 resolution, construction of new or rehabilitated residential
62 housing in some designated area or areas of the state is
63 necessary for the purpose of retaining in, or attracting to,
64 such area or areas qualified manpower resources essential
65 to modern mining, industrial and commercial operations,
66 and development in such area or areas.

67 (5) "Federally insured construction loan" means a
68 construction loan for land development, residential housing,
69 or nonresidential projects, which are either secured or
70 guaranteed, in whole or in part, by a federally insured

71 mortgage or a federal mortgage, or which are insured or
72 guaranteed, in whole or in part, by the United States or an
73 instrumentality thereof, or a commitment by the United
74 States or an instrumentality thereof to insure such loan.

75 (6) “Federally insured mortgage” means a mortgage
76 loan for land development, residential housing, or
77 nonresidential projects with a commitment by the United
78 States or an instrumentality thereof to insure or guarantee
79 such a mortgage.

80 (7) “Federal mortgage” means a mortgage loan for land
81 development, residential housing, or nonresidential projects
82 made by the United States or an instrumentality thereof, or
83 a commitment by the United States or an instrumentality
84 thereof to make such a mortgage loan.

85 (8) “Housing Development Fund” means the West
86 Virginia Housing Development Fund heretofore created and
87 established by §31-18-4 of this code.

88 (9) “Land development” means the process of acquiring
89 land for residential housing construction or nonresidential
90 projects or of making, installing, or constructing
91 improvements, including waterlines and water supply
92 installations, sewer lines and sewage disposal installations,
93 steam, gas, telephone, and telecommunications and electric
94 lines and installations, roads, railroad spurs, docking and
95 shipping facilities, streets, curbs, gutters, sidewalks,
96 drainage, and flood control facilities, whether on or off the
97 site, which the Housing Development Fund deems
98 necessary or desirable to prepare such land for construction
99 within this state.

100 (10) “Land Development Fund” means the land
101 development fund which may be created and established by
102 the Housing Development Fund in accordance with §31-18-
103 20a of this code.

104 (11) “Minimum bond insurance requirement” means, as
105 of any particular date of computation, an amount of money
106 equal to the greatest of the respective amounts, for the then
107 current or any future calendar year, of annual debt service
108 of the Housing Development Fund on all outstanding
109 mortgage finance bonds, such annual debt service for any
110 calendar year being the amount of money equal to the
111 aggregate of: (a) All interest payable during such calendar
112 year on such mortgage finance bonds on said date of
113 computation; plus (b) the principal amount of such
114 mortgage finance bonds outstanding which matures during
115 such calendar year, other than mortgage finance bonds for
116 which annual sinking fund payments have been or are to be
117 made in accordance with the resolution authorizing such
118 bonds; plus (c) the amount of all annual sinking fund
119 payments payable during such calendar year with respect to
120 any such mortgage finance bonds, all calculated on the
121 assumption that bonds will after said date of computation
122 cease to be outstanding by reason, but only by reason, of the
123 payment of bonds when due, and the payment when due and
124 application in accordance with the resolution authorizing
125 such bonds of all such sinking fund payments payable at or
126 after said date of computation.

127 (12) “Mortgage finance bonds” means bonds issued or
128 to be issued by the Housing Development Fund and secured
129 by a pledge of amounts payable from the mortgage finance
130 bond insurance fund in the manner and to the extent
131 provided in §31-18-20b of this code.

132 (13) “Mortgage Finance Bond Insurance Fund” means
133 the special trust fund created and established in the State
134 Treasury in accordance with §31-18-20b of this code.

135 (14) “Nonresidential project” means a project in the
136 state, whether or not directly related to the providing of
137 residential housing, determined by the Housing
138 Development Fund as likely to foster and enhance economic
139 growth and development in the area of the state in which
140 such project is developed, for retail, commercial, industrial,

141 community improvement, or preservation or other proper
142 purpose, including tourism and recreational housing, land,
143 air, or water transportation facilities, facilities for vocational
144 or other training or to provide medical care and other special
145 needs of persons residing in the state, sports complexes and
146 cultural, artistic, and other exhibition centers, industrial or
147 commercial projects and facilities, mail order, wholesale,
148 and retail sales facilities, and other real or personal
149 properties including facilities which are owned or leased by
150 this state, any county or municipality or other public body
151 within the state, and includes, without limitation, the
152 process of acquiring, holding, operating, planning,
153 financing, demolition, construction, renovation, leasing, or
154 otherwise disposing of such project or any part thereof or
155 interest therein. Any such project may include appurtenant
156 machinery and equipment.

