

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



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

Volume II
Chapters 117 - 249
Chapters 1 – 8
Chapters 1 – 6
Chapter 1

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

COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF

STEPHEN J. HARRISON
CLERK OF THE HOUSE



OFFICE OF THE CLERK OF THE HOUSE

212 MAIN UNIT
STATE CAPITOL
CHARLESTON, WEST VIRGINIA

CLERK'S OFFICE LEGISLATIVE GROUP

Bo Hoover
Assistant Clerk/Parliamentarian

Robert Altmann	Lynn Lewis
Anne Landgrebe	Lori Skull

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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
Cris, 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
Iaquinta II, Richard J. (D).....	48th	Clarksburg.....	Teacher/Coach.....	76th - 81st; 83rd
Isner, 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, Erika (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
Malcolm, Sharon Lewis (R)..... 39th	Charleston	Retired State Employee.....
O’Neal, John IV (R)..... 28th	Beckley	Business

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 ^h - 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, Iaquina, 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

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.

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.

●

CHAPTER 117

(S. B. 406 - By Senators Ferns, Takubo, Boso, Cline and Baldwin)

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

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

AN ACT to amend and reenact §9-5-26 of the Code of West Virginia, 1931, as amended, relating to supplemental Medicare and Medicaid reimbursement; and clarifying that ground emergency medical transportation services providers owned or operated by, or providing services under contract with the state and certain political subdivisions thereof, are eligible for reimbursement from Medicare.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-26. Supplemental Medicare and Medicaid reimbursement.

1 (a) A ground emergency medical transportation services
2 provider, owned, operated by, or providing services under
3 contract to, the state, or a city, a county, or city and county,
4 that provides services to Medicare and Medicaid
5 beneficiaries is eligible for supplemental reimbursement.

6 (b) An eligible provider's supplemental reimbursement
7 shall be calculated and paid as follows:

8 (1) The supplemental reimbursement to an eligible
9 provider shall be equal to the amount of federal financial
10 participation received as a result of the claims submitted.

11 (2) In no instance may the amount certified, when
12 combined with the amount received from all other sources

13 of reimbursement from the Medicare or Medicaid program,
14 exceed 100 percent of actual costs, as determined pursuant
15 to the Medicaid State Plan or the state's Medicare plan, for
16 ground emergency medical transportation services.

17 (3) The supplemental Medicare and Medicaid
18 reimbursement shall be distributed exclusively to eligible
19 providers under a payment methodology based on ground
20 emergency medical transportation services provided to
21 Medicare and Medicaid beneficiaries by eligible providers
22 on a per-transport basis or other federally permissible basis.
23 The Department of Health and Human Resources shall
24 obtain approval from the Centers for Medicare and
25 Medicaid Services for the payment methodology to be used,
26 and may not make any payment pursuant to this section
27 prior to obtaining that approval.

28 (c) No funds may be expended from the State Fund,
29 General Revenue for any supplemental reimbursement paid
30 under this section.

31 (d) The nonfederal share of the supplemental
32 reimbursement submitted to the federal Centers for
33 Medicare and Medicaid Services for purposes of claiming
34 federal financial participation may be paid only with funds
35 from the governmental entities.

36 (e) Participation in the program by an eligible provider
37 described in this section is voluntary.

38 (f) If an applicable governmental entity elects to seek
39 supplemental reimbursement pursuant to this section on
40 behalf of an eligible provider, the governmental entity shall:

41 (1) Certify, in conformity with the requirements of
42 Section 433.51 of Title 42 of the Code of Federal
43 Regulations, that the claimed expenditures for the ground
44 emergency medical transportation services are eligible for
45 federal financial participation;

46 (2) Provide evidence supporting the certification as
47 specified by the Department of Health and Human
48 Resources;

49 (3) Submit data as specified by the Department of
50 Health and Human Resources to determine the appropriate
51 amounts to claim as expenditures qualifying for federal
52 financial participation; and

53 (4) Keep, maintain, and have readily retrievable any
54 records specified by the Department of Health and Human
55 Resources to fully disclose reimbursement amounts to
56 which the eligible provider is entitled, and any other records
57 required by the federal Centers for Medicare and Medicaid
58 Services.

59 (g) (1) The Department of Health and Human Resources
60 shall promptly seek any necessary federal approvals for the
61 implementation of this section. The Department of Health
62 and Human Resources may limit the program to those costs
63 that are allowable expenditures under Title XIX of the
64 federal Social Security Act (42 U.S.C. §1396 *et seq.*). If
65 federal approval is not obtained for implementation of this
66 section, this section may not be implemented.

67 (2) The Department of Health and Human Resources
68 shall submit claims for federal financial participation for the
69 expenditures for the services that are allowable expenditures
70 under federal law.

71 (3) The Department of Health and Human Resources
72 shall, on an annual basis, submit any necessary materials to
73 the federal government to provide assurances that claims for
74 federal financial participation will include only those
75 expenditures that are allowable under federal law.

76 (4) Notwithstanding the provisions of §9-5-26(g)(1) of
77 this code, the Department of Health and Human Resources
78 shall, prior to seeking federal approval of any supplemental
79 reimbursement pursuant to this section, attempt to

80 maximize the number of qualified group emergency
81 medical transportation service providers eligible to receive
82 the supplemental reimbursement. These emergency medical
83 transportation service providers would include:

84 (A) Any not-for-profit emergency medical transport
85 providers not owned by the state or a city, a county, or a city
86 and county;

87 (B) Any voluntary emergency transportation service
88 providers not owned by the state or a city, a county, or a city
89 and county; and

90 (C) All other emergency medical transportation service
91 providers licensed pursuant to the provisions of §16-4C-1 *et*
92 *seq.* of this code.



CHAPTER 118

**(Com. Sub. for H. B. 3104 - By Delegates Howell and
Iaquinta)**

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §9-10-1, §9-10-2, §9-10-3, §9-10-4, §9-10-5, and §9-10-6; to amend and reenact §18-10K-1 of said code; and to repeal §18-10K-2, §18-10K-3, §18-10K-4, §18-10K-5, and §18-10K-6 of said code, all relating to transferring administration of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund to the Department of Health and Human Resources; abolishing the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board; transferring the powers, duties and records of the West Virginia Traumatic

Brain and Spinal Cord Injury Rehabilitation Fund Board to the Department of Health and Human Resources; and transferring the powers and duties of the Division of Rehabilitation Services related to administering the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund to the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 10. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND.

§9-10-1. Definitions.

1 As used in this article, the term:

2 (1) “Secretary” means the Secretary of the West
3 Virginia Department of Health and Human Resources or his
4 or her designee.

5 (2) “Fund” means the West Virginia Traumatic Brain
6 and Spinal Cord Injury Rehabilitation Fund.

7 (3) “Traumatic brain injury” means an acquired injury
8 to the brain, including brain injuries caused by anoxia due
9 to near drowning. “Traumatic brain injury” does not include
10 brain dysfunction caused by congenital or degenerative
11 disorders, nor birth trauma.

12 (4) “Spinal cord injury” means a traumatic injury to the
13 spinal cord that results in a permanent loss of sensation and
14 voluntary movement below the level of the lesion.

§9-10-2. Fund continued under Department of Health and Human Resources.

1 (a) The special revenue account in the State Treasury
2 known as the “West Virginia Traumatic Brain and Spinal
3 Cord Injury Rehabilitation Fund,” which was previously
4 authorized by §18-10K-1 *et seq.* of this code, is continued.

5 (b) Effective July 1, 2018, all powers and duties of the
6 West Virginia Traumatic Brain and Spinal Cord Injury
7 Rehabilitation Fund Board are transferred to the Secretary.

8 (c) Effective July 1, 2018, all powers and duties of the
9 West Virginia Division of Rehabilitation Services related to
10 administration of the West Virginia Traumatic Brain and
11 Spinal Cord Injury Rehabilitation Fund are transferred to
12 the Secretary.

§9-10-3. Administration of Fund; administrative fees; Fund use.

1 (a) The West Virginia Traumatic Brain and Spinal Cord
2 Injury Rehabilitation Fund is subject to the annual
3 appropriation of funds by the Legislature. The West
4 Virginia Traumatic Brain and Spinal Cord Injury
5 Rehabilitation Fund may receive any gifts, grants,
6 contributions or other money from any source which is
7 specifically designated for deposit in the Fund.

8 (b) All moneys collected, received and deposited into
9 the State Treasury and credited to the West Virginia
10 Traumatic Brain and Spinal Cord Injury Rehabilitation
11 Fund shall be expended by the Secretary exclusively in
12 accordance with the uses and criteria set forth in this article.
13 Expenditures from this Fund for any other purposes are
14 void.

15 (c) The Fund shall be administered by the Department
16 of Health and Human Resources: *Provided*, That the
17 Department may not charge a fee to administer the Fund.

18 (d) Nothing in this article may be construed to mandate
19 funding for the Fund or to require any appropriation by the
20 Legislature.

21 (e) Moneys in the Fund shall be used to pay for services
22 that will increase opportunities for and enhance the
23 achievement of functional independence, and a return to a

24 productive lifestyle for individuals who have suffered a
25 traumatic brain injury or a spinal cord injury.

26 (f) Services that are eligible for payment by the Fund
27 shall include, but not be limited to:

28 (1) Case management;

29 (2) Rehabilitative therapies and services;

30 (3) Attendant care;

31 (4) Home accessibility modifications;

32 (5) Equipment necessary for activities; and

33 (6) Family support services.

34 (g) Funds shall be expended according to the priorities
35 and criteria for disbursement established by the secretary
36 under section four of this article, and pursuant to legislative
37 rules authorized in section five of this article.

§9-10-4. Criteria and priorities for use of Fund.

1 (a) The Secretary shall establish priorities and criteria
2 for the disbursement of moneys in the Fund by conducting
3 at least one annual public meeting in each of the state's three
4 congressional districts in existence on January 1, 2018, to
5 identify the needs of citizens with traumatic brain injuries
6 and spinal cord injuries, and to identify the gaps in services
7 to these citizens. Public meetings held pursuant to the
8 requirements of this section shall be noticed and advertised
9 as public meetings, and the Secretary shall accept public
10 comments for not less than thirty days following each public
11 meeting.

12 (b) On or before December 31 of each year the Secretary
13 shall issue an annual report to the Governor and to the
14 Legislative Oversight Commission on Health and Human
15 Resources Accountability, with recommendations for
16 meeting the identified needs within the existing programs,

17 proposing statutory changes to facilitate the delivery of
18 services, improving coordination of services and
19 summarizing its actions during the preceding year.

20 (c) Moneys expended for services described under
21 section three of this article shall be as a payer of last resort
22 and only for citizens of this state. An individual shall use
23 comparable benefits and services that are available prior to
24 the expenditure of moneys available to that individual
25 through the Fund.

§9-10-5. Promulgation of legislative rules.

1 (a) The Secretary may propose legislative rules for
2 promulgation, in accordance with the provisions of §29A-
3 3-1 *et seq.* of this code, necessary for the transaction of its
4 business or to carry out the purposes of this article. The rules
5 shall include priorities and criteria for the disbursement of
6 moneys in the Fund.

7 (b) The rules of the West Virginia Traumatic Brain and
8 Spinal Cord Injury Rehabilitation Fund Board previously
9 promulgated pursuant to section three, §18-10K-1 *et seq.* of
10 this code shall remain in force and effect until the
11 promulgation of new or additional rules by the Secretary.

§9-10-6. Legislative Audit.

1 (a) On or before July 1, 2020, the Legislative Auditor
2 shall conduct a post audit of the West Virginia Traumatic
3 Brain and Spinal Cord Injury Rehabilitation Fund and report
4 its findings and recommendations to the Joint Standing
5 Committee on Government Organization.

6 (b) The post audit required by this section shall include,
7 but not be limited to, a review and comprehensive report
8 upon the following subjects:

9 (1) The Department of Health and Human Resources'
10 compliance with statutes and legislative rules governing
11 administration of the Fund.

12 (2) The adequacy of oversight controls for expenditures
13 from the Fund.

14 (3) The extent to which the Department of Health and
15 Human Resources administers the Fund to maximize the
16 number of eligible individuals served.

17 (4) The effectiveness of the Department of Health and
18 Human Resources' efforts to provide community education
19 and outreach to eligible individuals regarding the
20 availability of assistance from the Fund.

21 (5) The extent, if any, to which the functions of the Fund
22 unnecessarily duplicate the functions of other state
23 programs.

CHAPTER 18. EDUCATION.

ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND ACT.

§18-10K-1. Transfer of fund to Department of Health and Human Resources.

1 (a) Effective July 1, 2018, the West Virginia Traumatic
2 Brain and Spinal Cord Injury Rehabilitation Fund Board as
3 created by the prior enactment of this article is abolished
4 and its powers and duties are transferred to the West
5 Virginia Department of Health and Human Resources in
6 accordance with §9-10-1 *et seq.* of this code.

7 (b) The rules of the West Virginia Traumatic Brain and
8 Spinal Cord Injury Rehabilitation Fund Board shall remain in
9 force and effect until the promulgation of new or additional
10 rules by the Secretary of the Department of Health and Human
11 Resources, pursuant to §9-10-5 of this code.

12 (c) On the effective date of this section, all records
13 necessary to effectuate the purposes of §9-10-1 *et seq.* of
14 this code shall be transferred to the Secretary of the
15 Department of Health and Human Resources.

●

CHAPTER 119

**(Com. Sub. for H. B. 4001 - By Delegates Fast,
Higginbotham, Foster, McGeehan, Kessinger,
Westfall, Martin, Ambler, Butler, Queen and Sypolt)**

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

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

AN ACT to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §9-7-2, §9-7-5, and §9-7-6 of said code; to amend said code by adding thereto a new article, designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8, §9-8-9, §9-8-10, §9-8-11, and §9-8-12; and to amend and reenact §61-3-54 of said code, all relating to investigations, inspections, evaluations, and review conducted by the Department of Health and Human Resources to prevent fraud and abuse; disenrolling providers who commit fraud and requiring repayment; authorizing secretary to develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud; requiring a report on the pilot project to the Legislature; defining fraud as it relates to Medicaid; creating criminal penalties against providers for failure to keep medical records for a specific time period; authorizing a civil cause of action for fraud when a person or entity knew or reasonably should have known a claim to be false; enlarging the statute of limitations to file health care fraud civil actions; defining terms relating to public assistance; requiring the Department of Health and Human Resources to implement work requirements for applicants of Supplemental Nutrition Assistance Program (SNAP); to limit recipients to 3 months of benefits in any 36-month period unless the recipient is working or participating in a work, educational, or volunteer program for at least 20 hours a week; providing further

exemptions to work requirements; requiring discontinuance of a federal waiver in certain counties; requiring a study of the impact of the SNAP work requirements in those counties where they were implemented; eliminating the federal waiver statewide within a certain time-period; requiring a report to the Legislature; establishing work requirements; authorizing a waiver to if necessary to implement a policy that complies with federal law; authorizing rulemaking; requiring a design or establishment of a computerized income, asset, and identity verification system for each public assistance program administered by the Department of Health and Human Resources; allowing for contracting with a third-party vendor; setting out required contract terms; requiring accessing information of various federal, state, and miscellaneous sources for eligibility verification; requiring identity authentication as a condition to receive public assistance; requiring the department to study the feasibility of requiring photos on EBT cards; specifying procedures for case review of public assistance benefits; setting forth notice requirements and right to a hearing; requiring referrals for fraud, misrepresentation, and inadequate documentation; authorizing referrals of suspected cases of fraud for criminal prosecution; requiring report to the Governor and Legislature; setting forth prohibitions on the use of an electronic benefit transfer card; tracking out-of-state spending of SNAP and TANF benefits; providing for rulemaking; and providing a penalty for taking the identity of another person for the purpose of gaining employment.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-6. Powers of secretary.

- 1 Within limits of state appropriations and federal grants
- 2 and subject to provisions of state and federal laws and

3 regulations, the secretary, in addition to all other powers,
4 duties, and responsibilities granted and assigned to that
5 office in this chapter and elsewhere by law, is authorized to:

6 (1) Promulgate, amend, revise, and rescind department
7 rules respecting the organization and government of the
8 department and the execution and administration of those
9 powers, duties, and responsibilities granted and assigned by
10 this chapter and elsewhere by law to the department and the
11 secretary.

12 (2) Promulgate, amend, revise, and rescind department
13 rules and regulations respecting qualifications for receiving
14 the different classes of welfare assistance consistent with or
15 permitted by federal laws, rules and policies, but not
16 inconsistent with state law: *Provided*, That rules and
17 policies respecting qualifications shall permit the
18 expenditure of state funds to pay for care rendered in any
19 birthing center licensed under the provisions of §16-2E-1,
20 *et seq.* of this code by a licensed nurse midwife or midwife
21 as this occupation is defined in §30-15-7 of this code and
22 which care is within the scope of duties for such licensed
23 nurse midwife or midwife as permitted by the provisions of
24 section seven of said article.

25 (3) Obtain by purchase or lease grounds, buildings,
26 office or other space, equipment, facilities and services as
27 may be necessary for the execution and administration of
28 those powers, duties, and responsibilities granted and
29 assigned by this chapter and elsewhere by law to the
30 department and the secretary.

31 (4) Sign and execute in the name of the state by the State
32 Department of Health and Human Resources any contract
33 or agreement with the federal government or its agencies,
34 other states, political subdivisions of this state, corporations,
35 associations, partnerships, or individuals: *Provided*, That
36 the provisions of §5A-3-1 *et seq.* of this code are followed.

37 (5) Sign and execute a contract to implement
38 professional health care, managed care, actuarial and health
39 care-related monitoring, quality review/utilization, claims
40 processing, and independent professional consultant
41 contracts for the Medicaid program: *Provided*, That the
42 provisions of §5A-3-1 *et seq.* of this code are followed:
43 *Provided, however*, That a contract awarded under the
44 agency purchasing process from April 1, 2009, to January
45 2, 2013, remains in full force and effect and the secretary
46 retains sole authority to review, approve, and issue changes
47 to contracts issued under the former purchasing process, and
48 is responsible for challenges, disputes, protests, and legal
49 actions related to such contracts.

50 (6) Establish such special funds as may be required by
51 the federal Social Security Act, as amended, or by any other
52 Act or Acts of Congress, in order for this state to take full
53 advantage of the benefits and provisions thereof relating to
54 the federal-state assistance and federal assistance programs
55 administered by the department and to make payments into
56 and disbursements out of any such special fund or funds in
57 accordance with the requirements of the federal Social
58 Security Act, as amended, or any other Act or Acts of
59 Congress, and in accordance with applicable state law and
60 the objects and purposes of this chapter. In addition, the
61 State Department of Health and Human Resources, through
62 the secretary, is hereby authorized to accept any and all gifts
63 or grants, whether in money, land, services or materials,
64 which gift or gifts, if in the form of moneys, shall be placed
65 in a separate fund and expended solely for the purpose of
66 public assistance programs. No part of this special fund
67 shall revert to the General Revenue Funds of this state. No
68 expenses incurred pursuant to this special fund shall be a
69 charge against the General Funds of this state.

70 (7) Establish within the department an Office of
71 Inspector General for the purpose of conducting and
72 supervising investigations, performing inspections,
73 evaluations, and review, and providing quality control for

74 the programs of the department. The Office of Inspector
75 General shall be headed by the Inspector General who shall
76 report directly to the secretary. Neither the secretary nor any
77 employee of the department may prevent, inhibit, or
78 prohibit the Inspector General or his or her employees from
79 initiating, carrying out, or completing any investigation,
80 inspection, evaluation, review or other activity oversight of
81 public integrity by the Office of the Inspector General. The
82 secretary shall place within the Office of Inspector General
83 any function he or she deems necessary. Qualification,
84 compensation, and personnel practice relating to the
85 employees of the Office of the Inspector General, including
86 that of the position of Inspector General, shall be governed
87 by the classified service provisions of §29-6-1 *et seq.* of this
88 code and rules promulgated thereunder. The Inspector
89 General shall supervise all personnel of the Office of
90 Inspector General.

91 (8) Provide at department expense a program of
92 continuing professional, technical, and specialized
93 instruction for the personnel of the department.

94 (9) Pay from available funds all or part of the reasonable
95 expenses incurred by a person newly employed by the
96 department in moving his household furniture, effects, and
97 immediate family from his or her place of residence in this
98 state to his or her place of employment in this state; and to
99 pay from available funds all or part of the reasonable
100 expenses incurred by a department employee in moving his
101 or her household furniture, effects, and immediate family as
102 a result of a reassignment of the employee which is
103 considered desirable, advantageous to and in the best
104 interests of the state, but no part of the moving expenses of
105 any one such employee shall be paid more frequently than
106 once in 12 months or for any movement other than from one
107 place of employment in this state to another place of
108 employment in this state.

109 (10) Establish a program to provide reimbursement to
110 employees of the department whose items of personal

111 property, as defined by the department by policy, are
112 damaged during the course of employment or other work-
113 related activity as a result of aggressive behavior by a client
114 or patient receiving services from the department: *Provided*,
115 That such reimbursement is limited to a maximum amount
116 of \$250 per claim.

117 (11) Establish and maintain such institutions as are
118 necessary for the temporary care, maintenance, and training
119 of children and other persons.

120 (12) Prepare and submit state plans which will meet the
121 requirements of federal laws, rules governing federal-state
122 assistance and federal assistance and which are not
123 inconsistent with state law.

124 (13) Organize within the department a Board of Review,
125 consisting of a chairman appointed by the secretary and as
126 many assistants or employees of the department as may be
127 determined by the secretary and as may be required by
128 federal laws and rules respecting state assistance, federal-
129 state assistance, and federal assistance, such Board of
130 Review to have such powers of a review nature and such
131 additional powers as may be granted to it by the secretary
132 and as may be required by federal laws and rules respecting
133 federal-state assistance and federal assistance.

134 (14) Provide by rules review and appeal procedures
135 within the Department of Health and Human Resources as
136 may be required by applicable federal laws and rules
137 respecting state assistance, federal-state assistance, and
138 federal assistance and as will provide applicants for, and
139 recipients of, all classes of welfare assistance an opportunity
140 to be heard by the Board of Review, a member thereof or
141 individuals designated by the board, upon claims involving
142 denial, reduction, closure, delay, or other action or inaction
143 pertaining to public assistance.

144 (15) Provide by rules, consistent with requirements of
145 applicable federal laws and rules, application forms and

146 application procedures for the various classes of public
147 assistance.

148 (16) Provide locations for making applications for the
149 various classes of public assistance.

150 (17) Provide a citizen or group of citizens an
151 opportunity to file objections and to be heard upon
152 objections to the grant of any class of public assistance.

153 (18) Delegate to the personnel of the department all
154 powers and duties vested in the secretary, except the power
155 and authority to sign contracts and agreements.

156 (19) Make such reports in such form and containing
157 such information as may be required by applicable federal
158 laws and rules respecting federal-state assistance and
159 federal assistance.

160 (20) Invoke any legal, equitable, or special remedies for
161 the enforcement of the provisions of this chapter.

162 (21) Require a provider, subgrantee, or other entity
163 performing services on behalf of the department to comply
164 with all applicable laws, rules, and written procedures
165 pertaining to the program for which the entity is providing
166 or coordinating services, including, but not limited to,
167 policy manuals, statements of work, program instructions,
168 or other similar agreements. When submitting a claim for
169 payment, the entity shall certify that it has complied with all
170 material conditions for payment. Knowingly and
171 intentionally submitting a claim or billing for services
172 performed in material violation of any law, rule, policy, or
173 other written agreement shall constitute fraud and the
174 agreement for provision of services shall terminate. The
175 entity shall be required to repay the department for any
176 payment under the program for which the provider was not
177 entitled, regardless of whether the incorrect payment was
178 the result of department error, fraud, or other cause. A
179 demand for repayment or termination of agreement for

180 provision of services shall be subject to the due process
181 procedures pursuant to §29A-5-1 *et seq.* of this code. The
182 provisions of this subsection do not apply to fraud in the
183 Medicaid program.

184 (22) Develop a data analytics pilot program to identify
185 potential fraud and help guide policy objectives to eliminate
186 future fraud. The Secretary shall submit a report containing
187 the pilot program's results and recommendations to the
188 Joint Committee on Government and Finance no later than
189 December 31, 2020.

§9-7-2. Definitions.

1 For the purposes of this article:

2 "Assistance" means money payments, medical care,
3 transportation and other goods and services necessary for
4 the health or welfare of individuals, including guidance,
5 counseling, and other welfare services and shall include all
6 items of any nature contained within the definition of
7 "welfare assistance" in §9-1-2 of this code.

8 "Benefits" means money payments, goods, services, or
9 any other thing of value.

10 "Board and Care Facility" means a residential setting
11 where two or more unrelated adults receive nursing services
12 or personal care services.

13 "Claim" means an application for payment for goods or
14 services provided under the medical programs of the
15 Department of Health and Human Resources.

16 "Entity" means any corporation, association,
17 partnership, limited liability company, or other legal entity.

18 "Financial Exploitation" means the intentional
19 misappropriation or misuse of funds or assets of another.

20 “Fraud” means a knowing misrepresentation, knowing
21 concealment, or reckless statement of a material fact.

22 “Medicaid” means that assistance provided under a state
23 plan implemented pursuant to the provisions of subchapter
24 nineteen, chapter seven, Title 42, United States Code, as that
25 chapter has been and may hereafter be amended.

26 “Person” means any individual, corporation,
27 association, partnership, proprietor, agent, assignee, or
28 entity.

29 “Provider” means any individual or entity furnishing
30 goods or services under the medical programs of the
31 Department of Health and Human Resources.

32 “Unit” means the Medicaid Fraud Control Unit
33 established under §9-7-1 of this code.

**§9-7-5. Bribery; false claims; conspiracy; criminal penalties;
failure to maintain records.**

1 (a) A person shall not solicit, offer, pay, or receive any
2 unlawful remuneration, including any kickback, rebate or
3 bribe, directly or indirectly, with the intent of causing an
4 expenditure of moneys from the medical services fund
5 established pursuant to §9-4-2 of this code, which is not
6 authorized by applicable laws or rules and regulations.

7 (b) A person shall not make or present or cause to be
8 made or presented to the Department of Health and Human
9 Resources a claim under the medical programs of the
10 Department of Health and Human Resources knowing the
11 claim to be false, fraudulent, or fictitious.

12 (c) A person shall not enter into an agreement,
13 combination or conspiracy to obtain or aid another to obtain
14 the payment or allowance of a false, fraudulent, or fictitious
15 claim under the medical programs of the Department of
16 Health and Human Resources.

17 (d) Any person found to be in violation of §9-7-5(a), §9-
18 7-5(b) or §9-7-5(c) of this code is guilty of a felony and,
19 upon conviction, shall be imprisoned in a state correctional
20 facility not less than one nor more than 10 years or shall be
21 fined not to exceed \$10,000, or both fined and imprisoned.

22 (e) Any provider who, having submitted a claim for or
23 received a benefit, payment, or allowance under the medical
24 programs of the Department of Health and Human
25 Resources, knowingly fails to maintain such records as are
26 necessary to disclose fully the nature of a good or service
27 for which a claim was submitted or benefit, payment, or
28 allowance was received, or such records as are necessary to
29 disclose fully all income and expenditures upon which rate
30 of payment were based, for a period of at least five years
31 following the date on which payment was received, shall be
32 guilty of a misdemeanor and, upon conviction, may be
33 imprisoned in a state correctional facility not to exceed one
34 year or may be fined up to \$1,000, or both fined and
35 imprisoned. Any person who knowingly destroys such
36 records within five years from the date the benefit, payment,
37 or allowance was received, shall be guilty of a felony, and
38 may be imprisoned in a state correctional facility not less
39 than one nor more than 10 years or may be fined not to
40 exceed \$10,000, or both fined and imprisoned.

§9-7-6. Civil remedies; statute of limitations.

1 (a) Any person, firm, corporation, or other entity which
2 makes or attempts to make, or causes to be made, a claim
3 for benefits, payments, or allowances under the medical
4 programs of the Department of Health and Human
5 Resources, when such person, firm, corporation, or entity
6 knows, or reasonably should have known, such claim to be
7 false, fictitious, or fraudulent, or fails to maintain such
8 records as are necessary shall be liable to the Department of
9 Health and Human Resources in an amount equal to three
10 times the amount of such benefits, payments, or allowances
11 to which he or she or it is not entitled, and shall be liable for

12 the payment of reasonable attorney fees and all other fees
13 and costs of litigation.

14 (b) No criminal action or indictment need be brought
15 against any person, firm, corporation or other entity as a
16 condition for establishing civil liability hereunder.

17 (c) A civil action under this section may be prosecuted
18 and maintained on behalf of the Department of Health and
19 Human Resources by the Attorney General and the Attorney
20 General's assistants or a prosecuting attorney and the
21 prosecuting attorney's assistants or by any attorney in
22 contract with or employed by the Department of Health and
23 Human Resources to provide such representation.

24 (d) Any civil action brought under this section shall be
25 brought within five years from the time the false, fraudulent,
26 or fictitious claim was made. Claims will be judged based
27 on the Medicaid or program rules in existence at the time of
28 the claim submission.

ARTICLE 8. ELIGIBILITY AND FRAUD REQUIREMENTS FOR PUBLIC ASSISTANCE.

§9-8-1. Definitions.

1 As used in this article:

2 "Able bodied adult" means a person between the ages
3 of 18 and 49 years of age without dependents and who does
4 not meet any of the exemptions set forth in §9-8-2(a) of this
5 code.

6 "Applicant" or "recipient" means a person who is
7 applying for, or currently receiving, public assistance in the
8 State of West Virginia from the department.

9 "Department" means the West Virginia Department of
10 Health and Human Resources.

11 “Electronic benefit transfer” or “EBT” means any
12 electronic system which allows the department to issue and
13 track benefits via a magnetically encoded payment card.

14 “Good cause” means circumstances beyond the
15 household’s control, including, but not limited to, illness,
16 illness of another household member requiring the presence
17 of the member, a household emergency, natural disaster, a
18 declared state of emergency due to inclement weather, or
19 the unavailability of transportation.

20 “Public assistance” means government benefits
21 provided to qualifying individuals on the basis of need to
22 provide basic necessities to individuals and their families.
23 These shall include, but are not limited to, the following:

24 (A) Supplemental Nutrition Assistance Program, or
25 SNAP;

26 (B) Medicaid; and

27 (C) Temporary Assistance to Needy Families, or TANF.

28 “Secretary” means the Secretary of the West Virginia
29 Department of Health and Human Resources.

30 “Work” or “working” means:

31 (A) Work in exchange for money;

32 (B) Work in exchange for goods or services (“in kind”
33 work);

34 (C) Unpaid work, verified under standards established
35 by the department in rule; or

36 (D) Any combination thereof.

§9-8-2. Work requirements.

1 (a) All able bodied adults may receive Supplemental
2 Nutrition Assistance benefits for only three months in each

3 36-month period. Recipients are exempt from the time limit
4 if they are employed or are participating and complying
5 with the requirements of a work, education, or volunteer
6 program for at least 20 hours per week: *Provided*, That
7 further exemptions may apply and shall be determined in
8 accordance with federal law: *Provided, however*, That any
9 such exemptions shall not exceed those granted by federal
10 law.

11 (b) Beginning October 1, 2018, the department shall
12 discontinue and shall not seek federal waivers granted
13 pursuant to 7 U.S.C. § 2015(o) for Able Bodied Adults
14 Without Dependents (ABAWD) for any county that cannot
15 be demonstrated to have, through data in conformance with
16 U.S. Bureau of Labor Statistics methodology set forth under
17 federal law, a recent 12-month average unemployment rate
18 above 10 percent; a recent 24-month average
19 unemployment rate 20 percent above the national average
20 for the same 24-month period; qualification for extended
21 unemployment benefits; or designation as a “labor surplus
22 area” by the U.S. Department of Labor. These waivers
23 exempt able bodied adults with no children from work
24 requirements for receipt of SNAP benefits. Notwithstanding
25 any provision in this code to the contrary, all counties shall
26 be ineligible for any such waiver effective October 1, 2022.

27 (c) The department shall submit a report to the
28 Legislative Oversight Committee on Health and Human
29 Resources Accountability, no later than October 1, 2020, on
30 the employment impact of ABAWD requirements in those
31 counties where they were implemented as of October 1,
32 2018. The report shall include, on a county-by-county basis,
33 information on the number of SNAP recipients subject to
34 work requirements; the number exempted from work
35 requirements and the reasons for exemption; the number of
36 applicants denied benefits due to non-compliance with work
37 requirements; the dollar amount of benefits withheld due to
38 non-compliance; the estimated fiscal impact on SNAP
39 retailers of withholding those benefits; the number of
40 recipients who engaged in work, education, or volunteerism

41 in order to maintain benefits; the efforts made to assist
42 recipients with meeting work requirements in order to
43 maintain benefits; and any such recommendations
44 pertaining to work requirements as the department deems
45 advisable.

46 (d) If a recipient resides in a county subject to the
47 provisions of this article, an applicant shall be deemed as
48 complying with the requirements of a work, education, or
49 volunteer program if any of the following requirements are
50 satisfied:

51 (1) Working at least 20 hours per week, averaged
52 monthly, or 80 hours a month;

53 (2) Participating in, and complying with, the
54 requirements of a work force training program of 20 hours
55 per week, as determined by the department in rule;

56 (3) Volunteering 20 hours a week, as determined by the
57 department in rule;

58 (4) Any combination of working, volunteering and/or
59 participating in a work program for a total of 20 hours per
60 week, as determined by the department in legislative rule;
61 or

62 (5) Participating in, and complying with, a workfare
63 program as set out in 7 C.F.R. 273.24(a)(3).

64 (e) As determined by the department, if a recipient
65 would have worked an average of 20 hours per week but
66 missed some work for good cause, the recipient shall be
67 considered to have met the work requirement if the absence
68 from work is temporary and the recipient retains his or her
69 job. Good cause includes circumstances beyond the
70 household's control, such as, but not limited to, illness,
71 illness of another household member requiring the presence
72 of the member, a household emergency, natural disaster, a
73 declared state of emergency due to inclement weather, or
74 the unavailability of transportation.

75 (f) If the department determines that a waiver, or an
76 amendment to a waiver, is necessary to implement a policy
77 that complies with 7 C.F.R. 273.24, it shall request the
78 waiver or the amendment to the waiver from the United
79 States Department of Agriculture.

80 (g) The department shall propose legislative rules in
81 accordance with the provisions of this code for a plan for
82 implementation of the requirements set forth in this section
83 in counties that are subject to the requirements set forth in
84 §9-8-2 (d) of this code.

§9-8-3. Income and identity verification.

1 (a) By December 31, 2018, the department shall
2 redesign an existing system or establish a new computerized
3 income, asset, and identity eligibility verification system or
4 contract with a third-party vendor to verify eligibility,
5 eliminate the duplication of assistance, and deter waste,
6 fraud, and abuse in each public assistance program which it
7 administers.

8 (b) The department may contract with a third-party
9 vendor to develop a system to provide a service or verify
10 income, assets, and identity eligibility of applicants to
11 prevent fraud, misrepresentation, and inadequate
12 documentation when determining eligibility for public
13 assistance. This system or service shall be accessed prior to
14 determining eligibility, periodically between eligibility
15 redeterminations, and during eligibility redeterminations
16 and reviews. The department may contract with a vendor to
17 provide information to facilitate reviews of recipient
18 eligibility conducted by the department.

19 (c) A contract made pursuant to this section may not
20 include a provision that provides the vendor with a
21 monetary incentive for reducing the number of recipients.

22 (d) Nothing in this article precludes the department from
23 continuing to conduct additional eligibility verification
24 processes currently in practice.

§9-8-4. Eligibility verification.

1 All applications for benefits must be processed through
2 a system as set forth in this article. Complete applications,
3 including the interview, shall be processed within 10 days
4 of receipt or the maximum period required by federal law.
5 Prior to determining eligibility, the department shall access
6 information for every applicant from federal, state, and
7 other sources: *Provided*, That such access does not violate
8 any federal law.

§9-8-5. Identity authentication.

1 (a) Prior to awarding public assistance, applicants for
2 benefits must complete a computerized identity
3 authentication process to confirm the identity of the
4 applicant. This shall be done with a knowledge-based
5 questionnaire consisting of financial and/or personal
6 questions. The questionnaire must contain questions
7 tailored to assist persons without a bank account or those
8 who have poor access to financial and banking services or
9 who do not have an established credit history. The
10 questionnaire may be submitted online, in-person, or via
11 telephone.

12 (b) The department shall submit a report to the
13 Legislative Oversight Committee on Health and Human
14 Resources Accountability regarding the feasibility of
15 implementing the photo EBT card option under 7 U.S.C. §
16 2016(h)(9). The study shall address certain operational
17 issues to ensure that state implementation would be
18 consistent with all federal requirements, and that program
19 access is protected for participating households, including,
20 but not limited to, allowing the recipient to designate
21 permitted users for purposes of utilizing the photo EBT
22 card.

§9-8-6. Case review.

1 (a) If the information obtained from the review provided
2 in this article does not result in the department finding a

3 discrepancy or change in an applicant's or recipient's
4 circumstances affecting eligibility, the department shall not
5 take any further action and shall continue processing the
6 application.

7 (b) If the review results in a discrepancy, the department
8 shall promptly redetermine eligibility.

§9-8-7. Notice and right to be heard.

1 (a) An applicant shall be given written notice and the
2 opportunity to explain any issues with the application or
3 redetermination as set forth in §9-8-6 of this code. Self-
4 declarations by applicants or recipients shall be accepted as
5 verification of categorical and financial eligibility if no
6 other verification source is available. In cases requiring
7 expedited services an applicant's statement may be
8 temporarily accepted until such time as verification is
9 possible.

10 (b) The notice given to the applicant or recipient is
11 required to describe the circumstances of the issue, the
12 manner in which the applicant or recipient may respond, and
13 the consequences of failing to take action. If the applicant
14 does not respond timely as required by federal law, the
15 department shall take appropriate action. The department
16 may request additional information as it finds necessary to
17 reach a decision.

18 (c) An individual may respond in writing, electronically,
19 or verbally. If an individual responds verbally, staff shall
20 note the time and contents of the response in the individual's
21 file. The response by the individual may:

22 (1) Disagree with the findings of the department. The
23 department shall reinvestigate the matter if the applicant or
24 recipient disagrees. If the department finds that there has
25 been an error, the department shall take immediate action to
26 correct it. If the department determines that there is no error,
27 the department shall determine the effect of the response on

28 the applicant's or recipient's case and take appropriate
29 action. Written notice of the department's action shall be
30 given to the applicant or recipient; or

31 (2) Agree with the findings of the department. The
32 department shall determine the effect on the applicant's or
33 recipient's case and take appropriate action. Written notice
34 of the department's action shall be given to the applicant or
35 recipient.

36 (d) If the applicant fails to respond to the notice, the
37 department shall deny or discontinue assistance for failure
38 to verify information. Eligibility for assistance may not be
39 established or reestablished until the issue has been
40 resolved.

§9-8-8. Referrals for fraud, misrepresentation or inadequate documentation.

1 (a) After the case review as set forth in §9-8-6 of this
2 code, the department shall refer cases of suspected fraud to
3 the Office of Inspector General within the department. That
4 office shall take appropriate action, including civil penalties
5 or referral to an appropriate prosecuting attorney for
6 criminal prosecution.

7 (b) In cases of substantiated fraud, upon conviction, the
8 state shall review all appropriate legal options. These may
9 include, but are not limited to, removal from other public
10 assistance programs and garnishment of wages or state
11 income tax refunds until the department recovers an equal
12 amount of benefits fraudulently claimed.

13 (c) The department may refer suspected cases of fraud,
14 misrepresentation, or inadequate documentation to
15 appropriate agencies, divisions, or departments for review
16 of eligibility issues in other public assistance programs. This
17 should also include cases in which an individual is
18 determined to be no longer eligible for the original program.

§9-8-9. Reporting to the Governor and Legislature.

1 The department shall prepare an annual report by
2 January 15 each year to the Governor and Legislative
3 Oversight Commission on Health and Human Resources
4 Accountability. The report shall contain information on the
5 effectiveness and general findings of the eligibility
6 verification system, including the number of cases
7 reviewed, the number of case closures, the number of
8 referrals for criminal prosecution, recovery of improper
9 payment, collection of civil penalties, the outcomes of cases
10 referred to the Office of Inspector General, and any savings
11 that have resulted from the system.

§9-8-10. Prohibitions on use of electronic benefit transfer cards.

1 (a) To ensure that public assistance program funds are
2 used for their intended purposes, funds available on
3 electronic benefit transfer cards may not be used to purchase
4 alcohol, liquor or imitation liquor, cigarettes, tobacco
5 products, bail, gambling activities, lottery tickets, tattoos,
6 travel services provided by a travel agent, money
7 transmission to locations abroad, sexually oriented adult
8 materials, concert tickets, professional or collegiate sporting
9 event tickets, or tickets for other entertainment events
10 intended for the general public.

11 (b) Electronic benefit transfer card transactions are
12 prohibited at all casinos, gaming establishments, tattoo
13 parlors, massage parlors, body piercing parlors, spas, nail
14 salons, lingerie shops, vapor cigarette stores, psychic or
15 fortune-telling businesses, bail bond companies, video
16 arcades, movie theaters, swimming pools, cruise ships,
17 theme parks, dog or horse racing facilities, pari-mutuel
18 facilities, sexually oriented businesses, retail establishments
19 which provide adult-oriented entertainment in which
20 performers disrobe or perform in an unclothed state for
21 entertainment, and businesses or retail establishments where
22 minors under age 18 are not permitted.

23 (c) Upon enrollment, the department shall provide all
24 applicants with an itemized list of prohibited purchases,
25 including those specified in this section, and make such list
26 available on the department's website.

27 (d) If a recipient is found to have violated the provisions
28 of this section, the department shall issue a warning in
29 writing to the recipient. The recipient is subject to
30 disqualification of benefits for up to three months following
31 the first offense, for up to one year following the second
32 offense, and a permanent termination of benefits following
33 the third offense, unless expressly prohibited by federal law.

§9-8-11. Tracking out-of-state spending.

1 (a) The department shall post on its website and provide
2 to the Joint Committee on Government and Finance a report
3 of Supplemental Nutrition Assistance Program and
4 Temporary Assistance for Needy Families benefit spending
5 on or before January 15 of each year.

6 (b) The report required by this section shall include:

7 (1) The dollar amount and number of transactions of
8 Supplemental Nutrition Assistance Program benefits that
9 are accessed or spent out-of-state, by state;

10 (2) The dollar amount and number of transactions of
11 Temporary Assistance for Needy Families benefits that are
12 accessed or spent out-of-state, by state;

13 (3) The dollar amount, number of transactions and times
14 of transactions of Supplemental Nutrition Assistance
15 Program benefits that are accessed or spent in-state, by
16 retailer, institution or location; and

17 (4) The dollar amount, number of transactions and times
18 of Temporary Assistance for Needy Families transactions of
19 benefits that are accessed or spent in-state, disaggregated by
20 retailer, institution, or location.

21 (c) The report required pursuant to this section shall not
22 identify individual recipients.

§9-8-12. Rulemaking.

1 The secretary may promulgate rules for legislative
 2 approval in accordance with the provisions of §29A-3-1 *et*
 3 *seq.* of this code which he or she finds necessary to
 4 effectuate the provisions of this article.

CHAPTER 61. CRIMES AND PUNISHMENT.**ARTICLE 3. CRIMES AGAINST PROPERTY.****§61-3-54. Taking identity of another person; penalty.**

1 Any person who knowingly takes the name, birth date,
 2 social security number, or other identifying information of
 3 another person, without the consent of that other person,
 4 with the intent to fraudulently represent that he or she is the
 5 other person for the purpose of making financial or credit
 6 transactions in the other person's name, or for the purpose
 7 of gaining employment, is guilty of a felony and, upon
 8 conviction, shall be punished by confinement in the
 9 penitentiary not more than five years, or fined not more than
 10 \$1,000, or both: *Provided*, That the provisions of this
 11 section do not apply to any person who obtains another
 12 person's drivers license or other form of identification for
 13 the sole purpose of misrepresenting his or her age.

CHAPTER 120

**(Com. Sub. for H. B. 4024 - By Delegates Summers,
 Ellington, Householder, Sobonya, Atkinson, Dean,
 Hollen, Butler and Espinosa)**

[Passed March 7, 2018; in effect July 1, 2018.]
 [Approved by the Governor on March 27, 2018.]

AN ACT to repeal §9-5-18 of the Code of West Virginia, 1931,
 as amended; and to amend and reenact §9-5-9 of said code, all

relating generally to direct cremation or direct burial expenses for indigent persons; decreasing the maximum amount paid by the Department of Health and Human Resources for indigent burial or cremation; making certain relatives of the indigent person liable for direct cremation or direct burial expenses; authorizing the Department of Health and Human Resources to recover direct cremation or direct burial expenses from relatives liable for those costs; requiring affidavits be signed and filed; requiring direct cremation in certain circumstances; defining terms; and establishing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-9. Direct cremation or direct burial expenses for indigent persons.

1 (a) For the purposes of this section:

2 “Direct burial” means the removal of the remains from
3 the place of death; casket for the deceased and
4 transportation to a West Virginia cemetery.

5 “Direct cremation” includes the removal of the remains
6 from the place of death; container; and crematory fees.

7 “Spouse” means the person to whom the decedent was
8 legally married and who survived the decedent: *Provided*,
9 That a petition for divorce had not been filed by either the
10 decedent or the spouse prior to the decedent’s death.

11 (b) The Department of Health and Human Resources
12 shall pay for direct cremation or direct burial for indigent
13 persons in an amount not to exceed the actual cost of the
14 direct cremation or direct burial service provided, or \$1000
15 whichever is less.

16 (c) Prior to paying for direct cremation or direct burial,
17 the department shall determine the financial assets of a

18 deceased person and whether or not the deceased's estate or
19 any of his or her relatives who are liable for the direct
20 cremation or direct burial expenses pursuant to subsection
21 (d) of this section is financially able to pay, alone or in
22 conjunction, for the direct cremation or direct burial
23 expenses. The Department of Health and Human Resources
24 shall require that an affidavit be filed with the department,
25 in a form provided by and determined in accordance with
26 the income guidelines as set forth by the department, as well
27 as any other supporting financial information the
28 department may require, including, but not limited to, bank
29 statements and income tax information of the deceased
30 person and the relatives of the deceased person who are
31 liable for the direct cremation or direct burial expenses
32 pursuant to section nine of this article. The affidavit must
33 be:

34 (1) Signed by the heir or heirs-at-law and state that the
35 estate of the deceased person is unable to pay the costs
36 associated with direct cremation or direct burial and that the
37 sole or combined assets of the heir or heirs-at-law are not
38 sufficient to pay for the direct cremation or direct burial of
39 the deceased person; or

40 (2) Signed by the county coroner or the county health
41 officer, the attending physician or other person signing the
42 death certificate or the state medical examiner stating that
43 the deceased person has no heirs or that heirs have not been
44 located after a reasonable search and that the deceased
45 person had no estate or the estate is pecuniarily unable to
46 pay the costs associated with direct cremation or direct
47 burial.

48 (d) The relatives of an indigent person, who are of
49 sufficient ability, shall be liable to pay the direct cremation
50 or direct burial expenses in the following order:

51 (1) The spouse.

52 (2) The children.

53 (3) The parents.

54 (4) The brothers and sisters.

55 (e) The Department of Health and Human Resources
56 may proceed by motion in the circuit court of the county in
57 which the indigent person may be, against one or more of
58 the relatives liable.

59 (f) If a relative so liable does not reside in this state and
60 has no estate or debts due him or her within the state by
61 means of which the liability can be enforced against him or
62 her, the other relatives shall be liable as provided by this
63 section.

64 (g) The liability of the relative of an indigent person for
65 funeral service expenses is limited to the amount paid by the
66 Department of Health and Human Resources.

67 (h) Payment for direct burials or direct cremations for
68 indigents shall be made by the Department of Health and
69 Human Resources to the West Virginia funeral director
70 licensed pursuant to §30-6-9 of this code or a crematory
71 operator certificated pursuant to §30-6-11 of this code that
72 provided the direct burial or direct cremation, as the
73 department may determine, pursuant to appropriations for
74 expenditures made by the Legislature. Nothing in this
75 section shall prohibit a family from holding a memorial
76 service for the indigent person: *Provided*, That payment
77 under this section is limited to direct burial and direct
78 cremation and may not include payment for a memorial
79 service.

80 (i) In the event that no family members can be found, or
81 refuse to participate, an application for payment of direct
82 cremation or direct burial for indigent persons may be
83 submitted to the Department of Health and Human
84 Resources by the provider of such services.

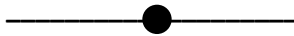
85 (j) A direct cremation may not be made of the decedent
86 if objectionable pursuant to decedent's religion or otherwise

87 prohibited by federal law, state law or regulation, in which
 88 case, alternate funeral service expenses shall be substituted.
 89 In the absence of a religious objection or prohibition by
 90 federal law, state law or regulation, an indigent for which
 91 payment under this section is authorized shall be cremated.

92 (k) A person who knowingly swears falsely in an
 93 affidavit required by this section shall be guilty of a
 94 misdemeanor and, upon conviction thereof, shall be fined
 95 not more than \$1,000 or confined in jail for a period of not
 96 more than six months, or both fined and confined.

§9-5-18. Repealed.

1 [Repealed.]



CHAPTER 121

**(Com. Sub. for H. B. 4279 - By Delegates Rowan,
 Fast, Moye, Paynter, Pethtel, Rohrbach, Eldridge,
 Lynch, Maynard, Lovejoy and Fleischauer)**

[Passed March 6, 2018; in effect ninety days from passage.]
 [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §9-6-1 and §9-6-2 of the Code of West Virginia, 1931, as amended, relating to adult protective services system; defining terms; and adding a goal that must be consider when creating a rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

1 As used in this article:

2 (1) “Adult protective services agency” means any public
3 or nonprofit private agency, corporation, board or
4 organization furnishing protective services to adults;

5 (2) “Abuse” means the infliction or threat to inflict
6 physical pain or injury on or the imprisonment of any
7 incapacitated adult or facility resident;

8 (3) “Neglect” means the unreasonable failure by a
9 caregiver to provide the care necessary to assure the
10 physical safety or health of an incapacitated adult;

11 (4) “Incapacitated adult” means any person who by
12 reason of physical, mental or other infirmity is unable to
13 independently carry on the daily activities of life necessary
14 to sustaining life and reasonable health;

15 (5) “Emergency” or “emergency situation” means a
16 situation or set of circumstances which presents a
17 substantial and immediate risk of death or serious injury to
18 an incapacitated adult;

19 (6) “Financial exploitation” means the intentional
20 misappropriation or misuse of funds or assets of an
21 incapacitated adult or facility resident, but does not apply to
22 a transaction or disposition of funds or assets where a person
23 made a good faith effort to assist the incapacitated adult or
24 facility resident with the management of his or her money
25 or other things of value;

26 (7) “Legal representative” means a person lawfully
27 invested with the power and charged with the duty of taking
28 care of another person or with managing the property and
29 rights of another person, including, but not limited to, a
30 guardian, conservator, medical power of attorney
31 representative, trustee or other duly appointed person;

32 (8) “Nursing home” or “facility” means any institution,
33 residence, intermediate care facility for individuals with an
34 intellectual disability, care home or any other adult
35 residential facility, or any part or unit thereof, that is subject

36 to the provisions of §16-5C-1 *et seq.*, §16-5D-1 *et seq.* §16-
37 5E-1 *et seq.*, or §16-5H-1 *et seq.* §16-5C-1 *et seq.* of this
38 code;

39 (9) “Regional long-term care ombudsman” means any
40 paid staff of a designated regional long-term care
41 ombudsman program who has obtained appropriate
42 certification from the Bureau for Senior Services and meets
43 the qualifications set forth in §16-5I-7 of this code;

44 (10) “Facility resident” means an individual living in a
45 nursing home or other facility, as that term is defined in
46 subdivision (7) of this section;

47 (11) “Responsible family member” means a member of
48 a resident’s family who has undertaken primary
49 responsibility for the care of the resident and who has
50 established a working relationship with the nursing home or
51 other facility in which the resident resides. For purposes of
52 this article, a responsible family member may include
53 someone other than the resident’s legal representative;

54 (12) “State Long-term Care Ombudsman” means an
55 individual who meets the qualifications of §16-5I-5 of this
56 code and who is employed by the State Bureau for Senior
57 Services to implement the State Long-term Care
58 Ombudsman Program;

59 (13) “Secretary” means the Secretary of the Department
60 of Health and Human Resources.

61 (14) “Caregiver” means a person or entity who cares for
62 or shares in the responsibility for the care of an incapacitated
63 adult on a full-time or temporary basis, regardless of
64 whether such person or entity has been designated as a
65 guardian or custodian of the incapacitated adult by any
66 contract, agreement or legal procedures. Caregiver includes
67 health care providers, family members, and any person who
68 otherwise voluntarily accepts a supervisory role towards an
69 incapacitated adult.

§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.

1 (a) There is continued within the Department of Health
2 and Human Resources the system of adult protective
3 services heretofore existing.

4 (b) The secretary shall propose rules for legislative
5 approval in accordance with the provisions of §29A-3-1 *et*
6 *seq.* of this code regarding the organization and duties of the
7 adult protective services system and the procedures to be
8 used by the department to effectuate the purposes of this
9 article. The rules may be amended and supplemented from
10 time to time.

11 (c) The secretary shall design and arrange such rules to
12 attain, or move toward the attainment, of the following goals
13 to the extent that the secretary believes feasible under the
14 provisions of this article within the state appropriations and
15 other funds available:

16 (1) Assisting adults who are abused, neglected,
17 financially exploited or incapacitated in achieving or
18 maintaining self-sufficiency and self-support and
19 preventing, reducing and eliminating their dependency on
20 the state;

21 (2) Preventing, reducing and eliminating neglect,
22 financial exploitation and abuse of adults who are unable to
23 protect their own interests;

24 (3) Preventing and reducing institutional care of adults
25 by providing less intensive forms of care, preferably in the
26 home;

27 (4) Referring and admitting abused, neglected,
28 financially exploited or incapacitated adults to institutional
29 care only where other available services are inappropriate;

30 (5) Providing services and monitoring to adults in
31 institutions designed to assist adults in returning to
32 community settings;

33 (6) Preventing, reducing and eliminating the
34 exploitation of incapacitated adults and facility residents
35 through the joint efforts of the various agencies of the
36 Department of Health and Human Resources, the adult
37 protective services system, the state and regional long-term
38 care ombudsmen, administrators of nursing homes or other
39 residential facilities and county prosecutors;

40 (7) Preventing, reducing and eliminating abuse, neglect,
41 and financial exploitation of residents in nursing homes or
42 facilities; and

43 (8) Coordinating investigation activities for complaints
44 of financial exploitation, abuse and neglect of incapacitated
45 adults and facility residents among the various agencies of
46 the Department of Health and Human Resources, the adult
47 protective services system, the state and regional long-term
48 care ombudsmen, administrators of nursing homes or other
49 residential facilities, county prosecutors, if necessary, and
50 other state or federal agencies or officials, as appropriate.

51 (d) No adult protective services caseworker may be held
52 personally liable for any professional decision or action
53 thereupon arrived at in the performance of his or her official
54 duties as set forth in this section or agency rules
55 promulgated thereupon: *Provided*, That nothing in this
56 subsection protects any adult protective services worker
57 from any liability arising from the operation of a motor
58 vehicle or for any loss caused by gross negligence, willful
59 and wanton misconduct or intentional misconduct.

60 (e) The rules proposed by the secretary shall provide for
61 the means by which the department shall cooperate with
62 federal, state and other agencies to fulfill the objectives of
63 the system of adult protective services.

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CHAPTER 122

**(Com. Sub. for H. B. 4453 - By Delegates Shott,
Fleischauer, Pethtel, Isner, Lovejoy, Hornbuckle,
Byrd, Canestraro, Lane, Moore and Summers)**

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §9-2-13 of the Code of West Virginia, 1931, as amended, relating to judicial review of contested cases under the West Virginia Department of Health and Human Resources Board of Review; correcting an error by changing “not” to “or”; and making other technical changes.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. COMMISSIONER OF HUMAN SERVICES;
POWERS, DUTIES AND RESPONSIBILITIES
GENERALLY.**

§9-2-13. Judicial review of decisions of contested cases.

1 (a) For purposes of this section:

2 (1) “Agency” means the Board of Review or the Bureau
3 for Medical Services, as the case may be, that has been
4 named as a party to any proceeding on appeal made pursuant
5 to the provisions of this section.

6 (2) “Board of Review” or “Board” means the West
7 Virginia Department of Health and Human Resources
8 Board of Review operating pursuant to the provisions of §9-
9 2-6 (13) of this code.

10 (3) "Bureau" means the Department of Health and
11 Human Resources' Bureau for Medical Services which is
12 the single state agency for Medicaid services in West
13 Virginia.

14 (b) The board shall provide a fair, impartial and
15 expeditious grievance and appeal process to applicants or
16 recipients of state assistance, federal assistance, federal-
17 state assistance or welfare assistance, as defined in §9-1-1
18 *et seq.* of this code. The bureau shall provide a fair, impartial
19 and expeditious grievance and appeal process to providers
20 of Medicaid services.

21 (c) Any party adversely affected or aggrieved by a final
22 decision or order of the agency may seek judicial review of
23 that decision.

24 (d) Proceedings for review shall be instituted by filing a
25 petition, at the election of the petitioner, in either the circuit
26 court of Kanawha County, West Virginia, or in the circuit
27 court of the county in which the petitioner or any one of the
28 petitioners resides or does business, or with the judge
29 thereof in vacation, within thirty days after the date upon
30 which such party received notice of the final order or
31 decision of the agency. A copy of the petition shall be served
32 upon the agency and all other parties of record by registered
33 or certified mail. The petition shall state whether the appeal
34 is taken on questions of law or questions of fact, or both. No
35 appeal bond is required to effect any such appeal.

36 (e) The filing of the petition for appeal does not stay or
37 supersede enforcement of the final decision or order of the
38 agency. The agency may voluntarily stay such enforcement
39 and the appellant, at any time after the filing of the petition
40 for appeal, may apply to the circuit court of Kanawha
41 County, or in the circuit court of the county in which the
42 petitioner or any one of the petitioners resides or does
43 business, for a stay of or to supersede the final decision or
44 order. Pending the appeal, the circuit court may grant a stay

45 or supersede the order upon such terms as it considers
46 proper.

47 (f) Within 15 days after receipt of a copy of the petition
48 by the agency, or within such further time as the court may
49 allow, the agency shall prepare and transmit to the circuit
50 court of Kanawha County, or in the circuit court of the
51 county in which the petitioner or any one of the petitioners
52 resides or does business, the original or a certified copy of
53 the entire record of the proceeding under review: *Provided,*
54 That all records prepared and transmitted that involve a
55 minor shall be filed under seal. This shall include a
56 transcript of all reported testimony and all exhibits, papers,
57 motions, documents, evidence, records, agency staff
58 memoranda and data used in consideration of the case, all
59 briefs, memoranda, papers, and records considered by the
60 agency in the underlying proceeding and a statement of
61 matters officially noted. By stipulation of the parties, the
62 record may be shortened. In the event the complete record
63 is not filed with the court within the time provided for in this
64 section, the appellant may apply to the court to have the case
65 docketed and the court shall order the agency to file the
66 record.

67 (g) The cost of preparing the official record shall be
68 assessed as part of the costs of the appeal. The appellant
69 shall provide security for costs satisfactory to the court. Any
70 party unreasonably refusing to stipulate to limit the record
71 may be assessed by the court for the additional costs
72 involved. Upon demand by any party to the appeal, the
73 agency shall furnish, at cost to the requesting party, a copy
74 of the official record.

75 (h) The court shall hear appeals upon assignments of
76 error filed in the petition or set out in the briefs filed by the
77 parties. The court may disregard errors not argued by brief
78 or may consider errors that are not assigned or argued. The
79 court shall fix a date and time for the hearing on the petition.
80 Unless otherwise agreed by the parties, the court may not
81 schedule the hearing sooner than 10 days after the filing of

82 the petition for appeal. The petitioner shall provide notice
83 of the date and time of the hearing to the agency.

84 (i) In cases involving alleged irregularities in procedure
85 before the agency that are not shown in the record, the court
86 may take additional testimony. Otherwise, the circuit court
87 shall review the appeal without a jury and may only consider
88 the official record provided pursuant to the requirements of
89 this section. The court may hear oral arguments and require
90 written briefs.

91 (j) The court may affirm the final decision or order of
92 the agency or remand the matter for further proceedings.
93 The court may reverse, vacate or modify the final decision
94 or order of the agency only if the substantial rights of the
95 petitioner have been prejudiced because the administrative
96 findings, inferences, conclusions, decision or order are:

97 (1) In violation of constitutional or statutory provisions;

98 (2) In excess of the statutory authority or jurisdiction of
99 the agency;

100 (3) Made upon unlawful procedures;

101 (4) Affected by other error of law;

102 (5) Clearly wrong in view of the reliable, probative, and
103 substantial evidence on the whole record; or

104 (6) Arbitrary or capricious or characterized by an abuse
105 of discretion or clearly unwarranted exercise of discretion.

106 (k) The judgment of the circuit court is final unless
107 reversed, vacated or modified on appeal to the West
108 Virginia Supreme Court of Appeals.

109 (l) The process established by this section is the
110 exclusive remedy for judicial review of final decisions of
111 the Board of Review and the Bureau for Medical Services.

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CHAPTER 123

(Com. Sub. for S. B. 46 - By Senators Cline and Takubo)

[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 §33-51-9, relating to pharmacy benefit managers; providing that a pharmacy, pharmacist, or pharmacy technician may inform consumers of lower cost alternatives and cost share to assist health care consumers in making informed decisions; prohibiting pharmacy benefit managers from penalizing a pharmacy, pharmacist, or pharmacy technician for discussing certain information with consumers; prohibiting pharmacy benefit managers from collecting cost shares exceeding the total submitted charges by a pharmacy, pharmacist, or pharmacy technician; setting forth limitations on pharmacy benefit managers when charging certain adjudicated claim fees to a pharmacy, pharmacist, or pharmacy technician; and excluding an employee benefit plan under the Employee Retirement Income Security Act of 1974 or Medicare Part D from this code section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 51. PHARMACY AUDIT INTEGRITY AND TRANSPARENCY ACT.

§33-51-9. Regulation of Pharmacy Benefit Managers.

1 (a) A pharmacy, a pharmacist, and a pharmacy
2 technician shall have the right to provide a covered

3 individual with information related to lower cost
4 alternatives and cost share for such covered individual to
5 assist health care consumers in making informed
6 decisions. Neither a pharmacy, a pharmacist, nor a
7 pharmacy technician shall be penalized by a pharmacy
8 benefit manager for discussing information in this section
9 or for selling a lower cost alternative to a covered
10 individual, if one is available, without using a health
11 insurance policy.

12 (b) A pharmacy benefit manager shall not collect from
13 a pharmacy, a pharmacist, or a pharmacy technician a cost
14 share charged to a covered individual that exceeds the total
15 submitted charges by the pharmacy or pharmacist to the
16 pharmacy benefit manager.

17 (c) A pharmacy benefit manager may only directly or
18 indirectly charge or hold a pharmacy, a pharmacist, or a
19 pharmacy technician responsible for a fee related to the
20 adjudication of a claim if:

21 (1) The total amount of the fee is identified, reported,
22 and specifically explained for each line item on the
23 remittance advice of the adjudicated claim; or

24 (2) The total amount of the fee is apparent at the point
25 of sale and not adjusted between the point of sale and the
26 issuance of the remittance advice.

27 (d) This section shall not apply with respect to claims
28 under an employee benefit plan under the Employee
29 Retirement Income Security Act of 1974 or Medicare Part D.

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CHAPTER 124

(S. B. 242 - By Senators Trump, Blair, Maroney and Rucker)

[Passed March 8, 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 §33-6-38; to amend said code by adding thereto a new section, designated §33-15-4p; to amend said code by adding thereto a new section, designated §33-16-3zz; and to amend said code by adding thereto a new section, designated §33-25A-8p, all relating to requiring health insurance providers to provide coverage for long-term antibiotic therapy for a patient with Lyme disease.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-38. Lyme disease to be covered by all health insurance policies.

1 All individual and group health insurance policies
2 providing coverage on an expense-incurred basis and
3 individual and group service or indemnity type contracts
4 issued by a nonprofit corporation shall provide coverage for
5 long-term antibiotic therapy for a patient with Lyme disease
6 when determined to be medically necessary and ordered by
7 a licensed physician after making a thorough evaluation of
8 the patient's symptoms, diagnostic test results, or response
9 to treatment.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**§33-15-4p. Lyme disease to be covered by all health insurance policies.**

1 Any insurer who, on or after January 1, 2019, delivers or
2 issues a policy of accident and sickness insurance in this state
3 under the provisions of this article shall make available as
4 benefits to all subscribers and members coverage on an
5 expense-incurred basis and individual and group service or
6 indemnity type contracts issued by a nonprofit corporation
7 shall provide coverage for long-term antibiotic therapy for a
8 patient with Lyme disease when determined to be medically
9 necessary and ordered by a licensed physician after making a
10 thorough evaluation of the patient's symptoms, diagnostic
11 test results, or response to treatment.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**§33-16-3zz. Lyme disease to be covered by all health insurance policies.**

1 Any insurer who, on or after January 1, 2019, delivers or
2 issues a policy of group accident and sickness insurance in
3 this state under the provisions of this article shall make
4 available as benefits to all subscribers and members coverage
5 on an expense-incurred basis and individual and group
6 service or indemnity type contracts issued by a nonprofit
7 corporation shall provide coverage for long-term antibiotic
8 therapy for a patient with Lyme disease when determined to
9 be medically necessary and ordered by a licensed physician
10 after making a thorough evaluation of the patient's
11 symptoms, diagnostic test results, or response to treatment.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**§33-25A-8p. Lyme disease to be covered by all health insurance policies.**

1 A health maintenance organization issuing coverage in
2 this state pursuant to the provisions of this article shall make

3 available as benefits to all subscribers and members
4 coverage on an expense-incurred basis and individual and
5 group service or indemnity type contracts issued by a
6 nonprofit corporation shall provide coverage for long-term
7 antibiotic therapy for a patient with Lyme disease when
8 determined to be medically necessary and ordered by a
9 licensed physician after making a thorough evaluation of the
10 patient's symptoms, diagnostic test results, or response to
11 treatment.