157 (15) "Operating Loan Fund" means the operating loan
158 fund which may be created and established by the Housing
159 Development Fund in accordance with §31-18-19 of this
160 code.

161 (16) "Persons and families of low and moderate
162 income" means persons and families, irrespective of race,
163 creed, national origin, or sex, determined by the Housing
164 Development Fund to require such assistance as is made
165 available by this article on account of personal or family
166 income not sufficient to afford sanitary, decent, and safe
167 housing, and to be eligible or potentially eligible to occupy
168 residential housing constructed and financed, wholly or in
169 part, with federally insured construction loans, federally
170 insured mortgages, federal mortgages, or with other public
171 or private assistance, or with uninsured construction loans,
172 or uninsured mortgage loans, and in making such
173 determination the fund shall take into account the following:
174 (a) The amount of the total income of such persons and
175 families available for housing needs; (b) the size of the
176 family; (c) the cost and condition of housing facilities
177 available; (d) the eligibility of such persons and families for

178 federal housing assistance of any type predicated upon low
179 or moderate income basis; and (e) the ability of such persons
180 and families to compete successfully in the normal housing
181 market and to pay the amounts at which private enterprise is
182 providing sanitary, decent, and safe housing: *Provided*, That
183 to the extent found and determined by the Housing
184 Development Fund, by resolution, to be necessary or
185 appropriate for the purposes of eliminating undesirable social
186 conditions and permanently eliminating slum conditions, the
187 income limitation requirements of this article may be waived
188 as to any persons or families who are eligible to occupy
189 residential housing constructed in whole, or in part, with
190 federally insured construction loans, federally insured
191 mortgages or federal mortgages under housing assistance or
192 mortgage insurance programs of the United States, or an
193 instrumentality thereof, predicated upon any low- or
194 moderate-income basis.

195 (17) "Residential housing" means a specific work or
196 improvement within this state undertaken primarily to
197 provide dwelling accommodations, including the
198 acquisition, construction, or rehabilitation of land,
199 buildings, and improvements thereto, for residential
200 housing for occupancy by eligible persons and families,
201 including, but not limited to, facilities for temporary
202 housing and emergency housing, nursing homes and
203 intermediate care facilities, and such other nonhousing
204 facilities as may be incidental or appurtenant thereto.

205 (18) "Special bond insurance commitment fee" means a
206 fee in the amount of one per centum of the total principal
207 amount of each loan which is to be temporarily or
208 permanently financed from the proceeds of mortgage
209 finance bonds, other than a federally insured construction
210 loan, a federally insured mortgage or a federal mortgage, or
211 an amount equal to an equivalent discount on each loan
212 purchased or invested in by the Housing Development Fund
213 from the proceeds of mortgage finance bonds, other than a
214 federally insured construction loan, a federally insured

215 mortgage or a federal mortgage, and which may be payable
216 from the proceeds of such bonds or any other source
217 available to the Housing Development Fund for such use:
218 *Provided*, That if the period of time between the first
219 disbursement of proceeds of such loan and the date upon
220 which it is specified that the first repayment of principal of
221 such a loan shall be payable exceeds 12 months, an
222 additional amount computed on the basis of one twelfth of
223 one per centum per month on the total principal amount of
224 such loan over the number of months of such period of time
225 in excess of 12 months shall be included in such fee.

226 (19) “Special bond insurance premium” means: (i) A fee
227 at the rate of one half of one percent per annum on the
228 outstanding principal balance which the Housing
229 Development Fund shall charge the borrower of a mortgage
230 loan, or of a loan secured by a mortgage, financed from the
231 proceeds of mortgage finance bonds, other than a federally
232 insured construction loan, a federally insured mortgage or a
233 federal mortgage, which shall accrue from a date which is
234 one month prior to the date on which the first installment
235 payment of principal of such a loan is payable and which
236 shall be payable thereafter in monthly installments on the
237 same day of each successive month that installment
238 payments of principal of such a loan are payable; and (ii)
239 with respect to any loan, other than a federally insured
240 construction loan, a federally insured mortgage or a federal
241 mortgage, purchased, or invested in with such proceeds, an
242 equivalent amount which the Housing Development Fund
243 shall set aside from payments it receives on such loan or
244 from any other source available to the Housing
245 Development Fund for such use.