CHAPTER 125

**(S. B. 299 - By Senators Boley, Boso, Drennan,
Facemire, Ferns, Gaunch, Maroney, Palumbo,
Plymale, Prezioso, Stollings and Blair)**

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-15-4q; to amend said code by adding thereto a new section, designated §33-16-3bb; to amend said code by adding thereto a new section, designated §33-24-7q; to amend said code by adding thereto a new section, designated §33-25-8n; and to amend said code by adding thereto a new section, designated §33-25A-8q, all relating to mandatory insurance coverage, up to the age of 20, for certain medical foods for amino acid-based formulas; providing a list of diagnosed conditions for which insurance coverage should extend; providing that coverage extends to medically necessary foods for home use when prescribed by a physician; defining terms; and providing for exclusions from such coverage.

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 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.**

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan, and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

1 (a) The agency shall establish a group hospital and
2 surgical insurance plan or plans, a group prescription drug
3 insurance plan or plans, a group major medical insurance
4 plan or plans and a group life and accidental death insurance
5 plan or plans for those employees herein made eligible and
6 establish and promulgate rules for the administration of
7 these plans subject to the limitations contained in this
8 article. These plans shall include:

9 (1) Coverages and benefits for x-ray and laboratory
10 services in connection with mammograms when medically
11 appropriate and consistent with current guidelines from the
12 United States Preventive Services Task Force; pap smears,
13 either conventional or liquid-based cytology, whichever is
14 medically appropriate and consistent with the current
15 guidelines from either the United States Preventive Services
16 Task Force or The American College of Obstetricians and
17 Gynecologists; and a test for the human papilloma virus
18 (HPV) when medically appropriate and consistent with
19 current guidelines from either the United States Preventive
20 Services Task Force or the American College of
21 Obstetricians and Gynecologists, when performed for

22 cancer screening or diagnostic services on a woman age 18
23 or over;

24 (2) Annual checkups for prostate cancer in men age 50
25 and over;

26 (3) Annual screening for kidney disease as determined
27 to be medically necessary by a physician using any
28 combination of blood pressure testing, urine albumin or
29 urine protein testing, and serum creatinine testing as
30 recommended by the National Kidney Foundation;

31 (4) For plans that include maternity benefits, coverage
32 for inpatient care in a duly licensed healthcare facility for a
33 mother and her newly born infant for the length of time
34 which the attending physician considers medically
35 necessary for the mother or her newly born child. No plan
36 may deny payment for a mother or her newborn child prior
37 to 48 hours following a vaginal delivery or prior to 96 hours
38 following a caesarean section delivery if the attending
39 physician considers discharge medically inappropriate;

40 (5) For plans which provide coverages for post-delivery
41 care to a mother and her newly born child in the home,
42 coverage for inpatient care following childbirth as provided
43 in §5-16-7(a)(4) of this code if inpatient care is determined
44 to be medically necessary by the attending physician. These
45 plans may include, among other things, medicines, medical
46 equipment, prosthetic appliances, and any other inpatient
47 and outpatient services and expenses considered appropriate
48 and desirable by the agency; and

49 (6) Coverage for treatment of serious mental illness:

50 (A) The coverage does not include custodial care,
51 residential care, or schooling. For purposes of this section,
52 "serious mental illness" means an illness included in the
53 American Psychiatric Association's diagnostic and
54 statistical manual of mental disorders, as periodically
55 revised, under the diagnostic categories or

56 subclassifications of: (i) Schizophrenia and other psychotic
57 disorders; (ii) bipolar disorders; (iii) depressive disorders;
58 (iv) substance-related disorders with the exception of
59 caffeine-related disorders and nicotine-related disorders; (v)
60 anxiety disorders; and (vi) anorexia and bulimia. With
61 regard to a covered individual who has not yet attained the
62 age of 19 years, “serious mental illness” also includes
63 attention deficit hyperactivity disorder, separation anxiety
64 disorder, and conduct disorder.

65 (B) Notwithstanding any other provision in this section
66 to the contrary, if the agency demonstrates that its total costs
67 for the treatment of mental illness for any plan exceeds two
68 percent of the total costs for such plan in any experience
69 period, then the agency may apply whatever additional cost-
70 containment measures may be necessary in order to
71 maintain costs below two percent of the total costs for the
72 plan for the next experience period. These measures may
73 include, but are not limited to, limitations on inpatient and
74 outpatient benefits.

75 (C) The agency shall not discriminate between medical-
76 surgical benefits and mental health benefits in the
77 administration of its plan. With regard to both medical-
78 surgical and mental health benefits, it may make
79 determinations of medical necessity and appropriateness
80 and it may use recognized healthcare quality and cost
81 management tools including, but not limited to, limitations
82 on inpatient and outpatient benefits, utilization review,
83 implementation of cost-containment measures,
84 preauthorization for certain treatments, setting coverage
85 levels, setting maximum number of visits within certain
86 time periods, using capitated benefit arrangements, using
87 fee-for-service arrangements, using third-party
88 administrators, using provider networks, and using patient
89 cost sharing in the form of copayments, deductibles, and
90 coinsurance.

91 (7) Coverage for general anesthesia for dental
92 procedures and associated outpatient hospital or ambulatory

93 facility charges provided by appropriately licensed
94 healthcare individuals in conjunction with dental care if the
95 covered person is:

96 (A) Seven years of age or younger or is developmentally
97 disabled and is an individual for whom a successful result
98 cannot be expected from dental care provided under local
99 anesthesia because of a physical, intellectual, or other
100 medically compromising condition of the individual and for
101 whom a superior result can be expected from dental care
102 provided under general anesthesia.

103 (B) A child who is 12 years of age or younger with
104 documented phobias or with documented mental illness and
105 with dental needs of such magnitude that treatment should
106 not be delayed or deferred and for whom lack of treatment
107 can be expected to result in infection, loss of teeth, or other
108 increased oral or dental morbidity and for whom a
109 successful result cannot be expected from dental care
110 provided under local anesthesia because of such condition
111 and for whom a superior result can be expected from dental
112 care provided under general anesthesia.

113 (8) (A) Any plan issued or renewed on or after January
114 1, 2012, shall include coverage for diagnosis, evaluation,
115 and treatment of autism spectrum disorder in individuals
116 ages 18 months to 18 years. To be eligible for coverage and
117 benefits under this subdivision, the individual must be
118 diagnosed with autism spectrum disorder at age eight or
119 younger. Such plan shall provide coverage for treatments
120 that are medically necessary and ordered or prescribed by a
121 licensed physician or licensed psychologist and in
122 accordance with a treatment plan developed from a
123 comprehensive evaluation by a certified behavior analyst
124 for an individual diagnosed with autism spectrum disorder.

125 (B) The coverage shall include, but not be limited to,
126 applied behavior analysis which shall be provided or
127 supervised by a certified behavior analyst. The annual
128 maximum benefit for applied behavior analysis required by

129 this subdivision shall be in an amount not to exceed \$30,000
130 per individual for three consecutive years from the date
131 treatment commences. At the conclusion of the third year,
132 coverage for applied behavior analysis required by this
133 subdivision shall be in an amount not to exceed \$2,000 per
134 month, until the individual reaches 18 years of age, as long
135 as the treatment is medically necessary and in accordance
136 with a treatment plan developed by a certified behavior
137 analyst pursuant to a comprehensive evaluation or
138 reevaluation of the individual. This subdivision does not
139 limit, replace or affect any obligation to provide services to
140 an individual under the Individuals with Disabilities
141 Education Act, 20 U. S. C. §1400 *et seq.*, as amended from
142 time to time or other publicly funded programs. Nothing in
143 this subdivision requires reimbursement for services
144 provided by public school personnel.

145 (C) The certified behavior analyst shall file progress
146 reports with the agency semiannually. In order for treatment
147 to continue, the agency must receive objective evidence or
148 a clinically supportable statement of expectation that:

149 (i) The individual's condition is improving in response
150 to treatment;

151 (ii) A maximum improvement is yet to be attained; and

152 (iii) There is an expectation that the anticipated
153 improvement is attainable in a reasonable and generally
154 predictable period of time.

155 (D) On or before January 1 each year, the agency shall
156 file an annual report with the Joint Committee on
157 Government and Finance describing its implementation of
158 the coverage provided pursuant to this subdivision. The
159 report shall include, but not be limited to, the number of
160 individuals in the plan utilizing the coverage required by
161 this subdivision, the fiscal and administrative impact of the
162 implementation and any recommendations the agency may
163 have as to changes in law or policy related to the coverage

164 provided under this subdivision. In addition, the agency
165 shall provide such other information as required by the Joint
166 Committee on Government and Finance as it may request.

167 (E) For purposes of this subdivision, the term:

168 (i) “Applied behavior analysis” means the design,
169 implementation and evaluation of environmental
170 modifications using behavioral stimuli and consequences in
171 order to produce socially significant improvement in human
172 behavior and includes the use of direct observation,
173 measurement, and functional analysis of the relationship
174 between environment and behavior.

175 (ii) “Autism spectrum disorder” means any pervasive
176 developmental disorder including autistic disorder,
177 Asperger’s Syndrome, Rett Syndrome, childhood
178 disintegrative disorder, or Pervasive Development Disorder
179 as defined in the most recent edition of the Diagnostic and
180 Statistical Manual of Mental Disorders of the American
181 Psychiatric Association.

182 (iii) “Certified behavior analyst” means an individual
183 who is certified by the Behavior Analyst Certification Board
184 or certified by a similar nationally recognized organization.

185 (iv) “Objective evidence” means standardized patient
186 assessment instruments, outcome measurements tools, or
187 measurable assessments of functional outcome. Use of
188 objective measures at the beginning of treatment, during,
189 and after treatment is recommended to quantify progress
190 and support justifications for continued treatment. The tools
191 are not required but their use will enhance the justification
192 for continued treatment.

193 (F) To the extent that the application of this subdivision
194 for autism spectrum disorder causes an increase of at least
195 one percent of actual total costs of coverage for the plan
196 year, the agency may apply additional cost containment
197 measures.

198 (G) To the extent that the provisions of this subdivision
199 require benefits that exceed the essential health benefits
200 specified under section 1302(b) of the Patient Protection
201 and Affordable Care Act, Pub. L. No. 111-148, as amended,
202 the specific benefits that exceed the specified essential
203 health benefits shall not be required of insurance plans
204 offered by the Public Employees Insurance Agency.

205 (9) For plans that include maternity benefits, coverage
206 for the same maternity benefits for all individuals
207 participating in or receiving coverage under plans that are
208 issued or renewed on or after January 1, 2014: *Provided,*
209 That to the extent that the provisions of this subdivision
210 require benefits that exceed the essential health benefits
211 specified under section 1302(b) of the Patient Protection
212 and Affordable Care Act, Pub. L. No. 111-148, as amended,
213 the specific benefits that exceed the specified essential
214 health benefits shall not be required of a health benefit plan
215 when the plan is offered in this state.

216 (10) (A) A policy, plan, or contract that is issued or
217 renewed on or after January 1, 2019, and that is subject to
218 this section, shall provide coverage, through the age of 20,
219 for amino acid-based formula for the treatment of severe
220 protein-allergic conditions or impaired absorption of
221 nutrients caused by disorders affecting the absorptive
222 surface, function, length, and motility of the gastrointestinal
223 tract. This includes the following conditions, if diagnosed
224 as related to the disorder by a physician licensed to practice
225 in this state pursuant to either §30-3-1 *et seq.* or §30-14-1
226 *et seq.* of this code:

227 (i) Immunoglobulin E and Nonimmunoglobulin E-
228 medicated allergies to multiple food proteins;

229 (ii) Severe food protein-induced enterocolitis syndrome;

230 (iii) Eosinophilic disorders as evidenced by the results
231 of a biopsy; and

232 (iv) Impaired absorption of nutrients caused by
233 disorders affecting the absorptive surface, function, length,
234 and motility of the gastrointestinal tract (short bowel).

235 (B) The coverage required by §5-16-7(a)(10)(A) of this
236 code shall include medical foods for home use for which a
237 physician has issued a prescription and has declared them to
238 be medically necessary, regardless of methodology of
239 delivery.

240 (C) For purposes of this subdivision, “medically
241 necessary foods” or “medical foods” shall mean
242 prescription amino acid-based elemental formulas obtained
243 through a pharmacy: *Provided*, That these foods are
244 specifically designated and manufactured for the treatment
245 of severe allergic conditions or short bowel.

246 (D) The provisions of this subdivision shall not apply to
247 persons with an intolerance for lactose or soy.

248 (b) The agency shall, with full authorization, make
249 available to each eligible employee, at full cost to the
250 employee, the opportunity to purchase optional group life
251 and accidental death insurance as established under the rules
252 of the agency. In addition, each employee is entitled to have
253 his or her spouse and dependents, as defined by the rules of
254 the agency, included in the optional coverage, at full cost to
255 the employee, for each eligible dependent.

256 (c) The finance board may cause to be separately rated
257 for claims experience purposes:

258 (1) All employees of the State of West Virginia;

259 (2) All teaching and professional employees of state
260 public institutions of higher education and county boards of
261 education;

262 (3) All nonteaching employees of the Higher Education
263 Policy Commission, West Virginia Council for Community

264 and Technical College Education and county boards of
265 education; or

266 (4) Any other categorization which would ensure the
267 stability of the overall program.

268 (d) The agency shall maintain the medical and
269 prescription drug coverage for Medicare- eligible retirees by
270 providing coverage through one of the existing plans or by
271 enrolling the Medicare-eligible retired employees into a
272 Medicare-specific plan, including, but not limited to, the
273 Medicare/Advantage Prescription Drug Plan. If a Medicare-
274 specific plan is no longer available or advantageous for the
275 agency and the retirees, the retirees remain eligible for
276 coverage through the agency.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance, and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

1 (a) The director is hereby given exclusive authorization
2 to execute such contract or contracts as are necessary to
3 carry out the provisions of this article and to provide the
4 plan or plans of group hospital and surgical insurance
5 coverage, group major medical insurance coverage, group
6 prescription drug insurance coverage, and group life and
7 accidental death insurance coverage selected in accordance
8 with the provisions of this article, such contract or contracts
9 to be executed with one or more agencies, corporations,
10 insurance companies or service organizations licensed to
11 sell group hospital and surgical insurance, group major
12 medical insurance, group prescription drug insurance and
13 group life and accidental death insurance in this state.

14 (b) The group hospital or surgical insurance coverage
15 and group major medical insurance coverage herein

16 provided shall include coverages and benefits for x-ray and
17 laboratory services in connection with mammogram and
18 pap smears when performed for cancer screening or
19 diagnostic services and annual checkups for prostate cancer
20 in men age 50 and over. Such benefits shall include, but not
21 be limited to, the following:

22 (1) Mammograms when medically appropriate and
23 consistent with the current guidelines from the United States
24 Preventive Services Task Force;

25 (2) A pap smear, either conventional or liquid-based
26 cytology, whichever is medically appropriate and consistent
27 with the current guidelines from the United States
28 Preventive Services Task Force or The American College
29 of Obstetricians and Gynecologists, for women age 18 and
30 over;

31 (3) A test for the human papilloma virus (HPV) for
32 women age 18 or over, when medically appropriate and
33 consistent with the current guidelines from either the United
34 States Preventive Services Task Force or the American
35 College of Obstetricians and Gynecologists for women age
36 18 and over;

37 (4) A checkup for prostate cancer annually for men age
38 50 or over; and

39 (5) Annual screening for kidney disease as determined
40 to be medically necessary by a physician using any
41 combination of blood pressure testing, urine albumin or
42 urine protein testing, and serum creatinine testing as
43 recommended by the National Kidney Foundation.

44 (6) Coverage for general anesthesia for dental
45 procedures and associated outpatient hospital or ambulatory
46 facility charges provided by appropriately licensed
47 healthcare individuals in conjunction with dental care if the
48 covered person is:

49 (A) Seven years of age or younger or is developmentally
50 disabled and is either an individual for whom a successful
51 result cannot be expected from dental care provided under
52 local anesthesia because of a physical, intellectual, or other
53 medically compromising condition of the individual and for
54 whom a superior result can be expected from dental care
55 provided under general anesthesia; or

56 (B) A child who is 12 years of age or younger with
57 documented phobias, or with documented mental illness,
58 and with dental needs of such magnitude that treatment
59 should not be delayed or deferred and for whom lack of
60 treatment can be expected to result in infection, loss of teeth
61 or other increased oral or dental morbidity and for whom a
62 successful result cannot be expected from dental care
63 provided under local anesthesia because of such condition
64 and for whom a superior result can be expected from dental
65 care provided under general anesthesia.

66 (7) (A) A policy, plan, or contract that is issued or
67 renewed on or after January 1, 2019, and that is subject to
68 this section, shall provide coverage, through the age of 20,
69 for amino acid-based formula for the treatment of severe
70 protein-allergic conditions or impaired absorption of
71 nutrients caused by disorders affecting the absorptive
72 surface, function, length, and motility of the gastrointestinal
73 tract. This includes the following conditions, if diagnosed
74 as related to the disorder by a physician licensed to practice
75 in this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et*
76 *seq.* of this code:

77 (i) Immunoglobulin E and Nonimmunoglobulin E-
78 medicated allergies to multiple food proteins;

79 (ii) Severe food protein-induced enterocolitis
80 syndrome;

81 (iii) Eosinophilic disorders as evidenced by the results
82 of a biopsy; and

83 (iv) Impaired absorption of nutrients caused by
84 disorders affecting the absorptive surface, function, length,
85 and motility of the gastrointestinal tract (short bowel).

86 (B) The coverage required by §15-16-9(b)(7)(A) of this
87 code shall include medical foods for home use for which a
88 physician has issued a prescription and has declared them to
89 be medically necessary, regardless of methodology of
90 delivery.

91 (C) For purposes of this subdivision, “medically
92 necessary foods” or “medical foods” shall mean
93 prescription amino acid-based elemental formulas obtained
94 through a pharmacy: *Provided*, That these foods are
95 specifically designated and manufactured for the treatment
96 of severe allergic conditions or short bowel.

97 (D) The provisions of this subdivision shall not apply to
98 persons with an intolerance for lactose or soy.

99 (c) The group life and accidental death insurance herein
100 provided shall be in the amount of \$10,000 for every
101 employee. The amount of the group life and accidental
102 death insurance to which an employee would otherwise be
103 entitled shall be reduced to \$5,000 upon such employee
104 attaining age 65.

105 (d) All of the insurance coverage to be provided for
106 under this article may be included in one or more similar
107 contracts issued by the same or different carriers.

108 (e) The provisions of §5A-3-1 *et seq.* of this code,
109 relating to the Division of Purchasing of the Department of
110 Finance and Administration, shall not apply to any contracts
111 for any insurance coverage or professional services
112 authorized to be executed under the provisions of this
113 article. Before entering into any contract for any insurance
114 coverage, as authorized in this article, the director shall
115 invite competent bids from all qualified and licensed
116 insurance companies or carriers, who may wish to offer

117 plans for the insurance coverage desired: *Provided*, That
118 the director shall negotiate and contract directly with
119 healthcare providers and other entities, organizations and
120 vendors in order to secure competitive premiums, prices,
121 and other financial advantages. The director shall deal
122 directly with insurers or healthcare providers and other
123 entities, organizations, and vendors in presenting
124 specifications and receiving quotations for bid purposes.
125 No commission or finder's fee, or any combination
126 thereof, shall be paid to any individual or agent; but this
127 shall not preclude an underwriting insurance company or
128 companies, at their own expense, from appointing a
129 licensed resident agent, within this state, to service the
130 companies' contracts awarded under the provisions of this
131 article. Commissions reasonably related to actual service
132 rendered for the agent or agents may be paid by the
133 underwriting company or companies: *Provided, however*,
134 That in no event shall payment be made to any agent or
135 agents when no actual services are rendered or performed.
136 The director shall award the contract or contracts on a
137 competitive basis. In awarding the contract or contracts the
138 director shall take into account the experience of the
139 offering agency, corporation, insurance company, or
140 service organization in the group hospital and surgical
141 insurance field, group major medical insurance field,
142 group prescription drug field, and group life and accidental
143 death insurance field, and its facilities for the handling of
144 claims. In evaluating these factors, the director may
145 employ the services of impartial, professional insurance
146 analysts or actuaries or both. Any contract executed by the
147 director with a selected carrier shall be a contract to govern
148 all eligible employees subject to the provisions of this
149 article. Nothing contained in this article shall prohibit any
150 insurance carrier from soliciting employees covered
151 hereunder to purchase additional hospital and surgical,
152 major medical or life and accidental death insurance
153 coverage.

154 (f) The director may authorize the carrier with whom a
155 primary contract is executed to reinsure portions of the
156 contract with other carriers which elect to be a reinsurer and
157 who are legally qualified to enter into a reinsurance
158 agreement under the laws of this state.

159 (g) Each employee who is covered under any contract
160 or contracts shall receive a statement of benefits to which
161 the employee, his or her spouse and his or her dependents
162 are entitled under the contract, setting forth the information
163 as to whom the benefits are payable, to whom claims shall
164 be submitted and a summary of the provisions of the
165 contract or contracts as they affect the employee, his or her
166 spouse and his or her dependents.

167 (h) The director may at the end of any contract period
168 discontinue any contract or contracts it has executed with
169 any carrier and replace the same with a contract or contracts
170 with any other carrier or carriers meeting the requirements
171 of this article.

172 (i) The director shall provide by contract or contracts
173 entered into under the provisions of this article the cost for
174 coverage of children's immunization services from birth
175 through age 16 years to provide immunization against the
176 following illnesses: Diphtheria, polio, mumps, measles,
177 rubella, tetanus, hepatitis-b, hemophilia influenzae-b, and
178 whooping cough. Additional immunizations may be
179 required by the Commissioner of the Bureau for Public
180 Health for public health purposes. Any contract entered into
181 to cover these services shall require that all costs associated
182 with immunization, including the cost of the vaccine, if
183 incurred by the healthcare provider, and all costs of vaccine
184 administration be exempt from any deductible, per visit
185 charge and/or copayment provisions which may be in force
186 in these policies or contracts. This section does not require
187 that other healthcare services provided at the time of
188 immunization be exempt from any deductible and/or
189 copayment provisions.

CHAPTER 33. INSURANCE.**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.****§33-15-4q. Coverage for amino acid-based formulas.**

1 (a) A policy, plan, or contract that is issued or renewed
2 on or after January 1, 2019, and that is subject to this article
3 shall provide coverage, through the age of 20, for amino
4 acid-based formula for the treatment of severe protein-
5 allergic conditions or impaired absorption of nutrients
6 caused by disorders affecting the absorptive surface,
7 function, length, and motility of the gastrointestinal tract.
8 This includes the following conditions, if diagnosed as
9 related to the disorder by a physician licensed to practice in
10 this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et*
11 *seq.* of this code:

12 (1) Immunoglobulin E and Nonimmunoglobulin E-
13 medicated allergies to multiple food proteins;

14 (2) Severe food protein-induced enterocolitis syndrome;

15 (3) Eosinophilic disorders as evidenced by the results of
16 a biopsy; and

17 (4) Impaired absorption of nutrients caused by disorders
18 affecting the absorptive surface, function, length, and
19 motility of the gastrointestinal tract (short bowel).

20 (b) The coverage required by §33-15-4p(a) of this code
21 shall include medical foods for home use for which a
22 physician has issued a prescription and has declared them to
23 be medically necessary, regardless of methodology of
24 delivery.

25 (c) For purposes of this section, “medically necessary
26 foods” or “medical foods” shall mean prescription amino
27 acid-based elemental formulas obtained through a
28 pharmacy: *Provided*, That these foods are specifically

29 designated and manufactured for the treatment of severe
30 allergic conditions or short bowel.

31 (d) The provisions of this section shall not apply to
32 persons with an intolerance for lactose or soy.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3bb. Coverage for amino acid-based formulas.

1 (a) A policy, plan, or contract that is issued or renewed
2 on or after January 1, 2019, and that is subject to this article
3 shall provide coverage, through the age of 20, for amino
4 acid-based formula for the treatment of severe protein-
5 allergic conditions or impaired absorption of nutrients
6 caused by disorders affecting the absorptive surface,
7 function, length, and motility of the gastrointestinal tract.
8 This includes the following conditions, if diagnosed as
9 related to the disorder by a physician licensed to practice in
10 this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et*
11 *seq.* of this code:

12 (1) Immunoglobulin E and Nonimmunoglobulin E-
13 medicated allergies to multiple food proteins;

14 (2) Severe food protein-induced enterocolitis syndrome;

15 (3) Eosinophilic disorders as evidenced by the results of
16 a biopsy; and

17 (4) Impaired absorption of nutrients caused by disorders
18 affecting the absorptive surface, function, length, and
19 motility of the gastrointestinal tract (short bowel).

20 (b) The coverage required by §33-16-3bb(a) of this code
21 shall include medical foods for home use for which a
22 physician has issued a prescription and has declared them to
23 be medically necessary, regardless of methodology of
24 delivery.

25 (c) For purposes of this section, “medically necessary
26 foods” or “medical foods” shall mean prescription amino
27 acid-based elemental formulas obtained through a
28 pharmacy: *Provided*, That these foods are specifically
29 designated and manufactured for the treatment of severe
30 allergic conditions or short bowel.

31 (d) The provisions of this section shall not apply to
32 persons with an intolerance for lactose or soy.

ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-7q. Coverage for amino acid-based formulas.

1 (a) A policy, plan, or contract that is issued or renewed
2 on or after January 1, 2019, and that is subject to this article
3 shall provide coverage, through the age of 20, for amino
4 acid-based formula for the treatment of severe protein-
5 allergic conditions or impaired absorption of nutrients
6 caused by disorders affecting the absorptive surface,
7 function, length, and motility of the gastrointestinal tract.
8 This includes the following conditions, if diagnosed as
9 related to the disorder by a physician licensed to practice in
10 this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et*
11 *seq.* of this code:

12 (1) Immunoglobulin E and Nonimmunoglobulin E-
13 medicated allergies to multiple food proteins;

14 (2) Severe food protein-induced enterocolitis syndrome;

15 (3) Eosinophilic disorders as evidenced by the results of
16 a biopsy; and

17 (4) Impaired absorption of nutrients caused by disorders
18 affecting the absorptive surface, function, length, and
19 motility of the gastrointestinal tract (short bowel).

20 (b) The coverage required by §33-24-7q(a) of this code
21 shall include medical foods for home use for which a

22 physician has issued a prescription and has declared them to
23 be medically necessary, regardless of methodology of
24 delivery.

25 (c) For purposes of this section, “medically necessary
26 foods” or “medical foods” shall mean prescription amino
27 acid-based elemental formulas obtained through a
28 pharmacy: *Provided*, That these foods are specifically
29 designated and manufactured for the treatment of severe
30 allergic conditions or short bowel.

31 (d) The provisions of this section shall not apply to
32 persons with an intolerance for lactose or soy.

ARTICLE 25. HEALTHCARE CORPORATION.

§33-25-8n. Coverage for amino acid-based formulas.

1 (a) A policy, plan, or contract that is issued or renewed
2 on or after January 1, 2019, and that is subject to this article
3 shall provide coverage, through the age of 20, for amino
4 acid-based formula for the treatment of severe protein-
5 allergic conditions or impaired absorption of nutrients
6 caused by disorders affecting the absorptive surface,
7 function, length, and motility of the gastrointestinal tract.
8 This includes the following conditions, if diagnosed as
9 related to the disorder by a physician licensed to practice in
10 this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et*
11 *seq.* of this code:

12 (1) Immunoglobulin E and Nonimmunoglobulin E-
13 medicated allergies to multiple food proteins;

14 (2) Severe food protein-induced enterocolitis syndrome;

15 (3) Eosinophilic disorders as evidenced by the results of
16 a biopsy; and

17 (4) Impaired absorption of nutrients caused by disorders
18 affecting the absorptive surface, function, length, and
19 motility of the gastrointestinal tract (short bowel).

20 (b) The coverage required by §33-25-8n(a) of this code
21 shall include medical foods for home use for which a
22 physician has issued a prescription and has declared them to
23 be medically necessary, regardless of methodology of
24 delivery.

25 (c) For purposes of this section, “medically necessary
26 foods” or “medical foods” shall mean prescription amino
27 acid-based elemental formulas obtained through a
28 pharmacy: *Provided*, That these foods are specifically
29 designated and manufactured for the treatment of severe
30 allergic conditions or short bowel.

31 (d) The provisions of this section shall not apply to
32 persons with an intolerance for lactose or soy.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8q. Coverage for amino acid-based formulas.

1 (a) A policy, plan, or contract that is issued or renewed
2 on or after January 1, 2019, and that is subject to this article
3 shall provide coverage, through the age of 20, for amino
4 acid-based formula for the treatment of severe protein-
5 allergic conditions or impaired absorption of nutrients
6 caused by disorders affecting the absorptive surface,
7 function, length, and motility of the gastrointestinal tract.
8 This includes the following conditions, if diagnosed as
9 related to the disorder by a physician licensed to practice in
10 this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et*
11 *seq.* of this code:

12 (1) Immunoglobulin E and Nonimmunoglobulin E-
13 medicated allergies to multiple food proteins;

14 (2) Severe food protein-induced enterocolitis syndrome;

15 (3) Eosinophilic disorders as evidenced by the results of
16 a biopsy; and

17 (4) Impaired absorption of nutrients caused by disorders
18 affecting the absorptive surface, function, length, and
19 motility of the gastrointestinal tract (short bowel).

20 (b) The coverage required by §33-25A-8p(a) of this
21 code shall include medical foods for home use for which a
22 physician has issued a prescription and has declared them to
23 be medically necessary, regardless of methodology of
24 delivery.

25 (c) For purposes of this section, “medically necessary
26 foods” or “medical foods” shall mean prescription amino
27 acid-based elemental formulas obtained through a
28 pharmacy: *Provided*, That these foods are specifically
29 designated and manufactured for the treatment of severe
30 allergic conditions or short bowel.

31 (d) The provisions of this section shall not apply to
32 persons with an intolerance for lactose or soy.



CHAPTER 126

**(Com. Sub. for S. B. 401 - By Senators Weld, Ferns,
Romano, Baldwin and Drennan)**

[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 §33-15-4r; to
amend said code by adding thereto a new section, designated
§33-16-3cc; to amend said code by adding thereto a new
section, designated §33-24-7r; to amend said code by adding
thereto a new section, designated §33-25-8o; and to amend
said code by adding thereto a new section, designated §33-
25A-8r, all relating to requiring specified coverage in health

benefit plans for outpatient and inpatient treatment for substance use disorders by July 1, 2019; defining terms; providing for rulemaking for the Insurance Commissioner; setting forth time frames for coverage; and providing for expedited grievances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4r. Substance use disorder.

1 (a) As used in this section, the following words have
2 the following meanings:

3 (1) “Concurrent review” means inpatient care is
4 reviewed as it is provided. Medically qualified reviewers
5 monitor appropriateness of the care, the setting, and patient
6 progress, and, as appropriate, the discharge plans.

7 (2) “Covered person” means an individual, other than a
8 Medicaid recipient, for whom coverage has been provided
9 pursuant to the provisions of this article.

10 (3) “Insurance Commissioner” means the person
11 appointed pursuant to the provisions of §33-2-1 *et seq.* of
12 this code.

13 (4) “Insurer” means the same as that term is defined in
14 §33-15-2 of this code.

15 (5) “Physician” or “psychiatrist” means a person
16 licensed pursuant to the provisions of either §30-3-1 *et seq.*
17 or §30-14-1 *et seq.* of this code.

18 (6) “Psychologist” means a person licensed pursuant to
19 the provisions of §30-21-1 *et seq.* of this code.

20 (7) “Substance use disorder” means the same as that
21 term is defined by the American Psychiatric Association in
22 the Diagnostic and Statistical Manual of Mental Disorders,
23 Fifth Edition, and shall include substance use withdrawal.

24 (b) An accident and sickness policy that provides
25 hospital or medical expense benefits and is delivered,
26 issued, executed, or renewed in this state, or approved for
27 issuance or renewal by the Insurance Commissioner, on or
28 after January 1, 2019, shall provide benefits for inpatient
29 and outpatient treatment of substance use disorder at in-
30 network facilities at the same level as other medical services
31 offered by the accident and sickness policy.

32 (c) The services for the treatment of substance use
33 disorder shall be:

34 (1) Prescribed by a physician or psychiatrist licensed
35 pursuant to the provisions of §30-3-1 *et seq.* or §30-14-1 *et*
36 *seq.* of this code or recommended by a psychologist licensed
37 pursuant to the provisions of §30-21-1 *et seq.* of this code;
38 and

39 (2) Provided by licensed health care professionals or
40 licensed or certified substance use disorder providers in
41 licensed or otherwise state-approved facilities, as required
42 by this code.

43 (d) The inpatient and outpatient treatment of substance
44 use disorders shall be provided when determined medically
45 necessary by the covered person's physician, psychologist,
46 or psychiatrist. The facility shall notify the insurer of both
47 the admission and the initial treatment plan within 48 hours
48 of the admission or initiation of treatment. If there is no in-
49 network facility immediately available for a covered person,
50 an accident and sickness policy shall provide necessary
51 exceptions to its network to ensure admission in a treatment
52 facility within 72 hours. If a covered person is being treated
53 at an out-of-network facility and an in-network facility
54 becomes available during the course of the treatment plan,
55 an insurer may transfer the covered person to the in-network
56 facility.

57 (e) Providers of treatment for substance use disorders to
58 persons covered under a covered contract shall not require

59 prepayment of medical expenses during this 180 days in
60 excess of applicable copayment, deductible, or coinsurance
61 as provided in the contract.

62 (f) The benefits for outpatient visits may be subject to
63 concurrent or retrospective review of medical necessity or
64 any other utilization management review.

65 (g)(1) If an insurer determines that continued inpatient
66 care in a facility is no longer medically necessary, the
67 insurer shall, within 72 hours, provide written notice to the
68 covered person and the covered person's physician of its
69 decision and the right to file for an expedited review of an
70 adverse decision.

71 (2) The insurer shall review and make a determination
72 with respect to the internal appeal within 72 hours and
73 communicate that determination to the covered person and
74 the covered person's physician.

75 (3) If the determination is to uphold the denial, the
76 covered person and the covered person's physician have the
77 right to file an expedited external appeal with an
78 independent review organization. An independent
79 utilization review organization shall make a determination
80 within 72 hours.

81 (4) If the insurer's determination is upheld and it is
82 determined continued inpatient care is not medically
83 necessary, the insurer remains responsible to provide
84 benefits for the inpatient care through the day following the
85 date the determination is made and the covered person is
86 only responsible for any applicable copayment, deductible,
87 and coinsurance for the stay through that date as applicable
88 under the contract.

89 (5) The covered person shall not be discharged or
90 released from the inpatient facility until all internal appeals
91 and independent utilization review organization appeals are
92 exhausted. For any costs incurred after the day following the

93 date of determination until the day of discharge, the covered
94 person is only responsible for any applicable cost-sharing,
95 and any additional charges shall be paid by the facility or
96 provider.

97 (h) The Insurance Commissioner shall propose rules in
98 accordance with the provisions of §29A-3-1 *et seq.* of this
99 code to develop a procedure for an expedited review of an
100 adverse decision as set forth in this section. The Legislature
101 finds that for the purposes of §20A-3-15 of this code, an
102 emergency exists requiring the promulgation of an
103 emergency rule to respond to the growing need in our state
104 for substance abuse treatment.

105 (i)(1) The benefits for the first five days of intensive
106 outpatient or partial hospitalization services shall be
107 provided without any retrospective review of medical
108 necessity, and medical necessity shall be determined by the
109 covered person's physician.

110 (2) The benefits beginning day six and every six days
111 thereafter of intensive outpatient or partial hospitalization
112 services is subject to a concurrent review of the medical
113 necessity of the services.

114 (j) Medical necessity review shall use an evidence-
115 based and peer-reviewed clinical review tool. This tool
116 shall be developed by the Insurance Commissioner. Rules
117 shall ensure that the tool is based on appropriate evidence-
118 based criteria that has been peer reviewed. The Insurance
119 Commissioner shall propose rules for legislative approval in
120 accordance with the provisions of §29A-3-1 *et seq.* of this
121 code to develop the tool.

122 (k) The benefits for outpatient prescription drugs to treat
123 substance use disorder shall be provided when determined
124 medically necessary by the covered person's physician or
125 psychiatrist without the imposition of any prior
126 authorization or other prospective utilization management
127 requirements.

128 (l) The days per plan year of benefits shall be computed
129 based on inpatient days. One or more unused inpatient days
130 may be exchanged for two outpatient visits. All extended
131 outpatient services such as partial hospitalization and
132 intensive outpatient, shall be considered inpatient days for
133 the purpose of the visit-to-day exchange provided in this
134 subsection.

135 (m) Except as provided in this section, the benefits and
136 cost-sharing shall be provided to the same extent as for any
137 other medical condition covered under the contract.

138 (n) The benefits required by this section are to be
139 provided to all covered persons with a diagnosis of
140 substance use disorder. The presence of additional related
141 or unrelated diagnoses shall not be a basis to reduce or deny
142 the benefits required by this section.

143 (o) The provisions of this section apply to all insurance
144 contracts in which the insurer has reserved the right to
145 change the premium.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3cc. Substance use disorder.

1 (a) As used in this section, the following words have
2 the following meanings:

3 (1) “Concurrent review” means inpatient care is
4 reviewed as it is provided. Medically qualified reviewers
5 monitor appropriateness of the care, the setting, and patient
6 progress, and, as appropriate, the discharge plans.

7 (2) “Covered person” means an individual, other than a
8 Medicaid recipient, for whom coverage has been provided
9 pursuant to the provisions of this article.

10 (3) “Health insurer” means the same as that term is
11 defined in §33-16-1a of this code.

12 (4) “Insurance Commissioner” means the person
13 appointed pursuant to the provisions of §33-2-1 *et seq.* of
14 this code.

15 (5) “Physician” or “psychiatrist” means a person
16 licensed pursuant to the provisions of either §30-3-1 *et seq.*
17 or §30-14-1 *et seq.* of this code.

18 (6) “Psychologist” means a person licensed pursuant to
19 the provisions of §30-21-1 *et seq.* of this code.

20 (7) “Substance use disorder” means the same as that
21 term is defined by the American Psychiatric Association in
22 the Diagnostic and Statistical Manual of Mental Disorders,
23 Fifth Edition, and shall include substance use withdrawal.

24 (b) A group accident and sickness policy that provides
25 hospital or medical expense benefits and is delivered,
26 issued, executed, or renewed in this state, or approved for
27 issuance or renewal by the Insurance Commissioner, on or
28 after January 1, 2019, shall provide benefits for inpatient
29 and outpatient treatment of substance use disorder at in-
30 network facilities at the same level as other medical services
31 offered by the group accident and sickness policy.

32 (c) The services for the treatment of substance use
33 disorder shall be:

34 (1) Prescribed by a physician or psychiatrist licensed
35 pursuant to the provisions of §30-3-1 *et seq.* or §30-14-1 *et*
36 *seq.* of this code or recommended by a psychologist licensed
37 pursuant to the provisions of §30-21-1 *et seq.* of this code;
38 and

39 (2) Provided by licensed health care professionals or
40 licensed or certified substance use disorder providers in
41 licensed or otherwise state-approved facilities, as required
42 by this code.

43 (d) The inpatient and outpatient treatment of substance
44 use disorders shall be provided when determined medically

45 necessary by the covered person's physician, psychologist,
46 or psychiatrist. The facility shall notify the health insurer of
47 both the admission and the initial treatment plan within 48
48 hours of the admission or initiation of treatment. If there is
49 no in-network facility immediately available for a covered
50 person, a group accident and sickness policy shall provide
51 necessary exceptions to its network to ensure admission in
52 a treatment facility within 72 hours. If a covered person is
53 being treated at an out-of-network facility and an in-
54 network facility becomes available during the course of the
55 treatment plan, an insurer may transfer the covered person
56 to the in-network facility.

57 (e) Providers of treatment for substance use disorders to
58 persons covered under a covered contract shall not require
59 prepayment of medical expenses during this 180 days in
60 excess of applicable copayment, deductible, or coinsurance
61 as provided in the contract.

62 (f) The benefits for outpatient visits may be subject to
63 concurrent or retrospective review of medical necessity or
64 any other utilization management review.

65 (g)(1) If a health insurer determines that continued
66 inpatient care in a facility is no longer medically necessary,
67 the health insurer shall within 72 hours provide written
68 notice to the covered person and the covered person's
69 physician of its decision and the right to file for an expedited
70 review of an adverse decision.

71 (2) The health insurer shall review and make a
72 determination with respect to the internal appeal within 72
73 hours and communicate the determination to the covered
74 person and the covered person's physician.

75 (3) If the determination is to uphold the denial, the
76 covered person and the covered person's physician have the
77 right to file an expedited external appeal with an
78 independent review organization. An independent

79 utilization review organization shall make a determination
80 within 72 hours.

81 (4) If the health insurer's determination is upheld and it
82 is determined continued inpatient care is not medically
83 necessary, the health insurer remains responsible to provide
84 benefits for the inpatient care through the day following the
85 date the determination is made and the covered person is
86 only responsible for any applicable copayment, deductible,
87 and coinsurance for the stay through that date as applicable
88 under the contract.

89 (5) The covered person shall not be discharged or
90 released from the inpatient facility until all internal appeals
91 and independent utilization review organization appeals are
92 exhausted. For any costs incurred after the day following the
93 date of determination until the day of discharge, the covered
94 person is only responsible for any applicable cost-sharing,
95 and any additional charges shall be paid by the facility or
96 provider.

97 (h) The Insurance Commissioner shall propose rules in
98 accordance with the provisions of §29A-3-1 *et seq.* of this
99 code to develop a procedure for an expedited review of an
100 adverse decision as set forth in this section. The Legislature
101 finds that for the purposes of §29A-3-15 of this code, an
102 emergency exists requiring the promulgation of an
103 emergency rule to respond to the growing need in our state
104 for substance abuse treatment.

105 (i)(1) The benefits for the first five days of intensive
106 outpatient or partial hospitalization services shall be
107 provided without any retrospective review of medical
108 necessity, and medical necessity shall be determined by the
109 covered person's physician.

110 (2) The benefits beginning day six and every six days
111 thereafter of intensive outpatient or partial hospitalization
112 services are subject to a concurrent review of the medical
113 necessity of the services.

114 (j) Medical necessity review shall use an evidence-
115 based and peer-reviewed clinical review tool. This tool
116 shall be developed by the Insurance Commissioner. The
117 Insurance Commissioner shall propose rules for legislative
118 approval in accordance with the provisions of §29A-3-1 *et*
119 *seq.* of this code to develop the tool.

120 (k) The benefits for outpatient prescription drugs to treat
121 substance use disorder shall be provided when determined
122 medically necessary by the covered person's physician or
123 psychiatrist without the imposition of any prior
124 authorization or other prospective utilization management
125 requirements.

126 (l) The days per plan year of benefits shall be computed
127 based on inpatient days. One or more unused inpatient days
128 may be exchanged for two outpatient visits. All extended
129 outpatient services such as partial hospitalization and
130 intensive outpatient, shall be considered inpatient days for
131 the purpose of the visit-to-day exchange provided in this
132 subsection.

133 (m) Except as provided in this section, the benefits and
134 cost-sharing shall be provided to the same extent as for any
135 other medical condition covered under the contract.

136 (n) The benefits required by this section are to be
137 provided to all covered persons with a diagnosis of
138 substance use disorder. The presence of additional related
139 or unrelated diagnoses shall not be a basis to reduce or deny
140 the benefits required by this section.

141 (o) The provisions of this section apply to all insurance
142 contracts in which the health insurer has reserved the right
143 to change the premium.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS, DENTAL
SERVICE CORPORATIONS, AND HEALTH SERVICE
CORPORATIONS.**

§33-24-7r. Substance use disorder.

1 (a) As used in this section, the following words have the
2 following meanings:

3 (1) “Concurrent review” means inpatient care is
4 reviewed as it is provided. Medically qualified reviewers
5 monitor appropriateness of the care, the setting, and patient
6 progress, and, as appropriate, the discharge plans.

7 (2) “Covered person” means an individual, other than a
8 Medicaid recipient, for whom coverage has been provided
9 pursuant to the provisions of this article.

10 (3) “Insurance Commissioner” means the person
11 appointed pursuant to the provisions of §33-2-1 of this code.

12 (4) “Health benefit plan” means the same as that term is
13 defined in §33-24-7p of this code.

14 (5) “Health plan issuer” means the same as that term is
15 defined in §33-24-7p of this code.

16 (6) “Physician” or “psychiatrist” means a person
17 licensed pursuant to the provisions of either §30-3-1 *et seq.*
18 or §30-14-1 *et seq.* of this code.

19 (7) “Psychologist” means a person licensed pursuant to
20 the provisions of §30-21-1 *et seq.* of this code.

21 (8) “Substance use disorder” means the same as that
22 term is defined by the American Psychiatric Association in
23 the Diagnostic and Statistical Manual of Mental Disorders,
24 Fifth Edition, and shall include substance use withdrawal.

25 (b) A health benefit plan offered by a health plan issuer
26 that provides hospital or medical expense benefits and is
27 delivered, issued, executed, or renewed in this state, or
28 approved for issuance or renewal by the Insurance
29 Commissioner, on or after January 1, 2019, shall provide
30 benefits for inpatient and outpatient treatment of substance

31 use disorder at in-network facilities at the same level as
32 other medical services offered by the health benefit plan.

33 (c) The services for the treatment of substance use
34 disorder shall be:

35 (1) Prescribed by a physician or psychiatrist licensed
36 pursuant to the provisions of §30-3-1 *et seq.* or §30-14-1 *et*
37 *seq.* of this code or recommended by a psychologist licensed
38 pursuant to the provisions of §30-21-1 *et seq.* of this code;
39 and

40 (2) Provided by licensed health care professionals or
41 licensed or certified substance use disorder providers in
42 licensed or otherwise state-approved facilities, as required
43 by this code.

44 (d) The inpatient and outpatient treatment of substance
45 use disorders shall be provided when determined medically
46 necessary by the covered person's physician, psychologist,
47 or psychiatrist. The facility shall notify the insurer of both
48 the admission and the initial treatment plan within 48 hours
49 of the admission or initiation of treatment. If there is no in-
50 network facility immediately available for a covered person,
51 a health benefit plan offered by a health plan issuer shall
52 provide necessary exceptions to its network to ensure
53 admission in a treatment facility within 72 hours. A health
54 benefit plan may transfer a covered person to an in-network
55 facility if one becomes available during the course of the
56 treatment plan. If a covered person is being treated at an out-
57 of-network facility and an in-network facility becomes
58 available during the course of the treatment plan, an insurer
59 may transfer the covered person to the in-network facility.

60 (e) Providers of treatment for substance use disorders to
61 persons covered under a covered contract shall not require
62 prepayment of medical expenses during this 180 days in
63 excess of applicable copayment, deductible, or coinsurance
64 as provided in the contract.

65 (f) The benefits for outpatient visits may be subject to
66 concurrent or retrospective review of medical necessity or
67 any other utilization management review.

68 (g)(1) If an insurer determines that continued inpatient
69 care in a facility is no longer medically necessary, the
70 insurer shall within 72 hours provide written notice to the
71 covered person and the covered person's physician of its
72 decision and the right to file for an expedited review of an
73 adverse decision.

74 (2) The insurer shall review and make a determination
75 with respect to the internal appeal within 72 hours and
76 communicate the determination to the covered person and
77 the covered person's physician.

78 (3) If the determination is to uphold the denial, the
79 covered person and the covered person's physician have the
80 right to file an expedited external appeal with an
81 independent review organization. An independent
82 utilization review organization shall make a determination
83 within 72 hours.

84 (4) If the insurer's determination is upheld and it is
85 determined continued inpatient care is not medically
86 necessary, the insurer remains responsible to provide
87 benefits for the inpatient care through the day following the
88 date the determination is made and the covered person is
89 only responsible for any applicable copayment, deductible,
90 and coinsurance for the stay through that date as applicable
91 under the contract.

92 (5) The covered person shall not be discharged or
93 released from the inpatient facility until all internal appeals
94 and independent utilization review organization appeals are
95 exhausted. For any costs incurred after the day following the
96 date of determination until the day of discharge, the covered
97 person is only responsible for any applicable cost-sharing,
98 and any additional charges shall be paid by the facility or
99 provider.

100 (h) The Insurance Commissioner shall propose rules in
101 accordance with the provisions of §29A-3-1 *et seq.* of this
102 code to develop a procedure for an expedited review of an
103 adverse decision as set forth in this section. The Legislature
104 finds that for the purposes of §29A-3-15 of this code, an
105 emergency exists requiring the promulgation of an
106 emergency rule to respond to the growing need in our state
107 for substance abuse treatment.

108 (i)(1) The benefits for the first five days of intensive
109 outpatient or partial hospitalization services shall be
110 provided without any retrospective review of medical
111 necessity, and medical necessity shall be determined by the
112 covered person's physician.

113 (2) The benefits beginning day six and every six days
114 thereafter of intensive outpatient or partial hospitalization
115 services are subject to a concurrent review of the medical
116 necessity of the services.

117 (j) Medical necessity review shall use an evidence-
118 based and peer-reviewed clinical review tool. This tool
119 shall be developed by the Insurance Commissioner. The
120 Insurance Commissioner shall propose rules for legislative
121 approval in accordance with the provisions of §29A-3-1 *et*
122 *seq.* of this code to develop the tool.

123 (k) The benefits for outpatient prescription drugs to treat
124 substance use disorder shall be provided when determined
125 medically necessary by the covered person's physician or
126 psychiatrist without the imposition of any prior
127 authorization or other prospective utilization management
128 requirements.

129 (l) The days per plan year of benefits shall be computed
130 based on inpatient days. One or more unused inpatient days
131 may be exchanged for two outpatient visits. All extended
132 outpatient services such as partial hospitalization and
133 intensive outpatient, shall be considered inpatient days for

134 the purpose of the visit-to-day exchange provided in this
135 subsection.

136 (m) Except as provided in this section, the benefits and
137 cost-sharing shall be provided to the same extent as for any
138 other medical condition covered under the contract.

139 (n) The benefits required by this section are to be
140 provided to all covered persons with a diagnosis of
141 substance use disorder. The presence of additional related
142 or unrelated diagnoses shall not be a basis to reduce or deny
143 the benefits required by this section.

144 (o) The provisions of this section apply to all insurance
145 contracts in which the insurer has reserved the right to
146 change the premium.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8o. Substance use disorder.

1 (a) As used in this section, the following words have the
2 following meanings:

3 (1) “Concurrent review” means inpatient care is
4 reviewed as it is provided. Medically qualified reviewers
5 monitor appropriateness of the care, the setting, and patient
6 progress, and, as appropriate, the discharge plans.

7 (2) “Covered person” means an individual, other than a
8 Medicaid recipient, for whom coverage has been provided
9 pursuant to the provisions of this article.

10 (3) “Insurance Commissioner” means the person
11 appointed pursuant to the provisions of §33-2-1 of this code.

12 (4) “Health benefit plan” means the same as that term is
13 defined in §33-25-8m of this code.

14 (5) “Health plan issuer” means the same as that term is
15 defined in §33-25-8m of this code.

16 (6) “Physician” or “psychiatrist” means a person
17 licensed pursuant to the provisions of either §30-3-1 *et seq.*
18 or §30-3-14 *et seq.* of this code.

19 (7) “Psychologist” means a person licensed pursuant to
20 the provisions of §30-21-1 *et seq.* of this code.

21 (8) “Substance use disorder” means the same as that
22 term is defined by the American Psychiatric Association in
23 the Diagnostic and Statistical Manual of Mental Disorders,
24 Fifth Edition, and shall include substance use withdrawal.

25 (b) A health benefit plan offered by a health plan issuer
26 that provides hospital or medical expense benefits and is
27 delivered, issued, executed, or renewed in this state, or
28 approved for issuance or renewal by the Insurance
29 Commissioner, on or after January 1, 2019, shall provide
30 benefits for inpatient and outpatient treatment of substance
31 use disorder at in-network facilities at the same level as
32 other medical services offered by the health benefit plan
33 offered by a health plan issuer.

34 (c) The services for the treatment of substance use
35 disorder shall be:

36 (1) Prescribed by a physician or psychiatrist licensed
37 pursuant to the provisions of §30-3-1 *et seq.* or §30-14-1 *et*
38 *seq.* of this code or recommended by a psychologist licensed
39 pursuant to the provisions of §30-21-1 *et seq.* of this code;
40 and

41 (2) Provided by licensed health care professionals or
42 licensed or certified substance use disorder providers in
43 licensed or otherwise state-approved facilities, as required
44 by this code.

45 (d) The inpatient and outpatient treatment of substance
46 use disorders shall be provided when determined medically
47 necessary by the covered person’s physician, psychologist,
48 or psychiatrist. The facility shall notify the insurer of both
49 the admission and the initial treatment plan within 48 hours

50 of the admission or initiation of treatment. If there is no in-
51 network facility immediately available for a covered person,
52 a health benefit plan offered by a health plan issuer shall
53 provide necessary exceptions to its network to ensure
54 admission in a treatment facility within 72 hours. If a
55 covered person is being treated at an out-of-network facility
56 and an in-network facility becomes available during the
57 course of the treatment plan, an insurer may transfer the
58 covered person to the in-network facility.

59 (e) Providers of treatment for substance use disorders to
60 persons covered under a covered contract shall not require
61 prepayment of medical expenses during this 180 days in
62 excess of applicable copayment, deductible, or coinsurance
63 as provided in the contract.

64 (f) The benefits for outpatient visits may be subject to
65 concurrent or retrospective review of medical necessity or
66 any other utilization management review.

67 (g)(1) If an insurer determines that continued inpatient
68 care in a facility is no longer medically necessary, the
69 insurer shall, within 72 hours, provide written notice to the
70 covered person and the covered person's physician of its
71 decision and the right to file for an expedited review of an
72 adverse decision.

73 (2) The insurer shall review and make a determination
74 with respect to the internal appeal within 72 hours and
75 communicate that determination to the covered person and
76 the covered person's physician.

77 (3) If the determination is to uphold the denial, the
78 covered person and the covered person's physician have the
79 right to file an expedited external appeal with an
80 independent review organization. An independent
81 utilization review organization shall make a determination
82 within 72 hours.

83 (4) If the insurer's determination is upheld and it is
84 determined continued inpatient care is not medically
85 necessary, the insurer remains responsible to provide
86 benefits for the inpatient care through the day following the
87 date the determination is made and the covered person is
88 only responsible for any applicable copayment, deductible,
89 and coinsurance for the stay through that date as applicable
90 under the contract.

91 (5) The covered person shall not be discharged or
92 released from the inpatient facility until all internal appeals
93 and independent utilization review organization appeals are
94 exhausted. For any costs incurred after the day following the
95 date of determination until the day of discharge, the covered
96 person is only responsible for any applicable cost-sharing,
97 and any additional charges shall be paid by the facility or
98 provider.

99 (h) The Insurance Commissioner shall propose rules in
100 accordance with the provisions of §29A-3-1 *et seq.* of this
101 code to develop a procedure for an expedited review of an
102 adverse decision as set forth in this section. The Legislature
103 finds that for the purposes of §29A-3-15 of this code, an
104 emergency exists requiring the promulgation of an
105 emergency rule to respond to the growing need in our state
106 for substance abuse treatment.

107 (i)(1) The benefits for the first five days of intensive
108 outpatient or partial hospitalization services shall be
109 provided without any retrospective review of medical
110 necessity, and medical necessity shall be determined by the
111 covered person's physician.

112 (2) The benefits beginning day six and every six days
113 thereafter of intensive outpatient or partial hospitalization
114 services is subject to a concurrent review of the medical
115 necessity of the services.

116 (j) Medical necessity review shall use an evidence-
117 based and peer-reviewed clinical review tool. This tool

118 shall be developed by the Insurance Commissioner. The
119 Insurance Commissioner shall propose rules for legislative
120 approval in accordance with the provisions of §29A-3-1 *et*
121 *seq.* of this code to develop the tool.

122 (k) The benefits for outpatient prescription drugs to treat
123 substance use disorder shall be provided when determined
124 medically necessary by the covered person's physician or
125 psychiatrist without the imposition of any prior
126 authorization or other prospective utilization management
127 requirements.

128 (l) The days per plan year of benefits shall be computed
129 based on inpatient days. One or more unused inpatient days
130 may be exchanged for two outpatient visits. All extended
131 outpatient services such as partial hospitalization and
132 intensive outpatient, shall be considered inpatient days for
133 the purpose of the visit-to-day exchange provided in this
134 subsection.

135 (m) Except as provided in this section, the benefits and
136 cost-sharing shall be provided to the same extent as for any
137 other medical condition covered under the contract.

138 (n) The benefits required by this section are to be
139 provided to all covered persons with a diagnosis of
140 substance use disorder. The presence of additional related
141 or unrelated diagnoses shall not be a basis to reduce or deny
142 the benefits required by this section.

143 (o) The provisions of this section apply to all insurance
144 contracts in which the insurer has reserved the right to
145 change the premium.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8r. Substance use disorder.

1 (a) As used in this section, the following words have
2 the following meanings:

3 (1) “Concurrent review” means inpatient care is
4 reviewed as it is provided. Medically qualified reviewers
5 monitor appropriateness of the care, the setting, and patient
6 progress, and, as appropriate, the discharge plans.

7 (2) “Covered person” means an individual, other than a
8 Medicaid recipient, for whom coverage has been provided
9 pursuant to the provisions of this article.

10 (3) “Insurance Commissioner” means the person
11 appointed pursuant to the provisions of §33-2-1 of this code.

12 (4) “Health benefit plan” means the same as that term is
13 defined in §33-24-7p of this code.

14 (5) “Health plan issuer” means the same as that term is
15 defined in §33-24-7p of this code.

16 (6) “Physician” or “psychiatrist” means a person
17 licensed pursuant to the provisions of either §30-3-1 *et seq.*
18 or §30-14-1 *et seq.* of this code.

19 (7) “Psychologist” means a person licensed pursuant to
20 the provisions of §30-21-1 *et seq.* of this code.

21 (8) “Substance use disorder” means the same as that
22 term is defined by the American Psychiatric Association in
23 the Diagnostic and Statistical Manual of Mental Disorders,
24 Fifth Edition, and shall include substance use withdrawal.

25 (b) A health benefit plan offered by a health plan issuer
26 that provides hospital or medical expense benefits and is
27 delivered, issued, executed, or renewed in this state, or
28 approved for issuance or renewal by the Insurance
29 Commissioner, on or after January 1, 2019, shall provide
30 benefits for inpatient and outpatient treatment of substance
31 use disorder at in-network facilities at the same level as
32 other medical benefits offered by the health benefit plan
33 offered by a health plan insurer.

34 (c) The services for the treatment of substance use
35 disorder shall be:

36 (1) Prescribed by a physician or psychiatrist licensed
37 pursuant to the provisions of §30-3-1 *et seq.* or §30-14-1 *et*
38 *seq.* of this code or recommended by a psychologist licensed
39 pursuant to the provisions of §30-21-1 *et seq.* of this code;
40 and

41 (2) Provided by licensed health care professionals or
42 licensed or certified substance use disorder providers in
43 licensed or otherwise state-approved facilities, as required
44 by this code.

45 (d) The inpatient and outpatient treatment of substance
46 use disorders shall be provided when determined medically
47 necessary by the covered person's physician, psychologist,
48 or psychiatrist. The facility shall notify the insurer of both
49 the admission and the initial treatment plan within 48 hours
50 of the admission or initiation of treatment. If there is no in-
51 network facility immediately available for a covered person,
52 a health benefit plan offered by a health plan issuer shall
53 provide necessary exceptions to its network to ensure
54 admission in a treatment facility within 72 hours. If a
55 covered person is being treated at an out-of-network facility
56 and an in-network facility becomes available during the
57 course of the treatment plan, an insurer may transfer the
58 covered person to the in-network facility.

59 (e) Providers of treatment for substance use disorders to
60 persons covered under a covered contract shall not require
61 prepayment of medical expenses during this 180 days in
62 excess of applicable copayment, deductible, or coinsurance
63 as provided in the contract.

64 (f) The benefits for outpatient visits may be subject to
65 concurrent or retrospective review of medical necessity or
66 any other utilization management review.

67 (g)(1) If an insurer determines that continued inpatient
68 care in a facility is no longer medically necessary, the
69 insurer shall, within 72 hours, provide written notice to the
70 covered person and the covered person's physician of its
71 decision and the right to file for an expedited review of an
72 adverse decision.

73 (2) The insurer shall review and make a determination
74 with respect to the internal appeal within 72 hours and
75 communicate that determination to the covered person and
76 the covered person's physician.

77 (3) If the determination is to uphold the denial, the
78 covered person and the covered person's physician have the
79 right to file an expedited external appeal with an
80 independent review organization. An independent
81 utilization review organization shall make a determination
82 within 72 hours.

83 (4) If the insurer's determination is upheld and it is
84 determined continued inpatient care is not medically
85 necessary, the insurer remains responsible to provide
86 benefits for the inpatient care through the day following the
87 date the determination is made and the covered person shall
88 only be responsible for any applicable copayment,
89 deductible, and coinsurance for the stay through that date as
90 applicable under the contract.

91 (5) The covered person shall not be discharged or
92 released from the inpatient facility until all internal appeals
93 and independent utilization review organization appeals are
94 exhausted. For any costs incurred after the day following the
95 date of determination until the day of discharge, the covered
96 person is only responsible for any applicable cost-sharing,
97 and any additional charges shall be paid by the facility or
98 provider.

99 (h) The Insurance Commissioner shall propose rules in
100 accordance with the provisions of §29A-3-1 *et seq.* of this
101 code to develop a procedure for an expedited review of an

102 adverse decision as set forth in this section. The Legislature
103 finds that for the purposes of §29A-3-15 of this code, an
104 emergency exists requiring the promulgation of an
105 emergency rule to respond to the growing need in our state
106 for substance abuse treatment.

107 (i)(1) The benefits for the first five days of intensive
108 outpatient or partial hospitalization services shall be
109 provided without any retrospective review of medical
110 necessity, and medical necessity shall be determined by the
111 covered person's physician.

112 (2) The benefits beginning day six and every six days
113 thereafter of intensive outpatient or partial hospitalization
114 services is subject to a concurrent review of the medical
115 necessity of the services.

116 (j) Medical necessity review shall use an evidence-
117 based and peer-reviewed clinical review tool. This tool
118 shall be developed by the Insurance Commissioner. The
119 Insurance Commissioner shall propose rules for legislative
120 approval in accordance with the provisions of §29A-3-1 *et*
121 *seq.* of this code to develop the tool.

122 (k) The benefits for outpatient prescription drugs to treat
123 substance use disorder shall be provided when determined
124 medically necessary by the covered person's physician or
125 psychiatrist without the imposition of any prior
126 authorization or other prospective utilization management
127 requirements.

128 (l) The days per plan year of benefits shall be computed
129 based on inpatient days. One or more unused inpatient days
130 may be exchanged for two outpatient visits. All extended
131 outpatient services such as partial hospitalization and
132 intensive outpatient, shall be considered inpatient days for
133 the purpose of the visit-to-day exchange provided in this
134 subsection.

135 (m) Except as provided in this section, the benefits and
136 cost-sharing shall be provided to the same extent as for any
137 other medical condition covered under the contract.

138 (n) The benefits required by this section are to be
139 provided to all covered persons with a diagnosis of
140 substance use disorder. The presence of additional related
141 or unrelated diagnoses shall not be a basis to reduce or deny
142 the benefits required by this section.

143 (o) The provisions of this section apply to all insurance
144 contracts in which the insurer has reserved the right to
145 change the premium.



CHAPTER 127

(Com. Sub. for S. B. 493 - By Senator Azinger)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to repeal §33-26B-1, §33-26B-2, §33-26B-3, §33-26B-4, §33-26B-5, §33-26B-6, §33-26B-7, §33-26B-8, §33-26B-9, §33-26B-10, §33-26B-11, §33-26B-12, §33-26B-13, §33-26B-14, §33-26B-15, and §33-26B-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-26A-2, §33-26A-3, §33-26A-5, §33-26A-6, §33-26A-7, §33-26A-8, §33-26A-9, §33-26A-11, §33-26A-12, §33-26A-14, and §33-26A-19 of said code, all relating to guaranty associations; repealing West Virginia Health Maintenance Organization Guaranty Association Act; and updating West Virginia Life and Health Insurance Guaranty Association Act to maintain consistency with National Association of Insurance Commissioners Life and Health Insurance Guaranty Association Model Act.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 26B. WEST VIRGINIA HEALTH MAINTENANCE
ORGANIZATION GUARANTY ASSOCIATION.**

§33-26B-1. Short title.

1 [Repealed.]

§33-26B-2. Purpose.

1 [Repealed.]

§33-26B-3. Scope.

1 [Repealed.]

§33-26B-4. Construction.

1 [Repealed.]

§33-26B-5. Definitions.

1 [Repealed.]

§33-26B-6. Creation of association.

1 [Repealed.]

§33-26B-7. Board of directors.

1 [Repealed.]

§33-26B-8. Powers and duties of the association.

1 [Repealed.]

§33-26B-9. Assessments.

1 [Repealed.]

§33-26B-10. Plan of operation.

1 [Repealed.]

§33-26B-11. Powers and duties of the commissioner.

1 [Repealed.]

§33-26B-12. Records.

1 [Repealed.]

§33-26B-13. Annual report of the association.

1 [Repealed.]

§33-26B-14. Tax exemptions.

1 [Repealed.]

§33-26B-15. Immunity.

1 [Repealed.]

§33-26B-16. Prohibited advertisements.

1 [Repealed.]

**ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATION ACT.****§33-26A-2. Purpose of article and association of insurers.**

1 (a) The purpose of this article is to protect, subject to
2 certain limitations, the persons specified in §33-26A-3(a) of
3 this code against failure in the performance of contractual
4 obligations, under life, health, and annuity policies, plans,
5 or contracts specified in §33-26A-3(b) of this code, because
6 of the impairment or insolvency of the member insurer that
7 issued the policies, plans, or contracts.

8 (b) To provide this protection, an association of member
9 insurers is created to pay benefits and to continue coverages
10 as limited by this article, and members of the association are
11 subject to assessment to provide funds to carry out the
12 purpose of this article.

§33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.