246 (20) “State sinking fund commission” means the
247 commission known as such and continued in existence
248 pursuant to §13-3-1 *et seq.* of this code and any body, board,
249 person, or commission which shall, by law, hereafter
250 succeed to the powers and duties of such commission.

251 (21) “Temporary housing” means a specific work or
252 improvement within this state undertaken primarily to
253 provide dwelling accommodations, including the
254 acquisition, construction, or rehabilitation of land,
255 buildings, and improvements thereto, for temporary
256 residential housing, including, but not limited to, shelters for
257 homeless people, housing for victims of floods and other
258 disasters, shelters for abused or battered persons and their
259 children, housing for families with hospitalized family
260 members, housing for students and student families, and
261 housing for the handicapped and such other nonhousing
262 facilities as may be incidental or appurtenant thereto.

263 (22) “Uninsured construction loans” means a
264 construction loan for land development, residential housing
265 or nonresidential projects which is not secured by either a
266 federally insured mortgage or a federal mortgage, and which
267 is not insured by the United States or an instrumentality
268 thereof, and as to which there is no commitment by the
269 United States or an instrumentality thereof to provide
270 insurance.

271 (23) “Uninsured mortgage” and “uninsured mortgage
272 loan” means mortgage loans for land development,
273 residential housing or nonresidential projects which are not
274 insured or guaranteed by the United States or an
275 instrumentality thereof, and as to which there is no
276 commitment by the United States or an instrumentality
277 thereof to provide insurance.

§31-18-6. Corporate powers.

1 The Housing Development Fund is hereby granted, has
2 and may exercise all powers necessary or appropriate to
3 carry out and effectuate its corporate purpose, including, but
4 not limited to, the following:

5 (1) To make or participate in the making of federally
6 insured construction loans to sponsors of land development,
7 residential housing, or nonresidential projects. Such loans

8 shall be made only upon determination by the Housing
9 Development Fund that construction loans are not otherwise
10 available, wholly or in part, from private lenders upon
11 reasonably equivalent terms and conditions;

12 (2) To make temporary loans, with or without interest,
13 but with such security for repayment as the Housing
14 Development Fund determines reasonably necessary and
15 practicable, from the operating loan fund, if created,
16 established, organized, and operated in accordance with the
17 provisions of §31-18-19 of this code, to defray development
18 costs to sponsors of land development, residential housing,
19 or nonresidential projects which are eligible or potentially
20 eligible for federally insured construction loans, federally
21 insured mortgages, federal mortgages or uninsured
22 construction loans or uninsured mortgage loans;

23 (3) To make or participate in the making of long-term
24 federally insured mortgage loans to sponsors of land
25 development, residential housing, or nonresidential
26 projects. Such loans shall be made only upon determination
27 by the Housing Development Fund that long-term mortgage
28 loans are not otherwise available, wholly or in part, from
29 private lenders upon reasonably equivalent terms and
30 conditions;

31 (4) To establish residential housing and nonresidential
32 and land development projects for counties declared to be in
33 a disaster area by the Federal Emergency Management
34 Agency or other agency or instrumentality of the United
35 States or this state;

36 (5) To accept appropriations, gifts, grants, bequests, and
37 devises and to utilize or dispose of the same to carry out its
38 corporate purpose;

39 (6) To make and execute contracts, releases,
40 compromises, compositions, and other instruments
41 necessary or convenient for the exercise of its powers, or to
42 carry out its corporate purpose;

43 (7) To collect reasonable fees and charges in connection
44 with making and servicing loans, notes, bonds, obligations,
45 commitments, and other evidences of indebtedness, and in
46 connection with providing technical, consultative, and
47 project assistance services;

48 (8) To invest any funds not required for immediate
49 disbursement in any of the following securities:

50 (i) Direct obligations of or obligations guaranteed by the
51 United States of America or for the payment of the principal
52 and interest on which the full faith and credit of the United
53 States of America is pledged;

54 (ii) Bonds, debentures, notes, or other evidences of
55 indebtedness issued by any of the following agencies:
56 Banks for Cooperatives; Federal Intermediate Credit Banks;
57 Federal Home Loan Bank System; Export-Import Bank of
58 the United States; Federal Land Banks; Tennessee Valley
59 Authority; United States Postal Service; Inter-American
60 Development Bank; International Bank for Reconstruction
61 and Development; Small Business Administration;
62 Washington Metropolitan Area Transit Authority; General
63 Services Administration; Federal Financing Bank; Federal
64 Home Loan Mortgage Corporation; Student Loan
65 Marketing Association; Farmer's Home Administration; the
66 Federal National Mortgage Association or the Government
67 National Mortgage Association; or any bond, debenture,
68 note, participation certificate or other similar obligation to
69 the extent such obligations are guaranteed by the
70 Government National Mortgage Association or Federal
71 National Mortgage Association or are issued by any other
72 federal agency and backed by the full faith and credit of the
73 United States of America;