1 (a) This article shall provide coverage for the policies
2 and contracts specified in §33-26A-3(b) of this code:

3 (1) To persons who, regardless of where they reside
4 (except for nonresident certificate holders under group
5 policies or contracts), are the beneficiaries, assignees, or
6 payees, including health care providers rendering services
7 covered under health insurance policies or certificates, of
8 the persons covered under §33-26A-3(a)(2) of this code.

9 (2) To persons who are owners of or certificate holders
10 or enrollees under the policies or contracts, other than
11 unallocated annuity contracts and structured settlement
12 annuities, and in each case who:

13 (A) Are residents of this state; or

14 (B) Are not residents of this state, but only under all of
15 the following conditions:

16 (i) The member insurer that issued the policies or
17 contracts is domiciled in this state;

18 (ii) The states in which the persons reside have
19 associations similar to the association created by this article;
20 and

21 (iii) The persons are not eligible for coverage by an
22 association in any other state because the insurer or the
23 health maintenance organization was not licensed in the
24 state at the time specified in the state's guaranty association
25 law.

26 (3) For unallocated annuity contracts specified in §33-
27 26A-3(b) of this code, §33-26A-3(a)(1) and §33-26A-
28 3(a)(2) of this code shall not apply, and this article shall,
29 except as provided in §33-26A-3(a)(5) and §33-26A-3(a)(6)
30 of this code, provide coverage to:

31 (A) Persons who are the owners of the unallocated
32 annuity contracts if the contracts are issued to or in
33 connection with a specific benefit plan whose plan sponsor
34 has its principal place of business in this state; and

35 (B) Persons who are owners of unallocated annuity
36 contracts issued to or in connection with government
37 lotteries if the owners are residents.

38 (4) For structured settlement annuities specified in §33-
39 26A-3(b) of this code, §33-26A-3(a)(1) and §33-26A-
40 3(a)(2) of this code shall not apply, and this article shall,
41 except as provided in §33-26A-3(a)(5) and §33-26A-3(a)(6)
42 of this code, provide coverage to a person who is a payee
43 under a structured settlement annuity, or beneficiary of a
44 payee if the payee is deceased, if the payee:

45 (A) Is a resident, regardless of where the contract owner
46 resides; or

47 (B) Is not a resident, but only under both of the
48 following conditions:

49 (i) (I) The contract owner of the structured settlement
50 annuity is a resident; or

51 (II) The contract owner of the structured settlement
52 annuity is not a resident, but the insurer that issued the
53 structured settlement annuity is domiciled in this state and
54 the state in which the contract owner resides has an
55 association similar to the association created by this article;
56 and

57 (ii) Neither the payee or beneficiary nor the contract
58 owner is eligible for coverage by the association of the state
59 in which the payee or contract owner resides.

60 (5) This article shall not provide coverage to:

61 (A) A person who is a payee or beneficiary of a contract
62 owner resident of this state, if the payee or beneficiary is
63 afforded any coverage by the association of another state; or

64 (B) A person covered under §33-26A-3(a)(3) of this
65 code, if any coverage is provided by the association of
66 another state to the person; or

67 (C) A person who acquires rights to receive payments
68 through a structured settlement factoring transaction as
69 defined in 26 U.S.C. § 5891, regardless of whether the
70 transaction occurred before or after 26 U.S.C. § 5891
71 became effective.

72 (6) This article is intended to provide coverage to a
73 person who is a resident of this state and, in special
74 circumstances, to a nonresident. In order to avoid duplicate
75 coverage, if a person who would otherwise receive coverage
76 under this article is provided coverage under the laws of any
77 other state, the person shall not be provided coverage under
78 this article. In determining the application of the provisions
79 of this subdivision in situations where a person could be
80 covered by the association of more than one state, whether
81 as an owner, payee, enrollee, beneficiary, or assignee, this
82 article shall be construed in conjunction with other state
83 laws to result in coverage by only one association.

84 (b) Coverage provided by this article shall be as follows:

85 (1) This article shall provide coverage to the persons
86 specified in §33-26A-3(a) of this code for policies or
87 contracts of direct, nongroup life insurance, health
88 insurance (which for the purposes of this article includes
89 health maintenance organization subscriber contracts and
90 certificates), or annuities, and supplemental contracts to any
91 of these, for certificates under direct group policies and
92 contracts, and for unallocated annuity contracts issued by
93 member insurers, except as limited by this article. Annuity
94 contracts and certificates under group annuity contracts
95 include, but are not limited to, guaranteed investment

96 contracts, deposit administration contracts, unallocated
97 funding agreements, allocated funding agreements,
98 structured settlement annuities, annuities issued in
99 connection with government lotteries, and any immediate or
100 deferred annuity contracts.

101 (2) Except as otherwise provided in §33-26A-3(b)(3) of
102 this code, this article shall not provide coverage for:

103 (A) A portion of a policy or contract not guaranteed by
104 the member insurer, or under which the risk is borne by the
105 policy or contract owner;

106 (B) A policy or contract of reinsurance, unless
107 assumption certificates have been issued pursuant to the
108 reinsurance policy or contract;

109 (C) A portion of a policy or contract to the extent that
110 the rate of interest on which it is based, or the interest rate,
111 crediting rate, or similar factor determined by use of an
112 index or other external reference stated in the policy or
113 contract employed in calculating returns or changes in
114 value:

115 (i) Averaged over the period of four years prior to the
116 date on which the member insurer becomes an impaired or
117 insolvent insurer under this article, whichever is earlier,
118 exceeds the rate of interest determined by subtracting two
119 percentage points from Moody's Corporate Bond Yield
120 Average averaged for that same four-year period or for such
121 lesser period if the policy or contract was issued less than
122 four years before the member insurer becomes an impaired
123 or insolvent insurer under this article, whichever is earlier;
124 and

125 (ii) On and after the date on which the member insurer
126 becomes an impaired or insolvent insurer under this article,
127 whichever is earlier, exceeds the rate of interest determined
128 by subtracting three percentage points from Moody's
129 Corporate Bond Yield Average as most recently available;

130 (D) A portion of a policy or contract issued to a plan or
131 program of an employer, association, or other person to
132 provide life, health, or annuity benefits to its employees,
133 members, or others, to the extent that the plan or program is
134 self-funded or uninsured including, but not limited to,
135 benefits payable by an employer, association, or other
136 person under:

137 (i) A multiple employer welfare arrangement as defined
138 in section 514 of the Employee Retirement Income Security
139 Act of 1974, 29 U.S.C. §1144, as amended;

140 (ii) A minimum premium group insurance plan;

141 (iii) A stop-loss group insurance plan; or

142 (iv) An administrative services only contract;

143 (E) A portion of a policy or contract to the extent that it
144 provides for:

145 (i) Dividends or experience rating credits;

146 (ii) Voting rights; or

147 (iii) Payment of any fees or allowances to any person,
148 including the policy or contract owner, in connection with
149 the service to or administration of the policy or contract;

150 (F) A policy or contract issued in this state by a member
151 insurer at a time when it was not licensed or did not have a
152 certificate of authority to issue the policy or contract in this
153 state;

154 (G) An unallocated annuity contract issued to or in
155 connection with a benefit plan protected under the federal
156 pension benefit guaranty corporation, regardless of whether
157 the federal pension benefit guaranty corporation has yet
158 become liable to make any payments with respect to the
159 benefit plan;

160 (H) A portion of any unallocated annuity contract that is
161 not issued to or in connection with a specific employee,
162 union, or association of natural persons benefit plan or a
163 government lottery;

164 (I) A portion of a policy or contract to the extent that the
165 assessments required by §33-26A-9 of this code with
166 respect to the policy or contract are preempted by federal or
167 state law;

168 (J) An obligation that does not arise under the express
169 written terms of the policy or contract issued by the member
170 insurer to the enrollee, certificate holder, contract owner, or
171 policy owner, including without limitation:

172 (i) Claims based on marketing materials;

173 (ii) Claims based on side letters, riders, or other
174 documents that were issued by the member insurer without
175 meeting applicable policy or contract form filing or
176 approval requirements;

177 (iii) Misrepresentations of or regarding policy or
178 contract benefits;

179 (iv) Extra-contractual claims; or

180 (v) A claim for penalties or consequential or incidental
181 damages;

182 (K) A contractual agreement that establishes the
183 member insurer's obligations to provide a book value
184 accounting guaranty for defined contribution benefit plan
185 participants by reference to a portfolio of assets that is
186 owned by the benefit plan or its trustee, which in each case
187 is not an affiliate of the member insurer;

188 (L) A portion of a policy or contract to the extent it
189 provides for interest or other changes in value to be
190 determined by the use of an index or other external reference
191 stated in the policy or contract, but which have not been

192 credited to the policy or contract, or as to which the policy
193 or contract owner's rights are subject to forfeiture, as of the
194 date the member insurer becomes an impaired or insolvent
195 insurer under this article, whichever is earlier. If a policy's
196 or contract's interest or changes in value are credited less
197 frequently than annually, then for purposes of determining
198 the values that have been credited and are not subject to
199 forfeiture, the interest or change in value determined by
200 using the procedures defined in the policy or contract will
201 be credited as if the contractual date of crediting interest or
202 changing values was the date of impairment or insolvency,
203 whichever is earlier, and will not be subject to forfeiture;

204 (M) A policy or contract providing any hospital,
205 medical, prescription drug, or other health care benefits
206 pursuant to Part C or Part D of Subchapter XVIII, Chapter
207 7 of Title 42 of the United States Code (commonly known
208 as Medicare Part C & D), or Subchapter XIX, Chapter 7 of
209 Title 42 of the United States Code (commonly known as
210 Medicaid), or any regulations issued pursuant thereto; or

211 (N) Structured settlement annuity benefits to which a
212 payee (or beneficiary) has transferred his or her rights in a
213 structured settlement factoring transaction as defined in 26
214 U.S.C. § 5891, regardless of whether the transaction
215 occurred before or after that section became effective.

216 (3) The exclusion from coverage referenced in §33-
217 26A-3(b)(2)(C) of this code shall not apply to any portion
218 of a policy or contract, including a rider, that provides long-
219 term care or any other health insurance benefits.

220 (c) The benefits that the association may become liable
221 for shall in no event exceed the lesser of:

222 (1) The contractual obligations for which the member
223 insurer is liable or would have been liable if it were not an
224 impaired or insolvent insurer; or

225 (2) (A) With respect to one life, regardless of the
226 number of policies or contracts:

227 (i) \$300,000 in life insurance death benefits, but no
228 more than \$100,000 in net cash surrender and net cash
229 withdrawal values for life insurance;

230 (ii) For health insurance benefits:

231 (I) \$100,000 for coverages not defined as disability
232 income insurance or health benefit plans or long-term care
233 insurance as defined in §33-15A-4 of this code, including
234 any net cash surrender and net cash withdrawal values;

235 (II) \$300,000 for disability income insurance, and
236 \$300,000 for long-term care insurance as defined in §33-
237 15A-4 of this code;

238 (III) \$500,000 for health benefit plans;

239 (iii) \$250,000 in the present value of annuity benefits,
240 including net cash surrender and net cash withdrawal
241 values; or

242 (B) With respect to each individual participating in a
243 governmental retirement plan established under section 401,
244 403(b), or 457 of the United States Internal Revenue Code
245 covered by an unallocated annuity contract or the
246 beneficiaries of each such individual if deceased, in the
247 aggregate, \$250,000 in present value annuity benefits,
248 including net cash surrender and net cash withdrawal
249 values;

250 (C) With respect to each payee of a structured settlement
251 annuity, or beneficiary or beneficiaries of the payee if
252 deceased, \$250,000 in present value annuity benefits, in the
253 aggregate, including net cash surrender and net cash
254 withdrawal values, if any;

255 (D) However, in no event shall the association be
256 obligated to cover more than:

257 (i) An aggregate of \$300,000 in benefits with respect to
258 any one life under §33-26A-3(c)(2)(A), §33-26A-
259 3(c)(2)(B), or §33-26A-3(c)(2)(C) of this code except with
260 respect to benefits for health benefit plans under §33-26A-
261 3(c)(2)(A)(ii) of this code, in which case the aggregate
262 liability of the association shall not exceed \$500,000 with
263 respect to any one individual; or

264 (ii) With respect to one owner of multiple nongroup
265 policies of life insurance, whether the policy or contract
266 owner is an individual, firm, corporation, or other person,
267 and whether the persons insured are officers, managers,
268 employees, or other persons, more than \$5 million in
269 benefits, regardless of the number of policies and contracts
270 held by the owner.

271 (E) With respect to either one contract owner provided
272 coverage under §33-26A-3(a)(3)(B) of this code, or one
273 plan sponsor whose plans own directly or in trust one or
274 more unallocated annuity contracts not included in §33-
275 26A-3(c)(2)(B) of this code, \$5 million in benefits,
276 irrespective of the number of contracts with respect to the
277 contract owner or plan sponsor. However, in the case where
278 one or more unallocated annuity contracts are covered
279 contracts under this article and are owned by a trust or other
280 entity for the benefit of two or more plan sponsors, coverage
281 shall be afforded by the association if the largest interest in
282 the trust or entity owning the contract or contracts is held by
283 a plan sponsor whose principal place of business is in this
284 state. In no event shall the association be obligated to cover
285 more than \$5 million in benefits with respect to all of these
286 unallocated contracts.

287 (F) The limitations set forth in this subsection are
288 limitations on the benefits for which the association is
289 obligated before taking into account either its subrogation
290 and assignment rights or the extent to which those benefits
291 could be provided out of the assets of the impaired or
292 insolvent insurer attributable to covered policies. The costs
293 of the association's obligations under this article may be met

294 by the use of assets attributable to covered policies or
295 reimbursed to the association pursuant to its subrogation
296 and assignment rights.

297 (G) For purposes of this article, benefits provided by a
298 long-term care rider to a life insurance policy or annuity
299 contract shall be considered the same type of benefits as the
300 base life insurance policy or annuity contract to which it
301 relates.

302 (d) In performing its obligations to provide coverage
303 under §33-26A-8 of this code, the association shall not be
304 required to guarantee, assume, reinsure, reissue, or perform,
305 or cause to be guaranteed, assumed, reinsured, reissued, or
306 performed, the contractual obligations of the insolvent or
307 impaired insurer under a covered policy or contract that do
308 not materially affect the economic values or economic
309 benefits of the covered policy or contract.

§33-26A-5. Definitions.

1 As used in this article:

2 (1) “Account” means either of the two accounts created
3 under §33-26A-6 of this code.

4 (2) “Association” means the West Virginia Life and
5 Health Insurance Guaranty Association created under §33-
6 26A-6 of this code.

7 (3) “Authorized assessment” or the term “authorized”
8 when used in the context of assessments means a resolution
9 by the board of directors has been passed whereby an
10 assessment will be called immediately or in the future from
11 member insurers for a specified amount. An assessment is
12 authorized when the resolution is passed.

13 (4) “Benefit plan” means a specific employee, union, or
14 association of natural persons benefit plan.

15 (5) “Called assessment” or the term “called” when used
16 in the context of assessments means that a notice has been
17 issued by the association to member insurers requiring that
18 an authorized assessment be paid within the time frame set
19 forth within the notice. An authorized assessment becomes
20 a called assessment when notice is mailed by the association
21 to member insurers.

22 (6) “Commissioner” means the Insurance
23 Commissioner of West Virginia.

24 (7) “Contractual obligation” means any obligation
25 under a policy or contract or certificate under a group policy
26 or contract, or portion thereof for which coverage is
27 provided under §33-26A-3 of this code.

28 (8) “Covered contract” or “covered policy” means any
29 policy or contract within the scope of this article under §33-
30 26A-3 of this code.

31 (9) “Extra-contractual claims” shall include, for
32 example, claims relating to bad faith in the payment of
33 claims, punitive, or exemplary damages or attorneys’ fees
34 and costs.

35 (10) “Health benefit plan” means any hospital or
36 medical expense policy or certificate subject to §33-15-1 *et*
37 *seq.* or §33-16-1 *et seq.* of this code and benefits provided
38 subject to §33-24-1 *et seq.* or §33-25-1 *et seq.* of this code,
39 or health maintenance organization subscriber contract or
40 any other similar health contract subject to the provisions of
41 §33-25A-1 *et seq.* of this code. “Health benefit plan” does
42 not include:

43 (i) Accident only insurance;

44 (ii) Credit insurance;

45 (iii) Dental only insurance;

46 (iv) Vision only insurance;

- 47 (v) Medicare Supplement insurance;
- 48 (vi) Benefits for long-term care, home health care,
49 community-based care, or any combination thereof;
- 50 (vii) Disability income insurance;
- 51 (viii) Coverage for on-site medical clinics; or
- 52 (ix) Specified disease, hospital confinement indemnity,
53 or limited benefit health insurance if the types of coverage
54 do not provide coordination of benefits and are provided
55 under separate policies or certificates.
- 56 (11) “Impaired insurer” means a member insurer which,
57 after the effective date of this article, is not an insolvent
58 insurer, and: (1) Is deemed by the commissioner to be
59 potentially unable to fulfill its contractual obligations; or (2)
60 is placed under an order of rehabilitation or conservation by
61 a court of competent jurisdiction.
- 62 (12) “Insolvent insurer” means a member insurer which,
63 after the effective date of this article, is placed under an
64 order of liquidation by a court of competent jurisdiction
65 with a finding of insolvency.
- 66 (13) “Member insurer” means any insurer or health
67 maintenance organization licensed or which holds a
68 certificate of authority to transact in this state any kind of
69 insurance or health maintenance organization business for
70 which coverage is provided under §33-26A-3 of this code,
71 and includes an insurer or health maintenance organization
72 whose license or certificate of authority in this state may
73 have been suspended, revoked, not renewed, or voluntarily
74 withdrawn, and includes nonprofit service corporations as
75 defined in §33-24-1 *et seq.* of this code and health care
76 corporations as defined in §33-25-1 *et seq.* of this code, but
77 does not include:
- 78 (A) A fraternal benefit society;

- 79 (B) A mandatory state pooling plan;
- 80 (C) A mutual assessment company or any entity that
81 operates on an assessment basis;
- 82 (D) An insurance exchange;
- 83 (E) An organization which has a certificate or license
84 limited to the issuance of charitable gift annuities under
85 §33-13B-1 *et seq.* of this code; or
- 86 (F) Any entity similar to any of the above.
- 87 (14) “Moody’s Corporate Bond Yield Average” means
88 the Monthly Average Corporates as published by Moody’s
89 Investors Service, Inc., or any successor thereto.
- 90 (15) “Owner” of a policy or contract and
91 “policyholder”, “policy owner”, and “contract owner” mean
92 the person who is identified as the legal owner under the
93 terms of the policy or contract or who is otherwise vested
94 with legal title to the policy or contract through a valid
95 assignment completed in accordance with the terms of the
96 policy or contract and properly recorded as the owner on the
97 books of the member insurer. The terms “owner”, “contract
98 owner”, “policyholder”, and “policy owner” do not include
99 persons with a mere beneficial interest in a policy or
100 contract.
- 101 (16) “Person” means any individual, corporation,
102 limited liability company, partnership, association, or
103 voluntary organization.
- 104 (17) “Plan sponsor” means:
- 105 (A) The employer in the case of a benefit plan
106 established or maintained by a single employer;
- 107 (B) The employee organization in the case of a benefit
108 plan established or maintained by an employee
109 organization; or

110 (C) In a case of a benefit plan established or maintained
111 by two or more employers or jointly by one or more
112 employers and one or more employee organizations, the
113 association, committee, joint board of trustees, or other
114 similar group of representatives of the parties who establish
115 or maintain the benefit plan.

116 (18) “Premiums” means amounts or considerations (by
117 whatever name called) received on covered policies or
118 contracts less premiums, considerations, and deposits, and
119 less dividends and experience credits thereon. “Premiums”
120 does not include amounts or considerations received for
121 policies or contracts or for the portions of policies or
122 contracts for which coverage is not provided under §33-
123 26A-3(b) of this code, except that assessable premium shall
124 not be reduced on account of §33-26A-3(b)(2)(C) of this
125 code relating to interest limitations and §33-26A-3(c)(2) of
126 this code relating to limitations with respect to any one
127 individual, one participant, and one policy or contract
128 owner. Premiums shall not include:

129 (A) Premiums in excess of \$5 million on any
130 unallocated annuity contract not issued under a government
131 retirement plan or its trustee established under sections 401,
132 403(b), or 457 of the United States Internal Revenue Code;
133 or

134 (B) With respect to multiple nongroup policies of life
135 insurance owned by one owner, whether the policy or
136 contract owner is an individual, firm, corporation, or other
137 person, and whether the persons insured are officers,
138 managers, employees, or other persons, premiums in excess
139 of \$5 million with respect to these policies or contracts,
140 regardless of the number of policies or contracts held by the
141 owner.

142 (19) (A) “Principal place of business” of a plan sponsor
143 or a person other than a natural person means the single state
144 in which the natural persons who establish policy for the
145 direction, control, and coordination of the operations of the

146 entity as a whole primarily exercise that function,
147 determined by the association in its reasonable judgment by
148 considering the following factors:

149 (i) The state in which the primary executive and
150 administrative headquarters of the entity is located;

151 (ii) The state in which the principal office of the chief
152 executive officer of the entity is located;

153 (iii) The state in which the board of directors (or similar
154 governing person or persons) of the entity conducts the
155 majority of its meetings;

156 (iv) The state in which the executive or management
157 committee of the board of directors (or similar governing
158 person or persons) of the entity conducts the majority of its
159 meetings; and

160 (v) The state from which the management of the overall
161 operations of the entity is directed;

162 (vi) In the case of a benefit plan sponsored by affiliated
163 companies comprising a consolidated corporation, the state
164 in which the holding company or controlling affiliate has its
165 principal place of business as determined using the above
166 factors; however

167 (vii) In the case of a plan sponsor, if more than 50
168 percent of the participants in the benefit plan are employed
169 in a single state, that state shall be deemed to be the principal
170 place of business of the plan sponsor.

171 (B) The principal place of business of a plan sponsor of
172 a benefit plan described in §33-26A-5(17)(C) of this code
173 shall be deemed to be the principal place of business of the
174 association, committee, joint board of trustees, or other
175 similar group of representatives of the parties who establish
176 or maintain the benefit plan that, in lieu of a specific or clear
177 designation of a principal place of business, shall be deemed
178 to be the principal place of business of the employer or

179 employee organization that has the largest investment in the
180 benefit plan in question.

181 (20) “Receivership court” means the court in the
182 insolvent or impaired insurer’s state having jurisdiction over
183 the conservation, rehabilitation, or liquidation of the
184 member insurer.

185 (21) “Resident” means a person to whom a contractual
186 obligation is owed and who resides in this state on the date of
187 entry of a court order that determines a member insurer to be
188 an impaired insurer or a court order that determines a member
189 insurer to be an insolvent insurer, whichever occurs first. A
190 person may be a resident of only one state, which in the case
191 of a person other than a natural person shall be its principal
192 place of business. Citizens of the United States that are either
193 residents of foreign countries or residents of United States
194 possessions, territories, or protectorates that do not have an
195 association similar to the association created by this article,
196 shall be deemed residents of the state of domicile of the
197 member insurer that issued the policies or contracts.

198 (22) “Structured settlement annuity” means an annuity
199 purchased in order to fund periodic payments for a plaintiff
200 or other claimant in payment for or with respect to personal
201 injury suffered by the plaintiff or other claimant.

202 (23) “Supplemental contract” means a written
203 agreement entered into for the distribution of proceeds
204 under a life, health, or annuity policy or contract.

205 (24) “Unallocated annuity contract” means any annuity
206 contract or group annuity certificate which is not issued to
207 and owned by an individual, except to the extent of any
208 annuity benefits guaranteed to an individual by an insurer
209 under such contract or certificate.

§33-26A-6. Creation of association; required accounts; supervision of commissioner; meetings and records.

1 (a) There is created a nonprofit legal entity to be known
2 as the West Virginia Life and Health Insurance Guaranty

3 Association. All member insurers shall be and remain
4 members of the association as a condition of their authority
5 to transact insurance or a health maintenance organization
6 business in this state. The association shall perform its
7 functions under the plan of operation established and
8 approved under §33-26A-10 of this code and shall exercise
9 its powers through a board of directors established under
10 §33-26A-7 of this code. For purposes of administration and
11 assessment, the association shall maintain the following two
12 accounts:

13 (1) The life insurance and annuity account which
14 includes the following subaccounts:

15 (A) Life insurance account;

16 (B) Annuity account which shall include annuity
17 contracts owned by a governmental retirement plan or its
18 trustee established under section 401, 403(b), or 457 of the
19 United States Internal Revenue Code, but shall otherwise
20 exclude unallocated annuities; and

21 (C) Unallocated annuity account which shall exclude
22 contracts owned by a governmental retirement plan or its
23 trustee established under section 401, 403(b), or 457 of the
24 United States Internal Revenue Code.

25 (2) The health account.

26 (b) The association shall come under the immediate
27 supervision of the commissioner and shall be subject to the
28 applicable provisions of the insurance laws of this state.
29 Meetings or records of the association may be opened to the
30 public upon majority vote of the board of directors of the
31 association.

**§33-26A-7. Board of directors; members; vacancies; voting
rights; appointment and reimbursement.**

1 (a) The board of directors of the association shall consist
2 of not less than seven nor more than 11 member insurers

3 serving terms as established in the plan of operation. The
4 members of the board shall be selected by member insurers
5 subject to the approval of the commissioner. Vacancies on
6 the board shall be filled for the remaining period of the term
7 by a majority vote of the remaining board members, subject
8 to the approval of the commissioner.

9 (b) To select the initial board of directors, and initially
10 organize the association, the commissioner shall give notice
11 to all member insurers of the time and place of the
12 organizational meeting. In determining voting rights at the
13 organizational meeting, each member insurer shall be
14 entitled to one vote in person or by proxy. If the board of
15 directors is not selected within 60 days after notice of the
16 organizational meeting, the commissioner may appoint the
17 initial members.

18 (c) In approving selections or in appointing members to
19 the board, the commissioner shall consider, among other
20 things, whether all member insurers are fairly represented.

21 (d) Members of the board may be reimbursed from the
22 assets of the association for expenses incurred by them as
23 members of the board of directors but members of the board
24 shall not otherwise be compensated by the association for
25 their services.

§33-26A-8. Powers and duties of association.

1 (a) If a member insurer is an impaired insurer, the
2 association may, in its discretion, and subject to any
3 conditions imposed by the association that do not impair the
4 contractual obligations of the impaired insurer, that are
5 approved by the commissioner:

6 (1) Guarantee, assume, reissue, or reinsure, or cause to
7 be guaranteed, assumed, reissued, or reinsured, any or all of
8 the covered policies or contracts of the impaired insurer; or

9 (2) Provide such moneys, pledges, notes, guarantees, or
10 other means as are proper to effectuate §33-26A-8(a)(1) of

11 this code and assure payment of the contractual obligations
12 of the impaired insurer pending action under said §33-26A-
13 8(a)(1) of this code.

14 (b) If a member insurer is an insolvent insurer, the
15 association shall, in its discretion, either:

16 (1) (A) (i) Guarantee, assume, reissue, or reinsure, or
17 cause to be guaranteed, assumed, reissued, or reinsured, the
18 policies or contracts of the insolvent insurer; or

19 (ii) Assure payment of the contractual obligations of the
20 insolvent insurer; and

21 (B) Provide moneys, pledges, guarantees, or other
22 means as are reasonably necessary to discharge such duties;
23 or

24 (2) Provide benefits and coverages in accordance with
25 the following provisions:

26 (A) With respect to policies and contracts, assure
27 payment of benefits that would have been payable under the
28 policies or contracts of the insolvent insurer, for claims
29 incurred:

30 (i) With respect to group policies and contracts, not later
31 than the earlier of the next renewal date under such policies
32 or contracts or 45 days, but in no event less than 30 days,
33 after the date on which the association becomes obligated
34 with respect to such policies and contracts;

35 (ii) With respect to nongroup policies, contracts, and
36 annuities, not later than the earlier of the next renewal date,
37 if any, under these policies or contracts or one year, but in
38 no event less than 30 days, from the date on which the
39 association becomes obligated with respect to such policies
40 or contracts;

41 (B) Make diligent efforts to provide all known insureds,
42 enrollees, or annuitants, or group policy or contract owners

43 with respect to group policies and contracts 30-days' notice
44 of the termination (pursuant to §33-26A-8(b)(2)(A) of this
45 code) of the benefits provided;

46 (C) With respect to nongroup policies and contracts
47 covered by the association, make available to each known
48 insured, enrollee, or annuitant, or owner if other than the
49 insured or annuitant, and with respect to an individual
50 formerly an insured, enrollee, or annuitant under a group
51 policy or contract who is not eligible for replacement group
52 coverage, make available substitute coverage on an
53 individual basis in accordance with the provisions of §33-
54 26A-8(b)(2)(D) of this code, if the insureds, enrollees, or
55 annuitants had a right under law or the terminated policy,
56 contract, or annuity to convert coverage to individual
57 coverage or to continue an individual policy, contract, or
58 annuity in force until a specified age or for a specified time,
59 during which the insurer or health maintenance organization
60 had no right unilaterally to make changes in any provision
61 of the policy, contract, or annuity or had a right only to make
62 changes in premium by class;

63 (D) (i) In providing the substitute coverage required
64 under §33-26A-8(b)(2)(C) of this code, the association may
65 offer either to reissue the terminated coverage or to issue an
66 alternative policy or contract at actuarially justified rates,
67 subject to the prior approval of the commissioner;

68 (ii) Alternative or reissued policies or contracts shall be
69 offered without requiring evidence of insurability, and shall
70 not provide for any waiting period or exclusion that would
71 not have applied under the terminated policy or contract;

72 (iii) The association may reinsure any alternative or
73 reissued policy or contract.

74 (E) (i) Alternative policies or contracts adopted by the
75 association shall be subject to the approval of the
76 commissioner. The association may adopt alternative

77 policies or contracts of various types for future issuance
78 without regard to any particular impairment or insolvency.

79 (ii) Alternative policies or contracts shall contain at least
80 the minimum statutory provisions required in this state and
81 provide benefits that shall not be unreasonable in relation to
82 the premium charged. The association shall set the premium
83 in accordance with a table of rates which it shall adopt. The
84 premium shall reflect the amount of insurance to be
85 provided and the age and class of risk of each insured, but
86 shall not reflect any changes in the health of the insured after
87 the original policy or contract was last underwritten.

88 (iii) Any alternative policy or contract issued by the
89 association shall provide coverage of a type similar to that
90 of the policy or contract issued by the impaired or insolvent
91 insurer, as determined by the association.

92 (F) If the association elects to reissue terminated
93 coverage at a premium rate different from that charged
94 under the terminated policy or contract, the premium shall
95 be actuarially justified and set by the association in
96 accordance with the amount of insurance or coverage
97 provided and the age and class of risk, subject to prior
98 approval of the commissioner;

99 (G) The association's obligations with respect to
100 coverage under any policy or contract of the impaired or
101 insolvent insurer or under any reissued or alternative policy
102 or contract shall cease on the date that the coverage or policy
103 or contract is replaced by another similar policy or contract
104 by the policy or contract owner, the insured, the enrollee, or
105 the association;

106 (H) When proceeding under this subdivision with
107 respect to any policy or contract carrying guaranteed
108 minimum interest rates, the association shall assure the
109 payment or crediting of a rate of interest consistent with
110 §33-26A-3(b)(2)(C) of this code.

111 (c) Nonpayment of premium within 31 days after the
112 date required under the terms of any guaranteed, assumed,
113 alternative, or reissued policy or contract or substitute
114 coverage shall terminate the association's obligations under
115 such policy, contract, or coverage under this article with
116 respect to such policy, contract, or coverage, except with
117 respect to any claims incurred or any net cash surrender
118 value which may be due in accordance with the provisions
119 of this article.

120 (d) Premiums due for coverage after entry of an order of
121 liquidation of an insolvent insurer shall belong to and be
122 payable at the direction of the association. If the liquidator
123 of an insolvent insurer requests, the association shall
124 provide a report to the liquidator regarding such premium
125 collected by the association. The association shall be liable
126 for unearned premiums due to policy or contract owners
127 arising after the entry of the order.

128 (e) The protection provided by this article shall not
129 apply where any guaranty protection is provided to residents
130 of this state by the laws of the domiciliary state or
131 jurisdiction of the impaired or insolvent insurer other than
132 this state.

133 (f) In carrying out its duties under §33-26A-8(b) of this
134 code, the association may, subject to approval by a court in
135 this state:

136 (1) Impose permanent policy or contract liens in
137 connection with any guarantee, assumption, or reinsurance
138 agreement, if the association finds that the amounts which
139 can be assessed under this article are less than the amounts
140 needed to assure full and prompt performance of the
141 association's duties under this article, or that the economic
142 or financial conditions as they affect member insurers are
143 sufficiently adverse to render the imposition of such
144 permanent policy or contract liens, to be in the public
145 interest;

146 (2) Impose temporary moratoriums or liens on
147 payments of cash values and policy loans, or any other right
148 to withdraw funds held in conjunction with policies or
149 contracts, in addition to any contractual provisions for
150 deferral of cash or policy loan value. In the event of a
151 temporary moratorium or moratorium charge imposed by
152 the receivership court on payment of cash values or policy
153 loans, or on any other right to withdraw funds held in
154 conjunction with policies or contracts, out of the assets of
155 the impaired or insolvent insurer, the association may defer
156 the payment of cash values, policy loans, or other rights by
157 the association for the period of the moratorium or
158 moratorium charge imposed by the receivership court,
159 except for claims covered by the association to be paid in
160 accordance with a hardship procedure established by the
161 liquidator or rehabilitator and approved by the receivership
162 court.

163 (g) A deposit in this state, held pursuant to law or
164 required by the commissioner for the benefit of creditors,
165 including policy or contract owners, not turned over to the
166 domiciliary liquidator upon the entry of a final order of
167 liquidation or order approving a rehabilitation plan of a
168 member insurer domiciled in this state or in a reciprocal
169 state, pursuant to §33-10-1 *et seq.* of this code, shall be
170 promptly paid to the association. The association shall be
171 entitled to retain a portion of any amount so paid to it equal
172 to the percentage determined by dividing the aggregate
173 amount of policy or contract owners' claims related to that
174 insolvency for which the association has provided statutory
175 benefits by the aggregate amount of all policy or contract
176 owners' claims in this state related to that insolvency and
177 shall remit to the domiciliary receiver the amount so paid to
178 the association less the amount retained pursuant to this
179 subsection. Any amount so paid to the association and
180 retained by it shall be treated as a distribution of estate assets
181 pursuant to §33-10-1 *et seq.* of this code.

182 (h) If the association fails to act within a reasonable
183 period of time with respect to an insolvent insurer as
184 provided in §33-26A-8(b) of this code, the commissioner
185 shall have the powers and duties of the association under
186 this article with respect to the insolvent insurer.

187 (i) The association may render assistance and advice to
188 the commissioner, upon his or her request, concerning
189 rehabilitation, payment of claims, continuance of coverage,
190 or the performance of other contractual obligations of any
191 impaired or insolvent insurer.

192 (j) The association shall have standing to appear or
193 intervene before any court in this state with jurisdiction over
194 an impaired or insolvent insurer concerning which the
195 association is or may become obligated under this article.
196 Standing shall extend to all matters germane to the powers
197 and duties of the association, including, but not limited to,
198 proposals for reinsuring, reissuing, modifying, or
199 guaranteeing the policies or contracts of the impaired or
200 insolvent insurer and the determination of the policies or
201 contracts and contractual obligations. The association shall
202 also have the right to appear or intervene before a court or
203 agency in another state with jurisdiction over an impaired or
204 insolvent insurer for which the association is or may become
205 obligated or with jurisdiction over any person or property
206 against whom the association may have rights through
207 subrogation or otherwise.

208 (k) (1) Any person receiving benefits under this article
209 shall be deemed to have assigned the rights under, and any
210 causes of action against any person for losses arising under,
211 resulting from, or otherwise relating to, the covered policy
212 or contract to the association to the extent of the benefits
213 received because of this article, whether the benefits are
214 payments of or on account of contractual obligations,
215 continuation of coverage, or provision of substitute or
216 alternative policies, contracts, or coverages. The association
217 may require an assignment to it of such rights and cause of
218 action by any enrollee, payee, policy, or contract owner,

219 beneficiary, insured, or annuitant as a condition precedent
220 to the receipt of any right or benefits conferred by this article
221 upon such person.

222 (2) The subrogation rights of the association under this
223 subsection shall have the same priority against the assets of
224 the impaired or insolvent insurer as that possessed by the
225 person entitled to receive benefits under this article.

226 (3) In addition to §33-26A-8(k)(1) and §33-26A-8(k)(2)
227 of this code, the association shall have all common law
228 rights of subrogation and any other equitable or legal
229 remedy that would have been available to the impaired or
230 insolvent insurer or owner, beneficiary, enrollee, payee, or
231 insured of a policy or contract with respect to such policy or
232 contracts.

233 (4) If the preceding provisions of this subsection are
234 invalid or ineffective with respect to any person or claim for
235 any reason, the amount payable by the association with
236 respect to the related covered obligations shall be reduced
237 by the amount realized by any other person with respect to
238 the person or claim that is attributable to the policies or
239 contracts, or portion thereof, covered by the association.

240 (5) If the association has provided benefits with respect
241 to a covered obligation and a person recovers amounts as to
242 which the association has rights as described in this
243 subsection, the person shall pay to the association the
244 portion of the recovery attributable to the policies or
245 contracts, or portion thereof, covered by the association.

246 (1) In addition to the rights and powers elsewhere in this
247 article, the association may:

248 (1) Enter into such contracts as are necessary or proper
249 to carry out the provisions and purposes of this article;

250 (2) Sue or be sued, including taking any legal actions
251 necessary or proper to recover any unpaid assessments

252 under §33-26A-9 of this code and to settle claims or
253 potential claims against it;

254 (3) Borrow money to effect the purpose of this article;
255 any notes or other evidence of indebtedness of the association
256 not in default shall be legal investments for domestic member
257 insurers and may be carried as admitted assets;

258 (4) Employ or retain such persons as are necessary to
259 handle the financial transactions of the association, and to
260 perform such other functions as become necessary or proper
261 under this article;

262 (5) Take such legal action as may be necessary to avoid
263 or recover payment of improper claims;

264 (6) Exercise, for the purposes of this article and to the
265 extent approved by the commissioner, the powers of a
266 domestic life insurer, health insurer, or health maintenance
267 organization, but in no case may the association issue
268 policies or contracts other than those issued to perform its
269 obligations under this article;

270 (7) Organize itself as a corporation or in other legal form
271 permitted by the laws of the state;

272 (8) Request information from a person seeking coverage
273 from the association in order to aid the association in
274 determining its obligations under this article with respect to
275 the person, and the person shall promptly comply with the
276 request;

277 (9) Unless prohibited by law, in accordance with the
278 terms and conditions of the policy or contract, file for
279 actuarially justified rate or premium increases for any policy
280 or contract for which it provides coverage under this article;
281 and

282 (10) Take other necessary or appropriate action to
283 discharge its duties and obligations under this article or to
284 exercise its powers under this article.

285 (m) The association may join an organization of one or
286 more other state associations of similar purposes, to further
287 the purposes and administer the powers and duties of the
288 association.

289 (n) (1) (A) At any time within 180 days of the date of
290 the order of liquidation, the association may elect to succeed
291 to the rights and obligations of the ceding member insurer
292 that relate to policies, contracts, or annuities covered, in
293 whole or in part, by the association, in each case under any
294 one or more reinsurance contracts entered into by the
295 insolvent insurer and its reinsurers and selected by the
296 association. Any such assumption shall be effective as of the
297 date of the order of liquidation. The election shall be
298 effected by the association or the National Organization of
299 Life and Health Insurance Guaranty Associations
300 (NOLHGA) on its behalf sending written notice, return
301 receipt requested, to the affected reinsurers.

302 (B) To facilitate the earliest practicable decision about
303 whether to assume any of the contracts of reinsurance, and
304 in order to protect the financial position of the estate, the
305 receiver and each reinsurer of the ceding member insurer
306 shall make available upon request to the association or to
307 NOLHGA on its behalf as soon as possible after
308 commencement of formal delinquency proceedings: (i)
309 Copies of in-force contracts of reinsurance and all related
310 files and records relevant to the determination of whether
311 such contracts should be assumed; and (ii) notices of any
312 defaults under the reinsurance contracts or any known event
313 or condition which with the passage of time could become
314 a default under the reinsurance contracts.

315 (C) The following subparagraphs shall apply to
316 reinsurance contracts so assumed by the association:

317 (i) The association shall be responsible for all unpaid
318 premiums due under the reinsurance contracts for periods
319 both before and after the date of the order of liquidation, and
320 shall be responsible for the performance of all other

321 obligations to be performed after the date of the order of
322 liquidation, in each case which relate to policies, contracts,
323 or annuities covered, in whole or in part, by the association.
324 The association may charge policies, contracts, or annuities
325 covered in part by the association, through reasonable
326 allocation methods, the costs for reinsurance in excess of the
327 obligations of the association and shall provide notice and
328 an accounting of these charges to the liquidator.

329 (ii) The association shall be entitled to any amounts
330 payable by the reinsurer under the reinsurance contracts
331 with respect to losses or events that occur in periods after
332 the date of the order of liquidation and that relate to policies,
333 contracts, or annuities covered, in whole or in part, by the
334 association, provided that, upon receipt of any such
335 amounts, the association shall be obliged to pay to the
336 beneficiary under the policy, contract, or annuity on account
337 of which the amounts were paid a portion of the amount
338 equal to lesser of:

339 (I) The amount received by the association; and

340 (II) The excess of the amount received by the
341 association over the amount equal to the benefits paid by the
342 association on account of the policy, contract, or annuity
343 less the retention of the insurer applicable to the loss or
344 event.

345 (iii) Within 30 days following the association's election
346 (the "election date"), the association and each reinsurer
347 under contracts assumed by the association shall calculate
348 the net balance due to or from the association under each
349 reinsurance contract as of the election date with respect to
350 policies, contracts, or annuities covered, in whole or in part,
351 by the association, which calculation shall give full credit to
352 all items paid by either the member insurer or its receiver or
353 the reinsurer prior to the election date. The reinsurer shall
354 pay the receiver any amounts due for losses or events prior
355 to the date of the order of liquidation, subject to any set-off
356 for premiums unpaid for periods prior to the date, and the

357 association or reinsurer shall pay any remaining balance due
358 the other, in each case within five days of the completion of
359 the aforementioned calculation. Any disputes over the
360 amounts due to either the association or the reinsurer shall
361 be resolved by arbitration pursuant to the terms of the
362 affected reinsurance contracts or, if the contract contains no
363 arbitration clause, as otherwise provided by law. If the
364 receiver has received any amounts due the association
365 pursuant to §33-26A-8(n)(1)(C)(ii) of this code, the receiver
366 shall remit the same to the association as promptly as
367 practicable.

368 (iv) If the association or receiver, on the association's
369 behalf, within 60 days of the election date, pays the unpaid
370 premiums due for periods both before and after the election
371 date that relate to policies, contracts, or annuities covered,
372 in whole or in part, by the association, the reinsurer shall not
373 be entitled to terminate the reinsurance contracts for failure
374 to pay premium insofar as the reinsurance contracts relate to
375 policies, contracts, or annuities covered, in whole or in part,
376 by the association, and shall not be entitled to set off any
377 unpaid amounts due under other contracts, or unpaid
378 amounts due from parties other than the association, against
379 amounts due the association.

380 (2) During the period from the date of the order of
381 liquidation until the election date or, if the election date does
382 not occur, until 180 days after the date of the order of
383 liquidation:

384 (A) (i) Neither the association nor the reinsurer shall
385 have any rights or obligations under reinsurance contracts
386 that the association has the right to assume under §33-26A-
387 8(n)(1) of this code, whether for periods prior to or after the
388 date of the order of liquidation; and

389 (ii) The reinsurer, the receiver, and the association shall,
390 to the extent practicable, provide each other data and records
391 reasonably requested;

392 (B) Provided that once the association has elected to
393 assume a reinsurance contract, the parties' rights and
394 obligations shall be governed by §33-26A-8(n)(1) of this
395 code.

396 (3) If the association does not elect to assume a
397 reinsurance contract by the election date pursuant to §33-
398 26A-8(n)(1) of this code, the association shall have no rights
399 or obligations, in each case for periods both before and after
400 the date of the order of liquidation, with respect to the
401 reinsurance contract.

402 (4) When policies, contracts, or annuities, or covered
403 obligations with respect thereto, are transferred to an
404 assuming insurer, reinsurance on the policies, contracts, or
405 annuities may also be transferred by the association, in the
406 case of contracts assumed under §33-26A-8(n)(1) of this
407 code, subject to the following:

408 (A) Unless the reinsurer and the assuming insurer agree
409 otherwise, the reinsurance contract transferred shall not
410 cover any new policies of insurance, contracts, or annuities
411 in addition to those transferred;

412 (B) The obligations described in §33-26A-8(n)(1) of
413 this code shall no longer apply with respect to matters
414 arising after the effective date of the transfer; and

415 (C) Notice shall be given in writing, return receipt
416 requested, by the transferring party to the affected reinsurer
417 not less than 30 days prior to the effective date of the
418 transfer.

419 (5) The provisions of this subsection shall supersede the
420 provisions of any state law or of any affected reinsurance
421 contract that provides for or requires any payment of
422 reinsurance proceeds, on account of losses or events that
423 occur in periods after the date of the order of liquidation, to
424 the receiver of the insolvent insurer or any other person. The
425 receiver shall remain entitled to any amounts payable by the

426 reinsurer under the reinsurance contracts with respect to
427 losses or events that occur in periods prior to the date of the
428 order of liquidation, subject to applicable setoff provisions.

429 (6) Except as otherwise provided in this subsection,
430 nothing in this subsection shall alter or modify the terms and
431 conditions of any reinsurance contract. Nothing in this
432 subsection shall abrogate or limit any rights of any reinsurer
433 to claim that it is entitled to rescind a reinsurance contract.
434 Nothing in this subsection shall give a policyholder,
435 contract owner, enrollee, certificate holder, or beneficiary
436 an independent cause of action against a reinsurer that is not
437 otherwise set forth in the reinsurance contract. Nothing in
438 this subsection shall limit or affect the association's rights
439 as a creditor of the estate against the assets of the estate.
440 Nothing in this subsection shall apply to reinsurance
441 agreements covering property or casualty risks.

442 (o) The board of directors of the association shall have
443 discretion and may exercise reasonable business judgment
444 to determine the means by which the association is to
445 provide the benefits of this article in an economical and
446 efficient manner.

447 (p) Where the association has arranged or offered to
448 provide the benefits of this article to a covered person under
449 a plan or arrangement that fulfills the association's
450 obligations under this article, the person shall not be entitled
451 to benefits from the association in addition to or other than
452 those provided under the plan or arrangement.

453 (q) Venue in a suit against the association arising under
454 the article shall be in Kanawha County. The association
455 shall not be required to give an appeal bond in an appeal that
456 relates to a cause of action arising under this act.

457 (r) In carrying out its duties in connection with
458 guaranteeing, assuming, reissuing, or reinsuring policies or
459 contracts under §33-26A-8(a) or §33-26A-8(b) of this code,
460 the association may issue substitute coverage for a policy or

461 contract that provides an interest rate, crediting rate, or
462 similar factor determined by use of an index or other
463 external reference stated in the policy or contract employed
464 in calculating returns or changes in value by issuing an
465 alternative policy or contract in accordance with the
466 following provisions:

467 (1) In lieu of the index or other external reference
468 provided in the original policy or contract, the alternative
469 policy or contract provides for:

470 (i) A fixed interest rate;

471 (ii) Payment of dividends with minimum guarantees; or

472 (iii) A different method for calculating interest or
473 changes in value;

474 (2) There is no requirement for evidence of insurability,
475 waiting period, or other exclusion that would not have
476 applied under the replaced policy or contract; and

477 (3) The alternative policy or contract is substantially
478 similar to the replaced policy or contract in all other material
479 terms.

§33-26A-9. Assessments.

1 (a) For the purpose of providing the funds necessary to
2 carry out the powers and duties of the association, the board
3 of directors shall assess the member insurers, separately for
4 each account, at such time and for such amounts as the board
5 finds necessary. Assessments shall be due not less than 30
6 days after prior written notice to the member insurers and
7 shall accrue interest at 10 percent per annum on and after
8 the due date.

9 (b) There shall be two classes of assessments, as
10 follows:

11 (1) Class A assessments shall be authorized and called
12 for the purpose of meeting administrative and legal costs
13 and other expenses. Class A assessments may be authorized
14 and called whether or not related to a particular impaired or
15 insolvent insurer.

16 (2) Class B assessments shall be authorized and called
17 to the extent necessary to carry out the powers and duties of
18 the association under §33-26A-8 of this code with regard to
19 an impaired or insolvent insurer.

20 (c) (1) The amount of any Class A assessment shall be
21 determined by the board and may be authorized and called
22 on a pro rata or nonpro rata basis. If pro rata, the board may
23 provide that it be credited against future Class B
24 assessments.

25 (2) The amount of any Class B assessment, except for
26 assessments related to long-term care insurance, shall be
27 allocated for assessment purposes between the accounts and
28 among the subaccounts of the life insurance and annuity
29 account, pursuant to an allocation formula which may be
30 based on the premiums or reserves of the impaired or
31 insolvent insurer or any other standard determined by the
32 board in its sole discretion as being fair and reasonable
33 under the circumstances.

34 (3) The amount of the Class B assessment for long-term
35 care insurance written by the impaired or insolvent insurer
36 shall be allocated according to a methodology included in
37 the plan of operation and approved by the commissioner.
38 The methodology shall provide for 50 percent of the
39 assessment to be allocated to accident and health member
40 insurers and 50 percent to be allocated to life and annuity
41 member insurers.

42 (4) Class B assessments against member insurers for
43 each account and subaccount shall be in the proportion that
44 the premiums received on business in this state by each
45 assessed member insurer on policies or contracts covered by

46 each account for the three most recent calendar years for
47 which information is available preceding the year in which
48 the member insurer became impaired or insolvent, as the
49 case may be, bears to such premiums received on business
50 in this state for such calendar years by all assessed member
51 insurers.

52 (5) Assessments for funds to meet the requirements of
53 the association with respect to an impaired or insolvent
54 insurer shall not be authorized or called until necessary to
55 implement the purposes of this article. Classification of
56 assessments under §33-26A-9(b) of this code and
57 computation of assessments under this subsection shall be
58 made with reasonable degree of accuracy, recognizing that
59 exact determinations may not always be possible. The
60 association shall notify each member insurer of its
61 anticipated pro rata share of an authorized assessment not
62 yet called within 180 days after the assessment is
63 authorized.

64 (d) The association may abate or defer, in whole or in
65 part, the assessment of a member insurer if, in the opinion
66 of the board, payment of the assessment would endanger the
67 ability of the member insurer to fulfill its contractual
68 obligations. If an assessment against a member insurer is
69 abated or deferred in whole or in part, the amount by which
70 such assessment is abated or deferred may be assessed
71 against the other member insurers in a manner consistent
72 with the basis for assessments set forth in this section. Once
73 the conditions that caused a deferral have been removed or
74 rectified, the member insurer shall pay all assessments that
75 were deferred pursuant to a repayment plan approved by the
76 association.

77 (e) (1) (A) Subject to the provisions of §33-26A-
78 9(e)(1)(B) of this code, the total of all assessments
79 authorized by the association with respect to a member
80 insurer for each subaccount of the life and annuity account
81 and for the health account shall not in any one calendar year
82 exceed two percent of such insurer's average annual

83 premiums received in this state on the policies and contracts
84 covered by the subaccount or account during the three
85 calendar years preceding the year in which the member
86 insurer became an impaired or insolvent insurer.

87 (B) If two or more assessments are authorized in one
88 calendar year with respect to member insurers that become
89 impaired or insolvent in different calendar years, the
90 average annual premiums for purposes of the aggregate
91 assessment percentage limitation referenced in §33-26A-
92 9(e)(1)(A) of this code shall be equal and limited to the
93 higher of the three-year average annual premiums for the
94 applicable subaccount or account as calculated pursuant to
95 this section.

96 (C) If the maximum assessment, together with the other
97 assets of the association in an account, does not provide in
98 any one year in either account an amount sufficient to carry
99 out the responsibilities of the association, the necessary
100 additional funds shall be assessed as soon thereafter as
101 permitted by this article.

102 (2) The board may provide in the plan of operation a
103 method of allocating funds among claims, whether relating
104 to one or more impaired or insolvent insurers, when the
105 maximum assessment will be insufficient to cover
106 anticipated claims.

107 (3) If the maximum assessment for any subaccount of
108 the life and annuity account in any one year does not provide
109 an amount sufficient to carry out the responsibilities of the
110 association, then pursuant to §33-26A-9(c)(2) of this code,
111 the board shall assess all subaccounts of the life and annuity
112 account for the necessary additional amount, subject to the
113 maximum stated in §33-26A-9(e)(1) of this code.

114 (f) The board may, by an equitable method as
115 established in the plan of operation, refund to member
116 insurers, in proportion to the contribution of each member
117 insurer to that account, the amount by which the assets of

118 the account exceed the amount the board finds is necessary
119 to carry out during the coming year the obligations of the
120 association with regard to that account, including assets
121 accruing from assignment, subrogation, net realized gains,
122 and income from investments. A reasonable amount may be
123 retained in any account to provide funds for the continuing
124 expenses of the association and for future claims.

125 (g) It shall be proper for any member insurer, in
126 determining its premium rates and policy owner dividends
127 as to any kind of insurance or health maintenance
128 organization business within the scope of this article, to
129 consider the amount reasonably necessary to meet its
130 assessment obligations under this article.

131 (h) The association shall issue to each member insurer
132 paying an assessment under this article, other than Class A
133 assessment, a certificate of contribution, in a form
134 prescribed by the commissioner, for the amount of the
135 assessment so paid. All outstanding certificates shall be of
136 equal dignity and priority without reference to amounts or
137 dates of issue. A certificate of contribution may be shown
138 by the member insurer in its financial statement as an asset
139 in such form and for such amount, if any, and period of time
140 as the commissioner may approve.

141 (i) (1) A member insurer that wishes to protest all or part
142 of an assessment shall pay when due the full amount of the
143 assessment as set forth in the notice provided by the
144 association. The payment shall be available to meet
145 association obligations during the pendency of the protest
146 or any subsequent appeal. Payment shall be accompanied by
147 a statement in writing that the payment is made under
148 protest and setting forth a brief statement of the grounds for
149 the protest.

150 (2) Within 60 days following the payment of an
151 assessment under protest by a member insurer, the
152 association shall notify the member insurer in writing of its
153 determination with respect to the protest unless the

154 association notifies the member insurer that additional time
155 is required to resolve the issues raised by the protest.

156 (3) Within 30 days after a final decision has been made,
157 the association shall notify the protesting member insurer in
158 writing of that final decision. Within 60 days of receipt of
159 notice of the final decision, the protesting member insurer
160 may appeal that final action to the commissioner.

161 (4) In the alternative to rendering a final decision with
162 respect to a protest based on a question regarding the
163 assessment base, the association may refer protests to the
164 commissioner for a final decision, with or without a
165 recommendation from the association.

166 (5) If the protest or appeal on the assessment is upheld,
167 the amount paid in error or excess shall be returned to the
168 member insurer. Interest on a refund due a protesting
169 member insurer shall be paid at the rate actually earned by
170 the association.

171 (j) The association may request information of member
172 insurers in order to aid in the exercise of its power under this
173 section, and member insurers shall promptly comply with a
174 request.

§33-26A-11. Duties and powers of commissioner of insurance.

1 In addition to the duties and powers enumerated
2 elsewhere in this article:

3 (a) The commissioner shall:

4 (1) Upon request of the board of directors, provide the
5 association with a statement of the premiums in this and any
6 other appropriate states for each member insurer;

7 (2) When an impairment is declared and the amount of
8 the impairment is determined, serve a demand upon the
9 impaired insurer to make good the impairment within a
10 reasonable time. Notice to the impaired insurer shall

11 constitute notice to its shareholders, if any; the failure of the
12 impaired insurer to promptly comply with the demand shall
13 not excuse the association from the performance of its
14 powers and duties under this article; and

15 (3) In any liquidation or rehabilitation proceeding
16 involving a domestic insurer, be appointed as the liquidator
17 or rehabilitator.

18 (b) The commissioner may suspend or revoke, after
19 notice and hearing, the certificate of authority to transact
20 business in this state of any member insurer which fails to
21 pay an assessment when due or fails to comply with the plan
22 of operation. As an alternative, the commissioner may levy
23 a forfeiture on any member insurer which fails to pay an
24 assessment when due. The forfeiture shall not exceed five
25 percent of the unpaid assessment per month, but no
26 forfeiture shall be less than \$100 per month.

27 (c) A final action of the board of directors or the
28 association may be appealed to the commissioner by any
29 member insurer if such appeal is taken within 60 days of its
30 receipt of notice of the final action being appealed. If a
31 member company is appealing an assessment, the amount
32 assessed shall be paid to the association and available to
33 meet association obligations during the pendency of an
34 appeal. If the appeal on the assessment is upheld, the amount
35 paid in error or excess shall be returned to the member
36 company. Any final action or order of the commissioner
37 shall be subject to judicial review in a court of competent
38 jurisdiction.

39 (d) The liquidator, rehabilitator, or conservator of any
40 impaired insurer may notify all interested persons of the
41 effect of this article.

§33-26A-12. Prevention of insolvencies; duties of commissioner; coordination with board of directors; duties of the board of directors; requested examinations; procedures and reports.

1 To aid in the detection and prevention of member
2 insurer insolvencies or impairments:

3 (a) It shall be the duty of the commissioner:

4 (1) To notify the commissioners of all the other states,
5 territories of the United States, and the District of Columbia
6 within 30 days following the action taken or the date the
7 action occurs, when the commissioner takes any of the
8 following actions against a member insurer:

9 (A) Revocation of license;

10 (B) Suspension of license; or

11 (C) Makes any formal order that the member insurer
12 restrict its premium writing, obtain additional contributions
13 to surplus, withdraw from the state, reinsure all or any part
14 of its business, or increase capital, surplus, or any other
15 account for the security of policy owners, contract owners,
16 certificate holders, or creditors.

17 (2) To report to the board of directors when the
18 commissioner has taken any of the actions set forth in §33-
19 26A-12(a)(1) of this code or has received a report from any
20 other commissioner indicating that any such action has been
21 taken in another state. The report to the board of directors
22 shall contain all significant details of the action taken or the
23 report received from another commissioner.

24 (3) To report to the board of directors when the
25 commissioner has reasonable cause to believe from any
26 examination, whether completed or in process, of any
27 member insurer that the insurer may be an impaired or
28 insolvent insurer.

29 (4) To furnish to the board of directors the National
30 Association of Insurance Commissioners (NAIC) Insurance
31 Regulatory Information System (IRIS) ratios and listings of
32 companies not included in the ratios developed by the
33 NAIC, and the board may use the information contained

34 therein in carrying out its duties and responsibilities under
35 this section. The report and the information contained
36 therein shall be kept confidential by the board of directors
37 until it is made public by the commissioner or other lawful
38 authority.

39 (b) The commissioner may seek the advice and
40 recommendations of the board of directors concerning any
41 matter affecting his or her duties and responsibilities
42 regarding the financial condition of member insurers and
43 insurers or health maintenance organizations seeking
44 admission to transact business in this state.

45 (c) The board of directors may, upon majority vote,
46 make reports and recommendations to the commissioner
47 upon any matter germane to the solvency, liquidation,
48 rehabilitation, or conservation of any member insurer or
49 germane to the solvency of any insurer or health
50 maintenance organization seeking to do business in this
51 state. The reports and recommendations shall not be
52 considered public documents.

53 (d) It shall be the duty of the board of directors, upon
54 majority vote, to notify the commissioner of any
55 information indicating any member insurer may be an
56 impaired or insolvent insurer.

57 (e) The board of directors may, upon majority vote,
58 make recommendations to the commissioner for the
59 detection and prevention of insurer insolvencies.

§33-26A-14. Miscellaneous provisions.

1 (a) Nothing in this article shall be construed to reduce
2 the liability for unpaid assessments of the insureds of an
3 impaired or insolvent insurer operating under a plan with
4 assessment liability.

5 (b) Records shall be kept of all negotiations and
6 meetings in which the association or its representatives are
7 involved to discuss the activities of the association in

8 carrying out its powers and duties under §33-26A-8 of this
9 code. Records of such negotiations or meetings shall be
10 made public only upon the termination of a liquidation,
11 rehabilitation, or conservation proceeding involving the
12 impaired or insolvent insurer, upon the termination of the
13 impairment or insolvency of the insurer, or upon the order
14 of a court of competent jurisdiction. Nothing in this
15 subsection shall limit the duty of the association to render a
16 report of its activities under §33-26A-15 of this code.

17 (c) For the purpose of carrying out its obligations under
18 this article, the association shall be deemed to be a creditor
19 of the impaired or insolvent insurer to the extent of assets
20 attributable to covered policies reduced by any amounts to
21 which the association is entitled as assignee or subrogee
22 pursuant to §33-26A-8(k) of this code. All assets of the
23 impaired or insolvent insurer attributable to covered policies
24 or contracts shall be used to continue all covered policies or
25 contracts and pay all contractual obligations of the impaired
26 or insolvent insurer as required by this article. Assets
27 attributable to covered policies or contracts, as used in this
28 subsection, are that proportion of the assets which the
29 reserves that should have been established for such policies
30 or contracts bear to the reserves that should have been
31 established for all policies of insurance or health benefit
32 plans written by the impaired or insolvent insurer.

33 (d) As a creditor of the impaired or insolvent insurer as
34 established in §33-26A-14(c) of this code and consistent
35 with §33-10-1 *et seq.* of this code, the association and other
36 similar associations shall be entitled to receive a
37 disbursement of assets out of the marshaled assets, from
38 time to time as the assets become available to reimburse it,
39 as a credit against contractual obligations under this article.
40 If the liquidator has not, within 120 days of a final
41 determination of insolvency of a member insurer by the
42 receivership court, made an application to the court for the
43 approval of a proposal to disburse assets out of marshaled
44 assets to guaranty associations having obligations because

45 of the insolvency, then the association shall be entitled to
46 make application to the receivership court for approval of
47 its own proposal to disburse these assets.

48 (e)(1) Prior to the termination of any liquidation,
49 rehabilitation, or conservation proceeding, the court may
50 take into consideration the contributions of the respective
51 parties, including the association, the shareholders, contract
52 owners, certificate holders, enrollees, and policy owners of
53 the insolvent insurer, and any other party with a bona fide
54 interest, in making an equitable distribution of the
55 ownership rights of such insolvent insurer. In making such
56 a determination, consideration shall be given to the welfare
57 of the policy owners, contract owners, certificate holders,
58 and enrollees of the continuing or successor member
59 insurer.

60 (2) No distribution to stockholders, if any, of an
61 impaired or insolvent insurer shall be made until and unless
62 the total amount of valid claims of the association with
63 interest thereon for funds expended in carrying out its
64 powers and duties under §33-26A-8 of this code with
65 respect to the member insurer have been fully recovered by
66 the association.

67 (f)(1) If an order for liquidation or rehabilitation of a
68 member insurer domiciled in this state has been entered, the
69 receiver appointed under such order shall have a right to
70 recover on behalf of the member insurer, from any affiliate
71 that controlled it, the amount of distributions, other than
72 stock dividends paid by the member insurer on its capital
73 stock, made at any time during the five years preceding the
74 petition for liquidation or rehabilitation subject to the
75 limitations of this subsection.

76 (2) No such distribution shall be recoverable if the
77 member insurer shows that when paid the distribution was
78 lawful and reasonable, and that the member insurer did not
79 know and could not reasonably have known that the

80 distribution might adversely affect the ability of the member
81 insurer to fulfill its contractual obligations.

82 (3) Any person who, as an affiliate, controlled the
83 member insurer at the time the distributions were paid shall
84 be liable up to the amount of distributions received. Any
85 person who, as an affiliate, controlled the member insurer at
86 the time the distributions were declared, shall be liable up
87 to the amount of distributions which would have been
88 received if they had been paid immediately. If two or more
89 persons are liable with respect to the same distributions,
90 they shall be jointly and severally liable.

91 (4) The maximum amount recoverable under this
92 subsection shall be the amount needed in excess of all other
93 available assets of the insolvent insurer to pay the
94 contractual obligations of the insolvent insurer.

95 (5) If any person under §33-26A-14(f)(3) of this code is
96 insolvent, all its affiliates that controlled it at the time the
97 distribution was paid shall be jointly and severally liable for
98 any resulting deficiency in the amount recovered from the
99 insolvent affiliate.

**§33-26A-19. Prohibited advertisement of insurance guaranty
association act in insurance sales; notice to policyholders.**

1 (a) A person, including a member insurer, agent, or
2 affiliate of a member insurer, shall not make, publish,
3 disseminate, circulate, or place before the public, or cause
4 directly or indirectly, to be made, published, disseminated,
5 circulated, or placed before the public, in any newspaper,
6 magazine, or other publication, or in the form of a notice,
7 circular, pamphlet, letter or poster, or over any radio station
8 or television station, or in any other way, any advertisement,
9 announcement, or statement, written or oral, which uses the
10 existence of the insurance guaranty association of this state
11 for the purpose of sales, solicitation, or inducement to
12 purchase any form of insurance or other coverage covered
13 by the West Virginia Life and Health Insurance Guaranty

14 Association Act: *Provided*, That this section shall not apply
15 to the association or any other entity which does not sell or
16 solicit insurance or coverage by a health maintenance
17 organization.

18 (b) Within 180 days of the effective date of this article,
19 the association shall prepare a summary document
20 describing the general purposes and current limitations of
21 the act and complying with §33-26A-19(c) of this code.
22 This document should be submitted to the commissioner for
23 approval. Sixty days after receiving such approval, no
24 member insurer may deliver a policy or contract described
25 in §33-26A-3(b)(1) of this code to a policy owner, contract
26 owner, certificate holder, or enrollee unless the summary
27 document is delivered to the policy owner, contract owner,
28 certificate holder, or enrollee prior to or at the time of
29 delivery of the policy or contract except if §33-26A-19(d)
30 of this code applies. The document should also be available
31 upon request by a policy owner, contract owner, certificate
32 holder, or enrollee. The distribution, delivery, or contents or
33 interpretation of this document shall not guarantee that
34 either the policy or the contract or the policy owner, contract
35 owner, certificate holder, or enrollee is covered in the event
36 of the impairment or insolvency of a member insurer. The
37 description document shall be revised by the association as
38 amendments to the article may require. Failure to receive
39 this document does not give the policy owner, contract
40 owner, certificate holder, enrollee, or insured any greater
41 rights than those stated in this article.