74 (iii) Public housing bonds issued by public agencies or
75 municipalities and fully secured as to the payment of both
76 principal and interest by a pledge of annual contributions
77 under an annual contributions contract or contracts with the
78 United States of America; or temporary notes, preliminary

79 loan notes, or project notes issued by public agencies or
80 municipalities, in each case, fully secured as to the payment
81 of both principal and interest by a requisition or payment
82 agreement with the United States of America;

83 (iv) Certificates of deposit, time deposits, investment
84 agreements, repurchase agreements, or similar banking
85 arrangements with a member bank or banks of the federal
86 reserve system or a bank the deposits of which are insured
87 by the federal deposit insurance corporation, or its
88 successor, or a savings and loan association or savings bank
89 the deposits of which are insured by the federal savings and
90 loan insurance corporation, or its successor, or government
91 bond dealers reporting to, trading with and recognized as
92 primary dealers by a federal reserve bank: *Provided*, That
93 such investments shall only be made to the extent insured
94 by the Federal Deposit Insurance Corporation or the Federal
95 Savings and Loan Insurance Corporation or to the extent
96 that the principal amount thereof shall be fully collateralized
97 by obligations which are authorized investments for the
98 Housing Development Fund pursuant to this section;

99 (v) Direct obligations of or obligations guaranteed by
100 the State of West Virginia;

101 (vi) Direct and general obligations of any other state,
102 municipality, or other political subdivision within the
103 territorial United States: *Provided*, That at the time of their
104 purchase, such obligations are rated in either of the two
105 highest rating categories by a nationally recognized bond-
106 rating agency;

107 (vii) Any bond, note, debenture, or annuity issued by
108 any corporation organized and operating within the United
109 States: *Provided*, That such corporation shall have a
110 minimum net worth of \$15 million and its securities or its
111 parent corporation's securities are listed on one or more of
112 the national stock exchanges: *Provided, however*, That: (1)
113 Such corporation has earned a profit in eight of the
114 preceding 10 fiscal years as reflected in its statements; and

115 (2) such corporation has not defaulted in the payment of
116 principal or interest on any of its outstanding funded
117 indebtedness during its preceding 10 fiscal years; and (3)
118 the bonds, notes, or debentures of such corporation to be
119 purchased are rated “AA” or the equivalent thereof or better
120 than “AA” or the equivalent thereof by at least two or more
121 nationally recognized rating services such as Standard and
122 Poor’s, Dunn & Bradstreet, Best’s, or Moody’s;

123 (viii) If entered into solely for the purpose of reducing
124 investment, interest rate, liquidity, or other market risks in
125 relation to obligations issued or to be issued or owned or to
126 be owned by the Housing Development Fund, options,
127 futures contracts (including index futures but exclusive of
128 commodities futures, options, or other contracts), standby
129 purchase agreements or similar hedging arrangements listed
130 by a nationally recognized securities exchange or a
131 corporation described in §31-18-6(8)(vii) of this code;

132 (ix) Certificates, shares, or other interests in mutual
133 funds, unit trusts or other entities registered under section
134 eight of the United States Investment Company Act of 1940,
135 but only to the extent that the terms on which the underlying
136 investments are to be made prevent any more than a minor
137 portion of the pool which is being invested in to consist of
138 obligations other than investments permitted pursuant to
139 this section; and

140 (x) To the extent not inconsistent with the express
141 provisions of this section, obligations of the West Virginia
142 State Board of Investments or any other obligation
143 authorized as an investment for the West Virginia State
144 Board of Investments under §12-6-1 *et seq.* of this code or
145 for a public housing authority under §16-15-1 *et seq.* of this
146 code;

147 (9) To sue and be sued;

148 (10) To have a seal and alter the same at will;

149 (11) To make, and from time to time, amend, and repeal
150 bylaws and rules and regulations not inconsistent with the
151 provisions of this article;

152 (12) To appoint such officers, employees, and
153 consultants as it deems advisable and to fix their
154 compensation and prescribe their duties;

155 (13) To acquire, hold, and dispose of real and personal
156 property for its corporate purposes;

157 (14) To enter into agreements or other transactions with
158 any federal or state agency, any person and any domestic or
159 foreign partnership, corporation, association, or
160 organization;

161 (15) To acquire real property, or an interest therein, in
162 its own name, by purchase or foreclosure, where such
163 acquisition is necessary or appropriate to protect any loan in
164 which the Housing Development Fund has an interest and
165 to sell, transfer, and convey any such property to a buyer
166 and, in the event of such sale, transfer, or conveyance cannot
167 be effected with reasonable promptness or at a reasonable
168 price, to lease such property to a tenant;

169 (16) To purchase or sell, at public or private sale, any
170 mortgage or other negotiable instrument or obligation
171 securing a construction, rehabilitation, improvement, land
172 development, mortgage, or temporary loan;

173 (17) To procure insurance against any loss in connection
174 with its property in such amounts, and from such insurers,
175 as may be necessary or desirable;

176 (18) To consent, whenever it deems it necessary or
177 desirable in the fulfillment of its corporate purpose, to the
178 modification of the rate of interest, time of payment or any
179 installment of principal or interest, or any other terms, of
180 mortgage loan, mortgage loan commitment, construction
181 loan, rehabilitation loan, improvement loan, temporary

182 loan, contract, or agreement of any kind to which the
183 Housing Development Fund is a party;

184 (19) To make and publish rules and regulations
185 respecting its federally insured mortgage lending, uninsured
186 mortgage lending, construction lending, rehabilitation
187 lending, improvement lending and lending to defray
188 development costs and any such other rules and regulations
189 as are necessary to effectuate its corporate purpose;

190 (20) To borrow money to carry out and effectuate its
191 corporate purpose and to issue its bonds or notes as evidence
192 of any such borrowing in such principal amounts and upon
193 such terms as shall be necessary to provide sufficient funds
194 for achieving its corporate purpose, except that no notes
195 shall be issued to mature more than 10 years from date of
196 issuance and no bonds shall be issued to mature more than
197 50 years from date of issuance;

198 (21) To issue renewal notes, to issue bonds to pay notes
199 and, whenever it deems refunding expedient, to refund any
200 bonds by the issuance of new bonds, whether the bonds to
201 be refunded have or have not matured except that no such
202 renewal notes shall be issued to mature more than 10 years
203 from date of issuance of the notes renewed and no such
204 refunding bonds shall be issued to mature more than 50
205 years from the date of issuance;

206 (22) To apply the proceeds from the sale of renewal
207 notes or refunding bonds to the purchase, redemption, or
208 payment of the notes or bonds to be refunded;

209 (23) To make grants and provide technical services to
210 assist in the purchase or other acquisition, planning,
211 processing, design, construction, or rehabilitation,
212 improvement, or operation of residential housing,
213 nonresidential projects, or land development: *Provided*, That
214 no such grant or other financial assistance shall be provided
215 except upon a finding by the Housing Development Fund that
216 such assistance and the manner in which it will be provided

217 will preserve and promote residential housing in this state or
218 the interests of this state in maintaining or increasing
219 employment or the tax base;

220 (24) To provide project assistance services for
221 residential housing, nonresidential projects, and land
222 development, including, but not limited to, management,
223 training, and social and other services;

224 (25) To promote research and development in scientific
225 methods of constructing low-cost land development,
226 residential housing, or nonresidential projects of high
227 durability including grants, loans, or equity contributions
228 for research and development purposes: *Provided*, That no
229 such grant or other financial assistance shall be provided
230 except upon a finding by the Housing Development Fund
231 that such assistance and the manner in which it will be
232 provided will preserve and promote residential housing in
233 this state or the interests of this state in maintaining and
234 increasing employment and the tax base;

235 (26) With the proceeds from the issuance of notes or
236 bonds of the Housing Development Fund, including, but not
237 limited to, mortgage finance bonds, or with other funds
238 available to the Housing Development Fund for such
239 purpose, to participate in the making of or to make loans to
240 mortgagees approved by the Housing Development Fund
241 and take such collateral security therefor as is approved by
242 the Housing Development Fund and to invest in, purchase,
243 acquire, sell, or participate in the sale of, or take
244 assignments of, notes and mortgages, evidencing loans for
245 the construction, rehabilitation, improvement, purchase, or
246 refinancing of land development, residential housing, or
247 nonresidential projects in this state: *Provided*, That the
248 Housing Development Fund shall obtain such written
249 assurances as shall be satisfactory to it that the proceeds of
250 such loans, investments, or purchases will be used, as nearly
251 as practicable, for the making of or investment in long-term
252 federally insured mortgage loans or federally insured
253 construction loans, uninsured mortgage loans, or uninsured