42 (c) The document prepared under §33-26A-19(b) of this
43 code shall contain a clear and conspicuous disclaimer on its
44 face. The commissioner shall propose rules for legislative
45 approval in accordance with the provisions of §29A-3-1 *et*
46 *seq.* of this code establishing the form and content of the
47 disclaimer. The disclaimer shall:

48 (1) State the name and address of the association and
49 insurance department;

50 (2) Prominently warn the policy owner, contract owner,
51 certificate holder, or enrollee that the association may not
52 cover the policy or contract or, if coverage is available, it
53 will be subject to substantial limitations and exclusions and
54 conditioned on continued residence in the state;

55 (3) State the types of policies or contracts for which
56 guaranty funds will provide coverage;

57 (4) State that the member insurer and its agents are
58 prohibited by law from using the existence of the
59 association for the purpose of sales, solicitation, or
60 inducement to purchase any form of insurance or health
61 maintenance organization coverage;

62 (5) Emphasize that the policy owner, contract owner,
63 certificate holder, or enrollee should not rely on coverage
64 under the association when selecting an insurer or health
65 maintenance organization;

66 (6) Explain rights available and procedures for filing a
67 complaint to allege a violation of any provisions of this
68 article; and

69 (7) Provide other information as directed by the
70 commissioner.

71 (d) An insurer or agent may not deliver a policy or
72 contract described in §33-26A-3(b)(1) of this code and
73 excluded under §33-26A-3(b)(2)(A) of this code from
74 coverage under this article unless the insurer or agent, prior
75 to or at the time of delivery, gives the policy owner, contract
76 owner, certificate holder, or enrollee a separate written
77 notice which clearly and conspicuously discloses that the
78 policy or contract is not covered by the association. The
79 commissioner shall propose rules for legislative approval in
80 accordance with the provisions of §29A-3-1 *et seq.* of this
81 code specifying the form and content of the notice.

●

CHAPTER 128

(Com. Sub. for S. B. 495 - By Senator Azinger)

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

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

AN ACT to amend and reenact §33-20-4 of the Code of West Virginia, 1931, as amended, relating to commercial insurance rates; and designating specific insurance coverages which are exempt from the requirements of filing rates with the insurance commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-4. Rate filings.

1 (a) (1) Every insurer shall file with the commissioner
2 every manual of classifications, territorial rate areas
3 established pursuant to §33-20-3(c)(2) of this code, rules,
4 and rates, every rating plan, and every modification of any
5 of the foregoing which it proposes to use for casualty
6 insurance to which this article applies.

7 (2) Every insurer shall file with the commissioner,
8 except as to inland marine risks which, by general custom
9 of the business, are not written according to manual rates or
10 rating plans, every manual, minimum, class rate, rating
11 schedule, or rating plan and every other rating rule and
12 every modification of any of the foregoing which it
13 proposes to use for fire and marine insurance to which this
14 article applies. Specific inland marine rates on risks
15 specially rated, made by a rating organization, shall be filed
16 with the commissioner.

17 (3) Subject to §33-20-4(a)(4) and §33-20-4(a)(5) of this
18 code and the requirements for ratemaking in §33-20-3 of
19 this code, the following commercial lines insurance
20 coverages are exempt from rate-filing requirements under
21 this article with respect to every manual, minimum, class
22 rate, rating schedule, or rating plans, and every other rating
23 rule and modification of any of the foregoing, whether the
24 insurance coverage is endorsed to, or otherwise made part
25 of, another kind of insurance policy or sold as a stand-alone
26 policy:

27 (A) Surety and fidelity;

28 (B) Commercial inland marine;

29 (C) Boiler and machinery;

30 (D) Environmental impairment or pollution liability;

31 (E) Kidnap and ransom;

32 (F) Political risk or expropriation;

33 (G) Excess and umbrella liability;

34 (H) Directors' and officers' liability;

35 (I) Fiduciary liability;

36 (J) Employment practices liability;

37 (K) Errors and omission other than medical malpractice;

38 (L) Professional liability other than medical
39 malpractice;

40 (M) Media liability;

41 (N) Commercial lines travel risk, including accidental
42 death and dismemberment;

43 (O) Product liability, product recall, and completed
44 operations;

45 (P) Cybersecurity, including first and third-party
46 commercial lines coverage for losses arising out of or
47 relating to data privacy breach, network security, computer
48 viruses, and similar exposures;

49 (Q) Highly protected commercial property;

50 (R) All commercial lines insurance coverages not
51 excluded under §33-20-4(a)(4) of this code when purchased
52 by a commercial policyholder with aggregate annual
53 commercial insurance premiums of \$25,000 or more
54 excluding premiums for the types of insurance excluded
55 under §33-20-4(a)(4) of this code; and

56 (S) Any other commercial lines insurance coverage or
57 risk that the commissioner may, by order, exempt from rate
58 filing and approval requirements in order to promote
59 enhanced competition or to more effectively use the
60 resources of the department that might otherwise be used to
61 review commercial lines filings or because the
62 commissioner does not consider the filing and approval
63 requirements to be necessary or desirable for the protection
64 of the public.

65 (4) The exemptions from rate filing requirements in
66 §33-20-4(a)(3) of this code are not applicable to the
67 following kinds of commercial insurance:

68 (A) Workers' compensation;

69 (B) Medical malpractice liability;

70 (C) Nonfleet commercial automobile liability policies
71 covering four or fewer vehicles;

72 (D) Any coverage issued by an assigned risk or residual
73 market plan pursuant to §33-20-15 of this code, §33-20A-1
74 *et seq.* of this code, or the Mine Subsidence Insurance Fund
75 created pursuant to §33-30-1 *et seq.* of this code.

76 (5) The commissioner may temporarily reinstate, for a
77 period of no longer than one year, the requirement for rate
78 filings for a specific insurance coverage set forth in §33-20-
79 4(a)(3) of this code if, after a hearing, the commissioner
80 makes a finding of fact that a reasonable degree of
81 competition does not exist for that specific type of insurance
82 coverage. The finding of fact by the commissioner must
83 specify the relevant tests used to determine whether a lack
84 of a reasonable degree of competition exists and the results
85 thereof. In the absence of such findings of fact by the
86 commissioner, a competitive market is presumed to exist.

87 (b) Every filing shall state the proposed effective date and
88 shall indicate the character and extent of the coverage
89 contemplated. When a filing is not accompanied by the
90 information upon which the insurer supports the filing and the
91 commissioner does not have sufficient information to
92 determine whether the filing meets the requirements of this
93 article, he or she shall require the insurer to furnish the
94 information upon which it supports the filing and in that event
95 the waiting period shall commence as of the date the
96 information is furnished. The information furnished in support
97 of a filing may include: (1) The experience or judgment of the
98 insurer or rating organization making the filing; (2) the
99 experience or judgment of the insurer or rating organization in
100 the territorial rate areas established by §33-20-3(c)(2) of this
101 code; (3) its interpretation of any statistical data it relies upon;
102 (4) the experience of other insurers or rating organizations; or
103 (5) any other relevant factors. A filing and any supporting
104 information is open to public inspection as soon as the filing is
105 received by the commissioner. Any interested party may file a
106 brief with the commissioner supporting his or her position
107 concerning the filing. Any person or organization may file
108 with the commissioner a signed statement declaring and
109 supporting his or her or its position concerning the filing. Upon
110 receipt of the statement prior to the effective date of the filing,
111 the commissioner shall mail or deliver a copy of the statement
112 to the filer, which may file a reply as it may desire to make.

113 This section is not applicable to any memorandum or
114 statement of any kind by any employee of the commissioner.

115 (c) An insurer may satisfy its obligation to make a filing
116 by becoming a member of, or a subscriber to, a licensed
117 rating organization which makes filings and by authorizing
118 the commissioner to accept filings on its behalf: *Provided*,
119 That nothing contained in this article shall be construed as
120 requiring any insurer to become a member of or a subscriber
121 to any rating organization.

122 (d) The commissioner shall review filings as soon as
123 reasonably possible after they have been made in order to
124 determine whether they meet the requirements of this article.

125 (e) Subject to the exceptions specified in §33-20-4(f),
126 §33-20-4(g) and §33-20-4(h) of this code, each filing shall
127 be on file for a waiting period of 60 days before it becomes
128 effective. Upon written application by an insurer or rating
129 organization, the commissioner may authorize a filing
130 which he or she has reviewed to become effective before the
131 expiration of the waiting period. A filing shall be deemed to
132 meet the requirements of this article unless disapproved by
133 the commissioner within the waiting period.

134 (f) Any special filing with respect to a surety bond
135 required by law or by court or executive order or by order,
136 rule, or regulation of a public body, not covered by a
137 previous filing, shall become effective when filed and shall
138 be deemed to meet the requirements of this article until the
139 commissioner reviews the filing and so long thereafter as
140 the filing remains in effect.

141 (g) Specific inland marine rates on risks specially rated
142 by a rating organization shall become effective when filed
143 and shall be deemed to meet the requirements of this article
144 until the commissioner reviews the filing and so long
145 thereafter as the filing remains in effect.

146 (h) Except as provided in §33-20-4(a)(3) of this code, rates
147 for commercial lines property and casualty risks must be filed

148 with the commissioner and the filings need not be approved by
149 the commissioner. The commissioner may request additional
150 information to ensure compliance with applicable statutory
151 standards, but if the commissioner does not disapprove the
152 filing within the initial 30-day period after receipt, the rate
153 filing will become effective upon first usage after filing:
154 *Provided*, That the commissioner may at any time thereafter,
155 after notice and for cause shown, disapprove any rate filing.

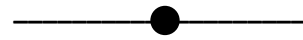
156 (i) Under legislative rules, the commissioner may, by
157 written order, suspend or modify the requirement of filing
158 as to any kind of insurance, subdivision, or combination
159 thereof, or as to classes of risks, the rates for which cannot
160 practicably be filed before they are used. These orders and
161 rules shall be made known to insurers and rating
162 organizations affected thereby. The commissioner may
163 make any examination he or she may consider advisable to
164 ascertain whether any rates affected by an order meet the
165 standards set forth in §33-20-3(b) of this code.

166 (j) Upon the written application of the insured, stating
167 his or her reasons therefor, filed with and approved by the
168 commissioner, a rate in excess of that provided by a filing
169 otherwise applicable may be used on any specific risks.

170 (k) No insurer shall make or issue a contract or policy
171 except in accordance with the filings which are in effect for
172 that insurer as provided in this article. This subsection does
173 not apply to contracts or policies for risks as to which filings
174 are not required.

175 (l) In instances when an insurer files a request for an
176 increase of automobile liability insurance rates in the
177 amount of 15 percent or more, the Insurance Commissioner
178 shall provide notice of the increase with the Office of the
179 Secretary of State to be filed in the State Register and shall
180 provide interested persons the opportunity to comment on
181 the request up to the time the commissioner approves or
182 disapproves the rate increase.

183 (m) For purposes of this section, “commercial” means
184 commercial lines as defined in §33-6-8(e)(2) of this code.



CHAPTER 129

**(Com. Sub. for H. B. 4175 - By Delegates Sobonya,
Summers, Criss, Rohrbach, Hollen, Westfall and
Lovejoy)**

[Passed March 2, 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 §33-4-22, relating
to requiring payment for health care services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-22. Payment for services; collaborative relationship is not required.

- 1 An insurance company or managed care organization
- 2 may not require an advanced practice registered nurse to
- 3 participate in a collaborative agreement in order to obtain
- 4 payment for his or her services.

●

CHAPTER 130

**(Com. Sub. for H. B. 4186 - By Delegates Westfall,
Householder, Upson, C. Miller, Frich, White, Lane,
Kessinger, Moore, Criss and Nelson)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-4-23, relating generally to guaranteed asset protection waivers; providing short title, purpose, legislative intent, and applicability of section; defining certain terms; specifying requirements for offering guaranteed asset protection waivers; providing that guaranteed asset protection waivers are not insurance and are exempt from the insurance laws of this state; providing further exemptions; defining certain terms; providing requirements for offering guaranteed asset protection waivers; requiring contractual liability or other insurance policies on guaranteed asset protection waivers in certain circumstances; requiring certain disclosures; providing for cancellation or non-cancellation; specifying requirements upon cancellation in certain circumstances; exempting certain requirements in commercial transactions; exempting guaranteed asset protection waivers sold and/or issued by a federally regulated depository institution; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-23. Guaranteed Asset Protection Waivers.

- 1 (a) *Short title.* – This section may be cited as the
- 2 “Guaranteed Asset Protection Waiver Act.”

3 (b) *Purpose.* – The purpose of this section is to provide
4 a framework within which guaranteed asset protection
5 waivers are defined and may be offered within this state.

6 (c) *Legislative intent.* – The Legislature finds that
7 guaranteed asset protection waivers are not insurance and
8 are not subject to the provisions of this chapter, except as
9 provided in this section. Guaranteed asset protection
10 waivers issued after the effective date of this section may
11 not be construed as insurance and persons marketing,
12 administering, selling or offering to sell guaranteed asset
13 protection waivers are not required to comply with
14 insurance licensing requirements.

15 (d) *Applicability.* – This section does not apply to:

16 (1) An insurance policy offered by an insurer under the
17 insurance laws of this state; or

18 (2) A debt cancellation or debt suspension contract
19 being offered in compliance with 12 C.F.R. §37.1, *et seq.*,
20 12 C.F.R. §721.1, *et seq.*, or other federal law.

21 (e) *Waivers not insurance; exemption from licensing*
22 *requirement.* – Guaranteed asset protection waivers
23 governed by, and issued after the effective date of this
24 section, are not insurance and are exempt from the insurance
25 laws of this state. Persons marketing, administering, selling
26 or offering to sell guaranteed asset protection waivers to
27 borrowers that comply with this section are exempt from
28 this state’s insurance licensing requirement with regard to
29 the marketing, selling or offering to sell guaranteed asset
30 protection waivers.

31 (f) *Definitions.* – The following terms are defined for
32 purposes of this section. These terms are not intended to be
33 used or required in guaranteed asset protection waivers.

34 (1) “Administrator” means a person, other than an
35 insurer or creditor, who performs administrative or
36 operational functions pursuant to guaranteed asset

37 protection waiver programs. Administrative or operational
38 functions may include, but are not limited to:

39 (A) Document development, processing, and support;

40 (B) Compliance Services;

41 (C) Waiver fee processing;

42 (D) Benefit determination and processing;

43 (E) Procurement and administration of the contractual
44 liability or other insurance policy;

45 (F) Technology support; or

46 (G) Personnel support.

47 (2) “Borrower” means a debtor, retail buyer, or lessee
48 under a finance agreement.

49 (3) “Contractual liability” means a contract or other
50 agreement that obligates a third party to indemnify a
51 creditor under (g)(4) of this section and is insurance under
52 the insurance laws of this state.

53 (4) “Creditor” means:

54 (A) The lender in a loan or credit transaction;

55 (B) The lessor in a lease transaction;

56 (C) A retail dealer of motor vehicles licensed under
57 §17A-6-1 *et seq.* of this code, that provides credit to buyers
58 as part of a retail sale, provided the dealer complies with the
59 requirements of this section;

60 (D) The seller in a commercial retail installment
61 transaction; or

62 (E) The assignees of any of the foregoing persons to
63 whom the credit obligation is payable.

64 (5) “Finance agreement” means a loan, lease or retail
65 installment sales contract for the purchase or lease of a
66 motor vehicle.

67 (6) “Free look period” means the period of time from
68 the effective date of the guaranteed asset protection waiver
69 until the date the borrower may cancel the contract without
70 penalty, fees or costs to the borrower. This period of time
71 may not be less than thirty days.

72 (7) “Guaranteed asset protection waiver” means a
73 contractual agreement that is part of or a separate addendum
74 to the finance agreement in which a creditor agrees, upon
75 payment of a separate charge, to cancel or waive all or part
76 of amounts due to it on a borrower’s finance agreement if
77 there is a total physical damage loss or unrecovered theft of
78 a motor vehicle. A guaranteed asset protection waiver is not
79 insurance due to the purchase, administration or operation
80 of the contractual liability or other insurance policy
81 authorized under subdivision (g)(4) of this section.

82 (8) “Insurer” means an insurance company required to
83 be licensed, registered, or otherwise authorized to do
84 business under the insurance laws of this state.

85 (9) “Motor vehicle” means a self-propelled or towed
86 vehicle designed for personal or commercial use, including,
87 but not limited to, an automobile, truck, motorcycle,
88 recreational vehicle, all-terrain vehicle, snowmobile,
89 camper, boat or personal watercraft, and the trailer used to
90 transport a motorcycle, boat, camper or personal watercraft.

91 (10) “Person” includes an individual, company,
92 association, organization, partnership, limited liability
93 company, business trust, corporation and every form of
94 legal entity.

95 (g) *Requirements for offering guaranteed asset*
96 *protection waivers.* –

97 (1) Guaranteed asset protection waivers may be offered,
98 sold or provided to borrowers in this state in compliance
99 with this section.

100 (2) Guaranteed asset protection waivers may, at the
101 option of the creditor, be sold for a single payment or may
102 be offered with a monthly or periodic payment option.

103 (3) Notwithstanding any other provision of law, any cost
104 to the borrower for a guaranteed asset protection waiver
105 entered into in compliance with the Truth in Lending Act,
106 15 U.S.C. §1601, *et seq.*, must be separately stated and may
107 not be considered a finance charge or interest.

108 (4) A retail dealer of motor vehicles shall insure its
109 guaranteed asset protection waiver obligations under a
110 contractual liability or other insurance policy issued by an
111 insurer. A creditor, other than a retail dealer of motor
112 vehicles, may insure its guaranteed asset protection waiver
113 obligations under a contractual liability policy or similar
114 policy issued by an insurer. The insurance policy may be
115 directly obtained by a creditor, a retail dealer of motor
116 vehicles or may be procured by an administrator to cover a
117 creditor's or retail dealer's obligations: *Provided*, That
118 retail dealers of motor vehicles that are lessors of motor
119 vehicles are not required to insure obligations related to
120 guaranteed asset protection waivers on leased vehicles.

121 (5) The guaranteed asset protection waiver remains a
122 part of the finance agreement upon the assignment, sale, or
123 transfer of the finance agreement by the creditor.

124 (6) The extension of credit, the terms of credit or the
125 terms of the related motor vehicle sale or lease may not be
126 conditioned upon the purchase of a guaranteed asset
127 protection waiver.

128 (7) A creditor that offers a guaranteed asset protection
129 waiver shall report the sale of and forward funds received
130 on all guaranteed asset protection waivers to the designated

131 party, if any, as prescribed in any applicable administrative
132 services agreement, contractual liability policy, other
133 insurance policy or other specified program document.

134 (8) Funds received or held by a creditor or administrator
135 and belonging to an insurer, creditor or administrator,
136 pursuant to the terms of a written agreement must be held
137 by the creditor or administrator in a fiduciary capacity.

138 (h) *Contractual liability or other insurance policies.* –

139 (1) Contractual liability or other insurance policies
140 insuring guaranteed asset protection waivers must state the
141 obligation of the insurer to reimburse or pay to the creditor
142 any sums the creditor is legally obligated to waive under the
143 guaranteed asset protection waivers issued by the creditor
144 and purchased or held by the borrower.

145 (2) Coverage under a contractual liability or other
146 insurance policy insuring a guaranteed asset protection
147 waiver must also cover any subsequent assignee upon the
148 assignment, sale, or transfer of the finance agreement.

149 (3) Coverage under a contractual liability or other
150 insurance policy insuring a guaranteed asset protection
151 waiver must remain in effect unless canceled or terminated
152 in compliance with applicable insurance laws of this state.

153 (4) The cancellation or termination of a contractual
154 liability or other insurance policy may not reduce the
155 insurer's responsibility for guaranteed asset protection
156 waivers issued by the creditor prior to the date of
157 cancellation or termination and for which premiums have
158 been received by the insurer.

159 (i) *Disclosures.* –

160 Guaranteed asset protection waivers must disclose, as
161 applicable, in writing and in clear, understandable language,
162 the following:

163 (A) The name and address of the initial creditor and the
164 borrower at the time of sale and the identity of any
165 administrator if different from the creditor;

166 (B) The purchase price and the terms of the guaranteed
167 asset protection waiver, including without limitation the
168 requirements for protection, conditions or exclusions
169 associated with the guaranteed asset protection waiver;

170 (C) That the borrower may cancel the guaranteed asset
171 protection waiver within a free look period as specified in
172 the waiver, and may receive a full refund of the purchase
173 price, so long as no benefits have been provided under the
174 waiver; or if benefits have been provided, the borrower may
175 receive a full or partial refund pursuant to the terms of the
176 guaranteed asset protection waiver;

177 (D) The procedure a borrower must follow, to obtain
178 guaranteed asset protection waiver benefits under the terms
179 and conditions of the waiver, including a telephone number
180 and address where the borrower may initiate activation of
181 waiver benefits. Once activation of waiver benefits has
182 been initiated, and until such time as the request for a benefit
183 under the GAP waiver is resolved, the GAP waiver shall not
184 be terminated or cancelled, nor shall a request for a benefit
185 under the GAP waiver be denied, by the creditor,
186 administrator or other designated party, solely due to the
187 borrower's failure to make monthly payments owed for the
188 GAP waiver purchase price;

189 (E) Whether the guaranteed asset protection waiver may
190 be canceled after the free look period and the conditions
191 under which it may be canceled or terminated, including the
192 procedures for requesting any refund due;

193 (F) That in order to receive any refund due if a borrower
194 cancels the guaranteed asset protection waiver agreement or
195 early termination of the finance agreement after the free
196 look period of the guaranteed asset protection waiver, the
197 borrower, in accordance with terms of the waiver, shall

198 provide a written request to cancel to the creditor,
199 administrator or other party as specified in the guaranteed
200 asset protection waiver. If a borrower is canceling the
201 guaranteed asset protection waiver due to early termination
202 of the finance agreement, the borrower shall provide a
203 written request to the creditor, administrator or other party
204 within ninety days of the occurrence of the event
205 terminating the finance agreement;

206 (G) The methodology for calculating any refund of the
207 unearned purchase price of the guaranteed asset protection
208 waiver due if there is cancellation of the guaranteed asset
209 protection waiver or early termination of the finance
210 agreement; and

211 (H) That neither the extension of credit, the terms of the
212 credit, nor the terms of the related motor vehicle sale or
213 lease, may be conditioned upon the purchase of the
214 guaranteed asset protection waiver.

215 (j) *Cancellation.* –

216 (1) Guaranteed asset protection waiver agreements may
217 be cancellable or non-cancellable after the free look period.
218 Guaranteed asset protection waivers must provide that if a
219 borrower cancels a guaranteed asset protection waiver
220 within the free look period, so long as no benefits have been
221 provided, the borrower is entitled to a full refund of the
222 purchase price. If benefits have been provided, the
223 borrower may receive a full or partial refund pursuant to the
224 terms of the guaranteed asset protection waiver;

225 (2) If the borrower cancels the guaranteed asset
226 protection waiver or terminates the finance agreement early
227 but after the agreement has been in effect beyond the free
228 look period, the borrower may receive a refund of any
229 unearned portion of the purchase price of the guaranteed
230 asset protection waiver unless the guaranteed asset
231 protection waiver provides otherwise. In order to receive a
232 refund, the borrower, in accordance with any applicable

233 terms of the waiver, shall provide a written request to the
234 creditor, administrator or other party. If the borrower is
235 canceling the guaranteed asset protection waiver due to the
236 early termination of the finance agreement, the borrower
237 shall provide a written request within ninety days of the
238 event terminating the finance agreement;

239 (3) If the cancellation of a guaranteed asset protection
240 waiver occurs as a result of a default under the finance
241 agreement, or the repossession of the motor vehicle
242 associated with the finance agreement, or any other
243 termination of the finance agreement, any refund due may
244 be paid directly to the creditor or administrator and applied
245 as set forth in subdivision (4) of this subsection (i), below;

246 (4) A cancellation or termination refund under
247 subdivision (1), (2) or (3) of this subsection (i) may be
248 applied by the creditor as a reduction of the amount owed
249 under the finance agreement, unless the borrower can show
250 that the finance agreement has been paid in full.

251 (k) *Commercial transaction exempted.* – Subsections
252 (g), (h) and (i) of this section do not apply to a guaranteed
253 asset protection waiver offered in connection with a lease or
254 retail installment sale associated with a “commercial
255 transaction.”

256 (l) *Exemption.* – This section does not apply to
257 guaranteed asset protection waivers sold and/or issued by a
258 federally regulated depository institution.

259 (m) *Effective date.* – This section shall apply to all
260 guaranteed asset protection waivers which become effective
261 on or after July 1, 2018.

●

CHAPTER 131

(Com. Sub. for H. B. 4230 - By Delegates Westfall, Frich, White and Upson)

[Passed March 3, 2018; in effect January 1, 2019.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §33-4-15a of the Code of West Virginia, 1931, as amended, relating to credit for reinsurance; purpose; establishing requirements for domestic insurers to be allowed a credit; requirements for reinsurers; establishing where assets that provide security to fund United States obligations are to be maintained by a non-United States insurer or reinsurer; providing for the filing and valuation of claims, and the distribution of assets of an insolvent non-United States insurer or reinsurer; providing for an asset or reduction from liability for reinsurance ceded by a domestic insurer when certain requirements are not met; defining a qualified United States financial institution; providing authority to the Insurance Commissioner to promulgate legislative and emergency rules; effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance.

- 1 (a) The purpose of this section is to protect the interest
- 2 of insureds, claimants, ceding insurers, assuming insurers,
- 3 and the public generally. The Legislature hereby declares its
- 4 intent is to ensure adequate regulation of insurers and
- 5 reinsurers, and the adequate protection for those to whom
- 6 they owe obligations. In furtherance of that stated interest,
- 7 it is hereby mandated that upon the insolvency of a non-

8 United States insurer or reinsurer that provides security to
9 fund its United States obligations in accordance with this
10 section, the assets representing the security shall be
11 maintained in the United States and claims shall be filed
12 with and valued by the state insurance commissioner with
13 regulatory oversight, and the assets shall be distributed, in
14 accordance with the insurance laws of the state in which the
15 trust is domiciled that are applicable to the liquidation of
16 domestic United States insurance companies. The
17 Legislature further declares that the matters contained in
18 this section are fundamental to the business of insurance in
19 accordance with 15 U.S.C. §§ 1011-1012.

20 (b) (1) Credit for reinsurance shall be allowed a
21 domestic ceding insurer as either an asset or a reduction
22 from liability on account of reinsurance ceded only when
23 the reinsurer meets the requirements of paragraph (b)(2)(A),
24 (B), (C), (D), (E) or (F) of this section; provided further, that
25 the commissioner may adopt by rule pursuant to subdivision
26 (e)(2) of this section additional requirements relating to or
27 setting forth:

28 (A) The valuation of assets or reserve credits;

29 (B) The amount and forms of security supporting
30 reinsurance arrangements described in subdivision (e)(2) of
31 this section; and/or

32 (C) The circumstances pursuant to which credit will be
33 reduced or eliminated.

34 (2) Credit shall be allowed under paragraph (b)(2)(A),
35 (B), or (C) of this section only with respect to cessions of
36 those kinds or classes of business which the assuming
37 insurer is licensed or otherwise permitted to write or assume
38 in its state of domicile or, in the case of a United States
39 branch of an alien assuming insurer, in the state through
40 which it is entered and licensed to transact insurance or
41 reinsurance. Credit shall be allowed under paragraph
42 (b)(2)(C) or (D) of this section only if the applicable

43 requirements of paragraph (b)(2)(G) of this section have
44 been satisfied.

45 (A) Credit shall be allowed when the reinsurance is
46 ceded to an assuming insurer that is licensed to transact
47 insurance or reinsurance in this state.

48 (B) Credit shall be allowed when the reinsurance is
49 ceded to an assuming insurer that is accredited by the
50 commissioner as a reinsurer in this state. To be eligible for
51 accreditation, a reinsurer must:

52 (i) File with the commissioner evidence of its
53 submission to this state's jurisdiction;

54 (ii) Submit to this state's authority to examine its books
55 and records;

56 (iii) Be licensed to transact insurance or reinsurance in
57 at least one state, or in the case of a United States branch of
58 an alien assuming insurer, be entered through and licensed
59 to transact insurance or reinsurance in at least one state;

60 (iv) File annually with the commissioner a copy of its
61 annual statement filed with the insurance department of its
62 state of domicile and a copy of its most recent audited
63 financial statement; and

64 (v) Demonstrate to the satisfaction of the commissioner
65 that it has adequate financial capacity to meet its reinsurance
66 obligations and is otherwise qualified to assume reinsurance
67 from domestic insurers. An assuming insurer is deemed to
68 meet this requirement as of the time of its application if it
69 maintains a surplus as regards policyholders in an amount
70 not less than \$20 million and its accreditation has not been
71 denied by the commissioner within 90 days after submission
72 of its application.

73 (C)(i) Credit shall be allowed when the reinsurance is
74 ceded to an assuming insurer that is domiciled in, or in the
75 case of a United States branch of an alien assuming insurer

76 is entered through, a state that employs standards regarding
77 credit for reinsurance substantially similar to those
78 applicable under this statute and the assuming insurer or
79 United States branch of an alien assuming insurer:

80 (I) Maintains a surplus as regards policyholders in an
81 amount not less than \$20 million; and

82 (II) Submits to the authority of this state to examine its
83 books and records.

84 (ii) The requirement of clause (b)(2)(C)(i)(I) of this
85 section does not apply to reinsurance ceded and assumed
86 pursuant to pooling arrangements among insurers in the
87 same holding company system.

88 (D)(i) Credit shall be allowed when the reinsurance is
89 ceded to an assuming insurer that maintains a trust fund in
90 a qualified United States financial institution, as defined in
91 subdivision (d)(2) of this section, for the payment of the
92 valid claims of its United States ceding insurers, their
93 assigns and successors in interest. To enable the
94 commissioner to determine the sufficiency of the trust fund,
95 the assuming insurer shall report annually to the
96 commissioner information substantially the same as that
97 required to be reported on the National Association of
98 Insurance Commissioners' Annual Statement form by
99 licensed insurers. The assuming insurer shall submit to
100 examination of its books and records by the commissioner
101 and bear the expense of examination.

102 (ii)(I) Credit for reinsurance shall not be granted under
103 this subsection unless the form of the trust and any
104 amendments to the trust have been approved by the
105 commissioner of the state where the trust is domiciled or the
106 commissioner of another state who, pursuant to the terms of
107 the trust instrument, has accepted principal regulatory
108 oversight of the trust.

109 (II) The form of the trust and any trust amendments also
110 shall be filed with the commissioner of every state in which
111 the ceding insurer beneficiaries of the trust are domiciled.
112 The trust instrument shall provide that contested claims
113 shall be valid and enforceable upon the final order of any
114 court of competent jurisdiction in the United States. The
115 trust shall vest legal title to its assets in its trustees for the
116 benefit of the assuming insurer's United States ceding
117 insurers, their assigns, and successors in interest. The trust
118 and the assuming insurer shall be subject to examination as
119 determined by the commissioner.

120 (III) The trust shall remain in effect for as long as the
121 assuming insurer has outstanding obligations due under the
122 reinsurance agreements subject to the trust. No later than
123 February 28 of each year the trustee of the trust shall report
124 to the commissioner in writing the balance of the trust and
125 listing the trust's investments at the preceding year-end and
126 shall certify the date of termination of the trust, if so
127 planned, or certify that the trust will not expire prior to the
128 following December 31.

129 (iii) The following requirements apply to the following
130 categories of assuming insurer:

131 (I) The trust fund for a single assuming insurer shall
132 consist of funds in trust in an amount not less than the
133 assuming insurer's liabilities attributable to reinsurance
134 ceded by United States ceding insurers, and, in addition, the
135 assuming insurer shall maintain a trustee surplus of not less
136 than \$20 million, except as provided in clause
137 (b)(2)(D)(iii)(II) of this section.

138 (II) At any time after the assuming insurer has
139 permanently discontinued underwriting new business
140 secured by the trust for at least three full years, the
141 commissioner with principal regulatory oversight of the
142 trust may authorize a reduction in the required trustee
143 surplus, but only after a finding, based on an assessment of
144 the risk, that the new required surplus level is adequate for

145 the protection of United States ceding insurers,
146 policyholders, and claimants in light of reasonably
147 foreseeable adverse loss development. The risk assessment
148 may involve an actuarial review, including an independent
149 analysis of reserves and cash flows, and shall consider all
150 material risk factors, including when applicable the lines of
151 business involved, the stability of the incurred loss estimates
152 and the effect of the surplus requirements on the assuming
153 insurer's liquidity or solvency. The minimum required
154 trustee surplus may not be reduced to an amount less than
155 thirty percent of the assuming insurer's liabilities
156 attributable to reinsurance ceded by United States ceding
157 insurers covered by the trust.

158 (III)(a) In the case of a group including incorporated and
159 individual unincorporated underwriters for reinsurance
160 ceded under reinsurance agreements with an inception,
161 amendment, or renewal date on or after January 1, 1993, the
162 trust shall consist of a trustee account in an amount not less
163 than the respective underwriters' several liabilities
164 attributable to business ceded by United States domiciled
165 ceding insurers to any underwriter of the group.