254 construction loans, for land development, residential
255 housing, or nonresidential projects or that other moneys in
256 an amount approximately equal to such proceeds shall be
257 committed and used for such purpose;

258 (27) To make or participate in the making of uninsured
259 construction loans for land development, residential
260 housing or nonresidential projects. Such loans shall be made
261 only upon determination by the Housing Development Fund
262 that construction loans are not otherwise available, wholly
263 or in part, from private lenders upon reasonably equivalent
264 terms and conditions;

265 (28) To make or participate in the making of long-term
266 uninsured mortgage loans for land development, residential
267 housing, or nonresidential projects. Such loans shall be
268 made only upon determination by the Housing
269 Development Fund that long-term mortgage loans are not
270 otherwise available, wholly or in part, from private lenders
271 upon reasonably equivalent terms and conditions;

272 (29) To obtain options to acquire real property, or any
273 interest therein, in its own name, by purchase, or lease or
274 otherwise, which is found by the Housing Development
275 Fund to be suitable, or potentially suitable, as a site, or as
276 part of a site, for land development or the construction of
277 residential housing or nonresidential projects; to hold such
278 real property or to acquire by purchase or otherwise and to
279 transfer by sale or otherwise any ownership or equity
280 interests in any other legal entity which holds such real
281 property; to finance the performance of land development,
282 residential housing, or nonresidential projects on or in
283 connection with any such real property or to perform land
284 development, residential housing, or nonresidential projects
285 on or in connection with any such real property; to own,
286 operate, and sponsor or participate in the sponsorship of
287 land development, residential housing, or nonresidential
288 projects; or to sell, transfer and convey, lease, or otherwise
289 dispose of such real property, or lots, tracts, or parcels of
290 such real property, for such prices, upon such terms,

291 conditions, and limitations, and at such time or times as the
292 Housing Development Fund shall determine;

293 (30) To make loans, with or without interest, but with
294 such security for repayment as the Housing Development
295 Fund determines reasonably necessary and practicable from
296 the land development fund, if created, established,
297 organized, and operated in accordance with the provisions
298 of §31-18-20a of this code, to sponsors of land
299 development, to defray development costs and other costs
300 of land development;

301 (31) To exercise all of the rights, powers, and authorities
302 of a public housing authority as set forth and provided in
303 §16-15-1 *et seq.* of this code, in any area or areas of the state
304 which the Housing Development Fund shall determine by
305 resolution to be necessary or appropriate;

306 (32) To provide assistance to urban renewal projects in
307 accordance with the provisions of §16-18-28 of this code
308 and in so doing to exercise all of the rights, powers, and
309 authorities granted in this article or in said article, in and for
310 any communities of the state which the Housing
311 Development Fund shall determine by resolution to be
312 necessary or appropriate;

313 (33) To make or participate in the making of loans for
314 the purpose of rehabilitating or improving existing
315 residential and temporary housing or nonresidential
316 projects, or to owners of existing residential or temporary
317 housing for occupancy by eligible persons and families for
318 the purpose of rehabilitating or improving such residential
319 or temporary housing or nonresidential projects and, in
320 connection therewith, to refinance existing loans involving
321 the same property. Such loans shall be made only upon
322 determination by the Housing Development Fund that
323 rehabilitation or improvement loans are not otherwise
324 available, wholly or in part, from private lenders upon
325 reasonably equivalent terms and conditions;

326 (34) Whenever the Housing Development Fund deems
327 it necessary in order to exercise any of its powers set forth
328 in §31-18-6(29) of this code, and upon being unable to agree
329 with the owner or owners of real property or interest therein
330 sought to be acquired by the fund upon a price for
331 acquisition of private property not being used or operated
332 by the owner in the production of agricultural products, to
333 exercise the powers of eminent domain in the acquisition of
334 such real property or interest therein in the manner provided
335 under §54-1-1 *et seq.* of this code, and the purposes set forth
336 in said subdivision are hereby declared to be public
337 purposes for which private property may be taken. For the
338 purposes of this section, the determination of “use or
339 operation by the owner in the production of agricultural
340 products” means that the principal use of such real estate is
341 for the production of food and fiber by agricultural
342 production other than forestry, and the fund shall not initiate
343 or exercise any powers of eminent domain without first
344 receiving an opinion in writing from both the Governor and
345 the Commissioner of Agriculture of this state that at the time
346 the fund had first attempted to acquire such real estate or
347 interest therein, such real estate or interest therein was not
348 in fact being used or operated by the owner in the production
349 of agricultural products;

350 (35) To acquire, by purchase or otherwise, and to hold,
351 transfer, sell, assign, pool, or syndicate, or participate in the
352 syndication of, any loans, notes, mortgages, securities, or
353 debt instruments collateralized by mortgages or interests in
354 mortgages or other instruments evidencing loans or equity
355 interests in or for the construction, rehabilitation,
356 improvement, renovation, purchase, or refinancing of land
357 development, residential housing, and nonresidential
358 projects in this state;

359 (36) To form one or more nonprofit corporations, whose
360 board of directors shall be the same as the board of directors
361 of the Housing Development Fund, which shall be
362 authorized and empowered to carry out any or all of the

363 corporate powers or purposes of the Housing Development
364 Fund, including, without limitation, acquiring limited or
365 general partnership interests and other forms of equity
366 ownership;

367 (37) To receive and compile data into an electronic
368 database and make available the raw mortgage foreclosure
369 data that is required to be reported to county clerks by
370 trustees pursuant to the provisions of §38-1-8a of this code,
371 including all data that has been received by the banking
372 commissioner pursuant to §31A-2-4c(a) of this code, as of
373 the effective date of the amendments made to said section
374 during the regular session of the 2010 Legislature. This
375 information shall be periodically forwarded by county
376 clerks to the Housing Development Fund, in accordance
377 with the provisions of §44-13-4a of this code; and

378 (38) Provide funding to increase the capacity of
379 nonprofit community housing organizations to serve their
380 communities.

§31-18-20d. Affordable Housing Fund.

1 (a) There is hereby created and established a special
2 fund to be designated as the Affordable Housing Fund into
3 which the Housing Development Fund shall deposit the
4 funds received pursuant to §11-15-4c and §11-22-2 of this
5 code. Such funds shall be governed, administered, and
6 accounted for by the Housing Development Fund as a
7 special purpose account separate and distinct from any other
8 moneys, fund or funds owned or managed by the Housing
9 Development Fund. Additionally, the Housing
10 Development Fund shall deposit an additional amount at
11 least equal to the funds received pursuant to §31-18-29 of
12 this code. The moneys deposited in such fund may be
13 invested and reinvested by the Housing Development Fund
14 as authorized under §31-18-6(8) of this code.

15 (b) The Housing Development Fund shall use the
16 moneys from the Affordable Housing Fund to make, or

17 participate in the making of, loans or grants for eligible
18 activities that shall include, but not be limited to:

19 (1) Providing funds for new construction, rehabilitation,
20 repair, or acquisition of housing to assist low or moderate
21 income citizens including land and land improvements;

22 (2) Providing matching funds for federal housing
23 moneys requiring a local or state match;

24 (3) Providing funds for administrative costs for housing
25 assistance programs or nonprofit organizations eligible for
26 funding pursuant to §31-18-20d(c) of this code if the grants
27 or loans provided will substantially increase the recipient's
28 access to housing funds or increase its capacity to supply
29 affordable housing;

30 (4) Providing loan guarantees and other financial
31 mechanisms to facilitate the provision of housing products
32 or services;

33 (5) Providing funds for down payments, closing costs,
34 foreclosure prevention, home ownership counseling, and
35 security bonds which facilitate the construction,
36 rehabilitation, repair, or acquisition of housing by low to
37 moderate income citizens;

38 (6) Providing risk underwriting products not provided
39 by private sector entities to facilitate broader accessibility
40 of citizens to other federal or state housing funds or loan
41 programs. The products shall be established using
42 professional risk underwriting standards and separate
43 corporate vehicles may be created and capitalized by the
44 Housing Development Fund to provide the products; and

45 (7) Providing start-up funds for initial operational
46 expenses of local government programs to reduce
47 substandard housing or inappropriate land use patterns.

48 (c) Organizations eligible for funding from the
49 Affordable Housing Fund include: (1) Local governments;

50 (2) local government housing authorities; (3) nonprofit
51 organizations recognized as exempt from federal income tax
52 under Section 501(c)(3) of the Internal Revenue Code, as
53 amended, codified in 26 U.S.C. § 501(c)(3), and which are
54 organized and operated exclusively for charitable purposes
55 within the meaning of that section, and in accordance with
56 those purposes provide assistance to low or moderate
57 income citizens of this state; and (4) regional or statewide
58 housing assistance organizations that have been recognized
59 as exempt under Section 501(c)(3) of the Internal Revenue
60 Code, as amended, and which provide assistance to low and
61 moderate income or low income citizens of this state.

§31-18-22. Termination or dissolution.

1 Upon the termination or dissolution, all rights and
2 properties of the Housing Development Fund, including the
3 Operating Loan Fund, the Land Development Fund, the
4 Mortgage Finance Bond Insurance Fund, and the
5 Affordable Housing Fund, shall pass to and be vested in the
6 State of West Virginia, subject to the rights of bondholders,
7 lienholders, and other creditors.

**§31-18-24. Annual audit; reports to Joint Committee on
Government and Finance; information to joint committee
or legislative Auditor.**

1 The Housing Development Fund shall cause an annual
2 audit to be made by an independent certified public
3 accountant of its books, accounts, and records, with respect
4 to its receipts, disbursements, contracts, mortgages, leases,
5 assignments, loans, and all other matters relating to its
6 financial operations, including those of the Operating Loan
7 Fund, the Land Development Fund, and the Mortgage
8 Finance Bond Insurance Fund. The person performing such
9 audit shall furnish copies of the audit report to the
10 commissioner of finance and administration, where they
11 shall be placed on file and made available for inspection by
12 the general public. The person performing such audit shall
13 also furnish copies of the audit report to the Speaker of the

14 House of Delegates, the President of the Senate, and the
15 majority and minority leaders of both houses.

16 In addition to the foregoing annual audit report, the
17 Housing Development Fund shall also render every six
18 months to the Joint Committee on Government and Finance
19 a report setting forth in detail a complete analysis of the
20 activities, indebtedness, receipts, and financial affairs of
21 such fund and the Operating Loan Fund, the Land
22 Development Fund, Affordable Housing Fund, and the
23 Mortgage Finance Bond Insurance Fund. Upon demand, the
24 Housing Development Fund shall also submit to the Joint
25 Committee on Government and Finance or the Legislative
26 Auditor any other information requested by such committee
27 or the Legislative Auditor.

§31-18-29. Dissolution of West Virginia Affordable Housing Trust Fund.

1 Upon termination of the West Virginia Affordable
2 Housing Trust Fund, the Housing Development Fund shall
3 provide for the payment of all debts, obligations, or expenses
4 of the Affordable Housing Trust Fund, and all assets
5 remaining in the Affordable Housing Trust Fund shall be
6 transferred to the West Virginia Housing Development Fund.

ARTICLE 18D. WEST VIRGINIA AFFORDABLE HOUSING TRUST FUND.

§31-18D-1. Short title.

1 [Repealed.]

§31-18D-2. Legislative finding and purpose.

1 [Repealed.]

§31-18D-3. Definitions.

1 [Repealed.]

§31-18D-4. Affordable housing trust fund.

1 [Repealed.]

§31-18D-5. Housing Trust Fund Board of Directors.

1 [Repealed.]

§31-18D-6. Powers and responsibilities of the board.

1 [Repealed.]

§31-18D-7. Eligible activities; eligible organizations.

1 [Repealed.]

§31-18D-8. Corporate powers.

1 [Repealed.]

§31-18D-9. Applications and selection criteria.

1 [Repealed.]

§31-18D-10. Documentary materials concerning financial or personal information; confidentiality.

1 [Repealed.]

§31-18D-11. Conflicts.

1 [Repealed.]

§31-18D-12. Tax exemption.

1 [Repealed.]

§31-18D-13. Annual report.

1 [Repealed.]

§31-18D-14. Exemption from certain requirements; audit.

1 [Repealed.]

§31-18D-15. Dissolution or liquidation of trust fund.

1 [Repealed.]

**Post-printing Addendum –
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(At the end of the first paragraph of the
Second Regular Session, 2018 portion of the **FOREWORD**.)

* The Senate’s March 10th legislative day ended with adjournment *sine die* at 12:01 a.m. on March 11th. The Governor had issued a proclamation on March 7, 2018, extending the session for a period not to exceed one day for the purpose of considering the Budget Bill.

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