166 (b) In the case of a group including incorporated and
167 individual unincorporated underwriters for reinsurance
168 ceded under reinsurance agreements with an inception date
169 on or before December 31, 1992, and not amended or
170 renewed after that date, notwithstanding the other
171 provisions of this section, the trust shall consist of a trustee
172 account in an amount not less than the respective
173 underwriters' several insurance and reinsurance liabilities
174 attributable to business written in the United States.

175 (c) In addition to the trusts described in subclauses
176 (b)(2)(D)(iii)(III)(a) and (b) of this section, the group shall
177 maintain in trust a trustee surplus of which \$100 million
178 shall be held jointly for the benefit of the United States
179 domiciled ceding insurers of any member of the group for
180 all years of account.

181 (d) The incorporated members of the group shall not be
182 engaged in any business other than underwriting as a
183 member of the group and shall be subject to the same level
184 of regulation and solvency control by the group's
185 domiciliary regulator as are the unincorporated members.

186 (e) Within ninety days after its financial statements are
187 due to be filed with the group's domiciliary regulator, the
188 group shall provide to the commissioner an annual
189 certification by the group's domiciliary regulator of the
190 solvency of each underwriter member; or if a certification is
191 unavailable, financial statements, prepared by independent
192 public accountants, of each underwriter member of the
193 group.

194 (IV) In the case of a group of incorporated underwriters
195 under common administration, the group shall:

196 (a) Have continuously transacted an insurance business
197 outside the United States for at least three years immediately
198 prior to making application for accreditation;

199 (b) Maintain aggregate policyholders' surplus of at least
200 \$10 billion;

201 (c) Maintain a trust fund in an amount not less than the
202 group's several liabilities attributable to business ceded by
203 United States domiciled ceding insurers to any member of
204 the group pursuant to reinsurance contracts issued in the
205 name of the group;

206 (d) In addition, maintain a joint trusted surplus of
207 which \$100 million shall be held jointly for the benefit of
208 United States domiciled ceding insurers of any member of
209 the group as additional security for these liabilities; and

210 (e) Within ninety days after its financial statements are
211 due to be filed with the group's domiciliary regulator, make
212 available to the commissioner an annual certification of
213 each underwriter member's solvency by the member's
214 domiciliary regulator and financial statements of each

215 underwriter member of the group prepared by its
216 independent public accountant.

217 (E) Credit shall be allowed when the reinsurance is
218 ceded to an assuming insurer that has been certified by the
219 commissioner as a reinsurer in this state and secures its
220 obligations in accordance with the requirements of this
221 paragraph.

222 (i) In order to be eligible for certification, the assuming
223 insurer shall meet the following requirements:

224 (I) The assuming insurer must be domiciled and
225 licensed to transact insurance or reinsurance in a qualified
226 jurisdiction, as determined by the commissioner pursuant to
227 subparagraph (b)(2)(E)(iii) of this section;

228 (II) The assuming insurer must maintain minimum
229 capital and surplus, or its equivalent, in an amount to be
230 determined by the commissioner pursuant to a rule
231 promulgated under subsection (e) of this section;

232 (III) The assuming insurer must maintain financial
233 strength ratings from two or more rating agencies deemed
234 acceptable by the commissioner pursuant to a rule
235 promulgated under subsection (e) of this section;

236 (IV) The assuming insurer must agree to submit to the
237 jurisdiction of this state, appoint the commissioner as its
238 agent for service of process in this state, and agree to
239 provide security for 100 percent of the assuming insurer's
240 liabilities attributable to reinsurance ceded by United States
241 ceding insurers if it resists enforcement of a final United
242 States judgment;

243 (V) The assuming insurer must agree to meet applicable
244 information filing requirements as determined by the
245 commissioner, both with respect to an initial application for
246 certification and on an ongoing basis; and

247 (VI) The assuming insurer must satisfy any other
248 requirements for certification deemed relevant by the
249 commissioner.

250 (ii) An association including incorporated and
251 individual unincorporated underwriters may be a certified
252 reinsurer. In order to be eligible for certification, in addition
253 to satisfying requirements of subparagraph (b)(2)(E)(i) of
254 this section:

255 (I) The association shall satisfy its minimum capital and
256 surplus requirements through the capital and surplus
257 equivalents (net of liabilities) of the association and its
258 members, which shall include a joint central fund that may
259 be applied to any unsatisfied obligation of the association or
260 any of its members, in an amount determined by the
261 commissioner to provide adequate protection;

262 (II) The incorporated members of the association shall
263 not be engaged in any business other than underwriting as a
264 member of the association and shall be subject to the same
265 level of regulation and solvency control by the association's
266 domiciliary regulator as are the unincorporated members;
267 and

268 (III) Within ninety days after its financial statements are
269 due to be filed with the association's domiciliary regulator,
270 the association shall provide to the commissioner an annual
271 certification by the association's domiciliary regulator of
272 the solvency of each underwriter member; or if a
273 certification is unavailable, financial statements, prepared
274 by independent public accountants, of each underwriter
275 member of the association.

276 (iii) The commissioner shall create and publish a list of
277 qualified jurisdictions, under which an assuming insurer
278 licensed and domiciled in such jurisdiction is eligible to be
279 considered for certification by the commissioner as a
280 certified reinsurer.

281 (I) In order to determine whether the domiciliary
282 jurisdiction of a non-United States assuming insurer is
283 eligible to be recognized as a qualified jurisdiction, the
284 commissioner shall evaluate the appropriateness and
285 effectiveness of the reinsurance supervisory system of the
286 jurisdiction, both initially and on an ongoing basis, and
287 consider the rights, benefits, and the extent of reciprocal
288 recognition afforded by the non-United States jurisdiction
289 to reinsurers licensed and domiciled in the United States. A
290 qualified jurisdiction must agree to share information and
291 cooperate with the commissioner with respect to all certified
292 reinsurers domiciled within that jurisdiction. A jurisdiction
293 may not be recognized as a qualified jurisdiction if the
294 commissioner has determined that the jurisdiction does not
295 adequately and promptly enforce final United States
296 judgments and arbitration awards. Additional factors may
297 be considered in the discretion of the commissioner.

298 (II) A list of qualified jurisdictions shall be published
299 through the National Association of Insurance
300 Commissioners' Committee Process. The commissioner
301 shall consider this list in determining qualified jurisdictions.
302 If the commissioner approves a jurisdiction as qualified that
303 does not appear on the list of qualified jurisdictions, the
304 commissioner shall provide thoroughly documented
305 justification in accordance with criteria to be developed by
306 rules promulgated pursuant to subsection (e) of this section.

307 (III) United States jurisdictions that meet the
308 requirement for accreditation under the National
309 Association of Insurance Commissioners' financial
310 standards and accreditation program shall be recognized as
311 qualified jurisdictions.

312 (IV) If a certified reinsurer's domiciliary jurisdiction
313 ceases to be a qualified jurisdiction, the commissioner has
314 the discretion to suspend the reinsurer's certification
315 indefinitely, in lieu of revocation.

316 (iv) The commissioner shall assign a rating to each
317 certified reinsurer, giving due consideration to the financial
318 strength ratings that have been assigned by rating agencies
319 deemed acceptable to the commissioner as developed by
320 rules promulgated pursuant to subsection (e) of this section.
321 The commissioner shall publish a list of all certified
322 reinsurers and their ratings.

323 (v) A certified reinsurer shall secure obligations
324 assumed from United States ceding insurers under this
325 subsection at a level consistent with its rating, as specified
326 in rules promulgated pursuant to subsection (e) of this
327 section.

328 (I) In order for a domestic ceding insurer to qualify for
329 full financial statement credit for reinsurance ceded to a
330 certified reinsurer, the certified reinsurer shall maintain
331 security in a form acceptable to the commissioner and
332 consistent with the provisions of subsection (c) of this
333 section, or in a multibeneficiary trust in accordance with
334 paragraph (b)(2)(D) of this section, except as otherwise
335 provided in this paragraph.

336 (II) If a certified reinsurer maintains a trust to fully
337 secure its obligations subject to paragraph (b)(2)(D) of this
338 section, and chooses to secure its obligations incurred as a
339 certified reinsurer in the form of a multibeneficiary trust, the
340 certified reinsurer shall maintain separate trust accounts for
341 its obligations incurred under reinsurance agreements
342 issued or renewed as a certified reinsurer with reduced
343 security as permitted by this subsection or comparable laws
344 of other United States jurisdictions and for its obligations
345 subject to paragraph (b)(2)(D) of this section. It shall be a
346 condition to the grant of certification under this paragraph
347 that the certified reinsurer shall have bound itself, by the
348 language of the trust and agreement with the commissioner
349 with principal regulatory oversight of each such trust
350 account, to fund, upon termination of any such trust
351 account, out of the remaining surplus of such trust any
352 deficiency of any other such trust account.

353 (III) The minimum trusted surplus requirements
354 provided in paragraph (b)(2)(D) are not applicable with
355 respect to a multibeneficiary trust maintained by a certified
356 reinsurer for the purpose of securing obligations incurred
357 under this paragraph, except that such trust shall maintain a
358 minimum trusted surplus of \$10 million.

359 (IV) With respect to obligations incurred by a certified
360 reinsurer under this paragraph, if the security is insufficient,
361 the commissioner shall reduce the allowable credit by an
362 amount proportionate to the deficiency, and has the
363 discretion to impose further reductions in allowable credit
364 upon finding that there is a material risk that the certified
365 reinsurer's obligations will not be paid in full when due.

366 (V) For purposes of this paragraph, a certified reinsurer
367 whose certification has been terminated for any reason shall
368 be treated as a certified reinsurer required to secure 100
369 percent of its obligations. If the commissioner continues to
370 assign a higher rating as permitted by other provisions of
371 this section, this requirement does not apply to a certified
372 reinsurer in inactive status or to a reinsurer whose
373 certification has been suspended. As used in this paragraph,
374 the term "terminated" refers to revocation, suspension,
375 voluntary surrender, and inactive status.

376 (vi) If an applicant for certification has been certified as
377 a reinsurer in a National Association of Insurance
378 Commissioners' accredited jurisdiction, the commissioner
379 has the discretion to defer to that jurisdiction's certification,
380 and has the discretion to defer to the rating assigned by that
381 jurisdiction, and such assuming insurer shall be considered
382 to be a certified reinsurer in this state.

383 (vii) A certified reinsurer that ceases to assume new
384 business in this state may request to maintain its
385 certification in inactive status in order to continue to qualify
386 for a reduction in security for its in-force business. An
387 inactive certified reinsurer shall continue to comply with all
388 applicable requirements of this paragraph, and the

389 commissioner shall assign a rating that takes into account,
390 if relevant, the reasons why the reinsurer is not assuming
391 new business.

392 (F) Credit shall be allowed when the reinsurance is
393 ceded to an assuming insurer not meeting the requirements
394 of paragraph (b)(2)(A), (B), (C), (D) or (E) of this section,
395 but only as to the insurance of risks located in jurisdictions
396 where the reinsurance is required by applicable law or
397 regulation of that jurisdiction.

398 (G)(i) If the assuming insurer is not licensed, accredited,
399 or certified to transact insurance or reinsurance in this state,
400 the credit permitted by paragraphs (b)(2)(C) and (D) of this
401 section shall not be allowed unless the assuming insurer
402 agrees in the reinsurance agreements:

403 (I) That in the event of the failure of the assuming
404 insurer to perform its obligations under the terms of the
405 reinsurance agreement, the assuming insurer, at the request
406 of the ceding insurer, shall submit to the jurisdiction of any
407 court of competent jurisdiction in any state of the United
408 States, will comply with all requirements necessary to give
409 the court jurisdiction, and will abide by the final decision of
410 the court or of any appellate court in the event of an appeal;
411 and

412 (II) To designate the Secretary of State as its true and
413 lawful attorney upon whom may be served any lawful
414 process in any action, suit, or proceeding instituted by or on
415 behalf of the ceding insurer.

416 (ii) This paragraph is not intended to conflict with or
417 override the obligation of the parties to a reinsurance
418 agreement to arbitrate their disputes, if this obligation is
419 created in the agreement.

420 (H) If the assuming insurer does not meet the
421 requirements of paragraph (b)(2)(A), (B) or (C), the credit
422 permitted by paragraph (b)(2)(D) or (E) of this section shall

423 not be allowed unless the assuming insurer agrees in the
424 trust agreements to the following conditions:

425 (i) Notwithstanding any other provisions in the trust
426 instrument, if the trust fund is inadequate because it contains
427 an amount less than the amount required by subparagraph
428 (b)(2)(D)(iii) of this section, or if the grantor of the trust has
429 been declared insolvent or placed into receivership,
430 rehabilitation, liquidation, or similar proceedings under the
431 laws of its state or country of domicile, the trustee shall
432 comply with an order of the commissioner with regulatory
433 oversight over the trust or with an order of a court of
434 competent jurisdiction directing the trustee to transfer to the
435 commissioner with regulatory oversight all of the assets of
436 the trust fund.

437 (ii) The assets shall be distributed by and claims shall be
438 filed with and valued by the commissioner with regulatory
439 oversight in accordance with the laws of the state in which
440 the trust is domiciled that are applicable to the liquidation
441 of domestic insurance companies.

442 (iii) If the commissioner with regulatory oversight
443 determines that the assets of the trust fund or any part
444 thereof are not necessary to satisfy the claims of the United
445 States ceding insurers of the grantor of the trust, the assets,
446 or part thereof shall be returned by the commissioner with
447 regulatory oversight to the trustee for distribution in
448 accordance with the trust agreement.

449 (iv) The grantor shall waive any right otherwise
450 available to it under United States law that is inconsistent
451 with this provision.

452 (I) If an accredited or certified reinsurer ceases to meet
453 the requirements for accreditation or certification, the
454 commissioner may suspend or revoke the reinsurer's
455 accreditation or certification.

456 (i) The commissioner must give the reinsurer notice and
457 opportunity for hearing. The suspension or revocation may
458 not take effect until after the commissioner's order on
459 hearing, unless:

460 (I) The reinsurer waives its right to hearing;

461 (II) The commissioner's order is based on regulatory
462 action by the reinsurer's domiciliary jurisdiction or the
463 voluntary surrender or termination of the reinsurer's
464 eligibility to transact insurance or reinsurance business in its
465 domiciliary jurisdiction or in the primary certifying state of
466 the reinsurer under subparagraph (b)(2)(E)(vi) of this
467 section; or

468 (III) The commissioner finds that an emergency requires
469 immediate action and a court of competent jurisdiction has
470 not stayed the commissioner's action.

471 (ii) While a reinsurer's accreditation or certification is
472 suspended, no reinsurance contract issued or renewed after
473 the effective date of the suspension qualifies for credit
474 except to the extent that the reinsurer's obligations under the
475 contract are secured in accordance with subsection (c) of
476 this section. If a reinsurer's accreditation or certification is
477 revoked, no credit for reinsurance may be granted after the
478 effective date of the revocation except to the extent that the
479 reinsurer's obligations under the contract are secured in
480 accordance with subparagraph (b)(2)(E)(v) of this section or
481 subsection (c) of this section.

482 (J) Concentration Risk.

483 (i) A ceding insurer shall take steps to manage its
484 reinsurance recoverables proportionate to its own book of
485 business. A domestic ceding insurer shall notify the
486 commissioner within 30 days after reinsurance recoverables
487 from any single assuming insurer, or group of affiliated
488 assuming insurers, exceeds 50 percent of the domestic
489 ceding insurer's last reported surplus to policyholders, or

490 after it is determined that reinsurance recoverables from any
491 single assuming insurer, or group of affiliated assuming
492 insurers, is likely to exceed this limit. The notification shall
493 demonstrate that the exposure is safely managed by the
494 domestic ceding insurer.

495 (ii) A ceding insurer shall take steps to diversify its
496 reinsurance program. A domestic ceding insurer shall notify
497 the commissioner within 30 days after ceding to any single
498 assuming insurer, or group of affiliated assuming insurers,
499 more than 20 percent of the ceding insurer's gross written
500 premium in the prior calendar year, or after it has
501 determined that the reinsurance ceded to any single
502 assuming insurer, or group of affiliated assuming insurers,
503 is likely to exceed this limit. The notification shall
504 demonstrate that the exposure is safely managed by the
505 domestic ceding insurer.

506 (c) (1) An asset or a reduction from liability for the
507 reinsurance ceded by a domestic insurer to an assuming
508 insurer not meeting the requirements of subsection (b) of
509 this section shall be allowed in an amount not exceeding the
510 liabilities carried by the ceding insurer; *Provided*, That the
511 commissioner may adopt by rule pursuant to subdivision
512 (e)(2) of this section specific additional requirements
513 relating to or setting forth:

514 (A) The valuation of assets or reserve credits;

515 (B) The amount and forms of security supporting
516 reinsurance arrangements described in subdivision (e)(2) of
517 this section; and/or

518 (C) The circumstances pursuant to which credit will be
519 reduced or eliminated.

520 (2) The reduction shall be in the amount of funds held
521 by or on behalf of the ceding insurer, including funds held
522 in trust for the ceding insurer, under a reinsurance contract
523 with the assuming insurer as security for the payment of

524 obligations thereunder, if the security is held in the United
525 States subject to withdrawal solely by, and under the
526 exclusive control of, the ceding insurer; or, in the case of a
527 trust, held in a qualified United States financial institution,
528 as defined in subdivision (d)(2) of this section. This security
529 may be in the form of:

530 (A) Cash;

531 (B) Securities listed by the Securities Valuation Office
532 of the National Association of Insurance Commissioners,
533 including those deemed exempt from filing as defined by
534 the Purposes and Procedures Manual of the Securities
535 Valuation Office, and qualifying as admitted assets;

536 (C)(i) Clean, irrevocable, unconditional letters of credit,
537 issued or confirmed by a qualified United States financial
538 institution, as defined in subdivision (d)(1) of this section,
539 effective no later than December 31 of the year for which
540 the filing is being made, and in the possession of, or in trust
541 for, the ceding insurer on or before the filing date of its
542 annual statement;

543 (ii) Letters of credit meeting applicable standards of
544 issuer acceptability as of the dates of their issuance (or
545 confirmation) shall, notwithstanding the issuing (or
546 confirming) institution's subsequent failure to meet
547 applicable standards of issuer acceptability, continue to be
548 acceptable as security until their expiration, extension,
549 renewal, modification, or amendment, whichever first
550 occurs; or

551 (D) Any other form of security acceptable to the
552 commissioner.

553 (d)(1) For purposes of paragraph (c)(2)(C) of this
554 section, a "qualified United States financial institution"
555 means an institution that:

556 (A) Is organized or, in the case of a United States office
557 of a foreign banking organization, licensed, under the laws
558 of the United States or any state thereof;

559 (B) Is regulated, supervised, and examined by United
560 States federal or state authorities having regulatory
561 authority over banks and trust companies; and

562 (C) Has been determined by either the commissioner or
563 the Securities Valuation Office of the National Association
564 of Insurance Commissioners to meet such standards of
565 financial condition and standing as are considered necessary
566 and appropriate to regulate the quality of financial
567 institutions whose letters of credit will be acceptable to the
568 commissioner.

569 (2) A “qualified United States financial institution”
570 means, for purposes of those provisions of this section
571 specifying those institutions that are eligible to act as a
572 fiduciary of a trust, an institution that:

573 (A) Is organized, or, in the case of a United States
574 branch or agency office of a foreign banking organization,
575 licensed, under the laws of the United States or any state
576 thereof and has been granted authority to operate with
577 fiduciary powers; and

578 (B) Is regulated, supervised, and examined by federal or
579 state authorities having regulatory authority over banks and
580 trust companies.

581 (e)(1) The commissioner may, to implement the
582 provisions of this section, promulgate emergency rules and
583 propose legislative rules for adoption by the Legislature
584 pursuant to the provisions of §29A-3-1 *et seq.* of this code.

585 (2) The commissioner is further authorized to
586 promulgate rules applicable to reinsurance arrangements as
587 described in paragraph (e)(2)(A) of this section.

588 (A) A rule adopted pursuant to subdivision (e)(2) of this
589 section may apply only to reinsurance relating to:

590 (i) Life insurance policies with guaranteed nonlevel
591 gross premiums or guaranteed nonlevel benefits;

592 (ii) Universal life insurance policies with provisions
593 resulting in the ability of a policyholder to keep a policy in
594 force over a secondary guarantee period;

595 (iii) Variable annuities with guaranteed death or living
596 benefits;

597 (iv) Long-term care insurance policies; or

598 (v) Such other life and health insurance and annuity
599 products as to which the National Association of Insurance
600 Commissioners adopts model regulatory requirements with
601 respect to credit for reinsurance.

602 (B) A rule adopted pursuant to subparagraphs
603 (e)(2)(A)(i) or (ii) of this section, may apply to any treaty
604 containing:

605 (i) Policies issued on or after January 1, 2015; and/or

606 (ii) Policies issued prior to January 1, 2015, if risk
607 pertaining to such pre-2015 policies is ceded in connection
608 with the treaty, in whole or in part, on or after January 1,
609 2015.

610 (C) A rule adopted pursuant to subdivision (e)(2) of this
611 section may require the ceding insurer, in calculating the
612 amounts or forms of security required to be held under rules
613 promulgated under this authority, to use the Valuation
614 Manual adopted by the National Association of Insurance
615 Commissioners under Section 11B(1) of the National
616 Association of Insurance Commissioners' Standard
617 Valuation Law, including all amendments adopted by the
618 National Association of Insurance Commissioners and in

619 effect on the date as of which the calculation is made, to the
620 extent applicable.

621 (D) A rule adopted pursuant to this subdivision (e)(2) of
622 this section shall not apply to cessions to an assuming
623 insurer that:

624 (i) Is certified in this state or, if this state has not adopted
625 provisions substantially equivalent to Section 2E of the
626 National Association of Insurance Commissioners' Credit
627 for Reinsurance Model Law, certified in a minimum of five
628 (5) other states; or

629 (ii) Maintains at least \$250 million in capital and surplus
630 when determined in accordance with the National
631 Association of Insurance Commissioners' Accounting
632 Practices and Procedures Manual, including all amendments
633 thereto adopted by the National Association of Insurance
634 Commissioners, excluding the impact of any permitted or
635 prescribed practices; and is

636 (I) Licensed in at least 26 states; or

637 (II) Licensed in at least 10 states, and licensed or
638 accredited in a total of at least 35 states.

639 (E) The authority to adopt rules pursuant to subdivision
640 (e)(2) of this section does not limit the commissioner's
641 general authority to adopt rules pursuant to subdivision
642 (e)(1) of this section.

643 (f) This section shall become effective on January 1,
644 2019, and shall apply to all cessions under reinsurance
645 agreements that have an inception, anniversary, or renewal
646 date on or after January 1, 2019.

●

CHAPTER 132

**(Com. Sub. for H. B. 4400 - By Delegates Westfall,
Hartman, Criss, White, Lane, Walters, Upson, Frich,
Capito and Shott)**

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to repeal §33-20F-6 of the Code of West Virginia, 1931, as amended, and to amend and reenact §33-20F-3, §33-20F-5, and §33-20F-9 of said code, all relating to the West Virginia Physicians Mutual Insurance Company; removing language that is no longer relevant to the operation of the company as a private mutual insurance company; and adding language to accommodate policies written to physicians outside the State of West Virginia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-3. Definitions.

- 1 For purposes of this article, the term:
- 2 (a) "Board of medicine" means the West Virginia Board
- 3 of Medicine as provided in §30-3-5 of this code.
- 4 (b) "Board of Osteopathy" means the West Virginia
- 5 Board of Osteopathy as provided in §30-14-3 of this code.
- 6 (c) "Commissioner" means the Insurance
- 7 Commissioner of West Virginia as provided in §33-2-1 of
- 8 this code.

9 (d) “Company” means the Physicians’ Mutual
10 Insurance Company created pursuant to the terms of this
11 article.

12 (e) “Medical liability insurance” means, for the
13 purposes of this article: All policies previously issued by the
14 Board of Risk and Insurance Management pursuant to §29-
15 12B-1 *et seq.* of this code which are transferred by the Board
16 of Risk and Insurance Management to the company,
17 pursuant to §33-20F-9(b) of this code and all policies of
18 insurance subsequently issued by the company to
19 physicians, physician corporations, physician-operated
20 clinics, and such other individual health care providers as
21 the commissioner may, upon written application of the
22 company, approve.

23 (f) “Physician” means an individual who is licensed by
24 the Board of Medicine or the Board of Osteopathy to
25 practice medicine or podiatry in West Virginia, or who is
26 licensed by a licensing board or body in another state to
27 practice medicine or podiatry.

28 (g) “Transfer date” means the date on which the assets,
29 obligations, and liabilities resulting from the Board of Risk
30 and Insurance Management’s issuance of medical liability
31 policies to physicians, physician corporations, and
32 physician-operated clinics pursuant to §29-12B-1 *et seq.* of
33 this code are transferred to the company.

§33-20F-5. Governance and organization.

1 (a) The Board of Risk and Insurance Management shall
2 implement the initial formation and organization of the
3 company as provided by this article.

4 (b) The company shall be governed by a board of
5 directors consisting of 11 directors, as follows:

6 (1) Six directors who are physicians licensed to practice
7 medicine in this state by the Board of Medicine or the Board
8 of Osteopathy, including at least one general practitioner

9 and one specialist: *Provided*, That only physicians who have
10 purchased medical professional liability coverage from the
11 Board of Risk and Insurance Management are eligible to
12 serve as physician representatives on the company's first
13 board of directors;

14 (2) Three directors who have substantial experience as
15 an officer or employee of a company in the insurance
16 industry;

17 (3) Two directors with general knowledge and
18 experience in business management who are officers and
19 employees of the company and are responsible for the daily
20 management of the company;

21 (c) In addition to the eleven directors required by
22 subsection (b) of this section, the bylaws of the company
23 may provide for the election of at least two additional
24 directors.

25 (d) The directors and officers of the company are to be
26 chosen in accordance with the articles of incorporation and
27 bylaws of the company. The initial board of directors
28 selected in accordance with the provisions of subdivision
29 (3), subsection (a) of this section shall serve for the
30 following terms: (1) Three for four-year terms; (2) three for
31 three-year terms; (3) three for two-year terms; and (4) two
32 for one-year terms. Thereafter, the Directors shall serve
33 staggered terms of four years. If an additional director is
34 added to the board as provided in subsection (c) of this
35 section, his or her initial term shall be for four years.

36 (e) The incorporators are to prepare and file articles of
37 incorporation and bylaws in accordance with the provisions
38 of this article and the provisions of this chapter and chapter
39 thirty-one of this code.

§33-20F-6. Management and administration of the company.

1 [Repealed]

§33-20F-9. Kinds of coverage authorized; transfer of policies from the state Board of Risk and Insurance Management; risk management practices authorized.

1 (a) Upon approval by the commissioner for a license to
2 transact insurance in this state, the company may issue
3 nonassessable policies of malpractice insurance, as defined
4 in §33-1-10 (e)(9) of this code, insuring a physician.
5 Additionally, the company may issue other types of casualty
6 or liability insurance as may be approved by the
7 commissioner.

8 (b) On the transfer date:

9 (1) The company shall accept from the Board of Risk
10 and Insurance Management the transfer of any and all
11 medical liability insurance obligations and risks of existing
12 or in-force contracts of insurance covering physicians,
13 physician corporations, and physician-operated clinics
14 issued by the board pursuant to §29-12B-1 *et seq.* of this
15 code: *Provided*, That the company may decline or refuse to
16 renew any and all such contracts of insurance transferred to
17 the company from the Board of Risk and Insurance
18 Management upon the expiration of the respective terms of
19 each contract of insurance so transferred and nothing in this
20 section is intended to or shall be construed to otherwise
21 obligate the company to accept, underwrite or renew any
22 contract of insurance whatsoever. The transfer shall not
23 include medical liability insurance obligations and risks of
24 existing or in-force contracts of insurance covering
25 hospitals and nonphysician providers;

26 (2) The company shall assume all responsibility for and
27 defend, indemnify, and hold harmless the Board of Risk and
28 Insurance Management and the state with respect to any and
29 all liabilities and duties arising from the assets and
30 responsibilities transferred to the company pursuant to §29-
31 12B-1 *et seq.* of this code;

32 (3) The Board of Risk and Insurance Management shall
33 disburse and pay to the company any funds attributable to
34 premiums paid for the insurance obligations transferred to
35 the company pursuant to subdivision (1) of this subsection,
36 with earnings thereon, less paid losses and expenses, and
37 deposited in the Medical Liability Fund created by §29-
38 12B-1 *et seq.* of this code as reflected on the ledgers of the
39 Board of Risk and Insurance Management;

40 (4) The Board of Risk and Insurance Management shall
41 disburse and pay to the company any funds in the Board of
42 Risk and Insurance Management Physicians' Mutual
43 Insurance Company account created by §33-20F-7 of this
44 code. All funds in this account shall be transferred pursuant
45 to terms of a surplus note or other loan arrangement
46 satisfactory to the Board of Risk and Insurance
47 Management and the Insurance Commissioner.

48 (c) The Board of Risk and Insurance Management shall
49 cause an independent actuarial study to be performed to
50 determine the amount of all paid losses, expenses and assets
51 associated with the policies the board has in force pursuant
52 to §29-12B-1 *et seq.* of this code. The actuarial study shall
53 determine the paid losses, expenses and assets associated
54 with the policies to be transferred to the company pursuant
55 to subsection (b) of this section and the paid losses,
56 expenses and assets associated with those policies retained
57 by the board. The determination shall not include liabilities
58 created by issuance of new tail insurance policies for
59 nonphysician providers authorized by §29-12B-6 (n) of this
60 code.

61 (d) The Board of Risk and Insurance Management may
62 enter into such agreements, including loan agreements, with
63 the company that are necessary to accomplish the transfers
64 addressed in this section.

65 (e) The company shall make policies of insurance
66 available to physicians in this state, regardless of practice
67 type or specialty. Policies issued by the company to each

68 class of physicians are to be essentially uniform in terms and
69 conditions of coverage.

70 (f) Notwithstanding the provisions of subsection (b), (c)
71 or (e) of this section, the company may:

72 (1) Establish reasonable classifications of physicians,
73 insured activities, and exposures based on a good faith
74 determination of relative exposures and hazards among
75 classifications;

76 (2) Vary the limits, coverages, exclusions, conditions,
77 and loss-sharing provisions among classifications;

78 (3) Establish, for an individual physician within a
79 classification, reasonable variations in the terms of
80 coverage, including rates, deductibles, and loss-sharing
81 provisions, based on underwriting criteria established by the
82 company, from time to time, which underwriting criteria
83 may take into account factors considered by other medical
84 malpractice insurance companies, from time to time, in
85 underwriting similar risks and which factors may include,
86 but are not limited to, the insured's prior loss experience;
87 current professional training and capability; disciplinary
88 action taken against the physician by the Board of Medicine,
89 Board of Osteopathy or a licensing board or body of another
90 state in which the physician has been licensed; felonies or
91 other criminal offenses committed by the physician;
92 evidence of alcohol or chemical dependency or abuse;
93 evidence of sexual misconduct; and any other factors
94 relevant to the liability risk profile of the physician.

95 (4) Refuse to provide insurance coverage for individual
96 physicians who do not meet underwriting criteria
97 established by the company, from time to time, which
98 underwriting criteria may take into account factors
99 considered by other medical malpractice insurance
100 companies, from time to time, in underwriting or declining
101 to underwrite similar risks and which factors may include,
102 but are not limited to, prior loss experience, current

103 professional training and capability, disciplinary action
104 taken against the physician by the Board of Medicine, Board
105 of Osteopathy or a licensing board or body of another state
106 in which the physician has been licensed; felonies or other
107 criminal offenses committed by the physician; evidence of
108 alcohol or chemical dependency or abuse; evidence of
109 sexual misconduct; and any other factors relevant to the
110 liability risk profile of the physician and which do or may
111 indicate that the physician represents an unacceptable risk
112 of loss if coverage is provided.

113 (g) The company shall establish reasonable risk
114 management and continuing education requirements which
115 policyholders must meet in order to be and remain eligible
116 for coverage.



CHAPTER 133

**(Com. Sub. for S. B. 506 - By Senators Swope, Smith,
Boso and Cline)**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §21-16-2, §21-16-3, and §21-16-5 of the Code of West Virginia, 1931, as amended, all relating to regulating persons who perform work on heating, ventilating, and cooling systems and fire dampers; providing definitions; creating new license for work on certain residential heating, ventilating, and cooling systems; renaming existing license; amending exemptions from license requirement; providing rule-making authority regarding licensure requirements, development of examination, and scope of work of certain persons who perform work on heating, ventilating, and cooling systems; and providing emergency rule-making authority.

Be it enacted by the Legislature of West Virginia:

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

§21-16-2. Definitions.

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

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

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

11 (1) “Heating system” means a system in which heat is
12 transmitted by radiation, conduction, or convection, or a
13 combination of any of these methods, to the air, surrounding
14 surfaces, or both, and includes a forced air system that uses
15 air being moved by mechanical means to transmit heat, but
16 does not include a fireplace or wood-burning stove not
17 incorporated into or used as a primary heating system;

18 (2) “Ventilating system” means the natural or
19 mechanical process of supplying air to, or removing air
20 from, any space whether the air is conditioned or not
21 conditioned, at a rate of airflow of more than 250 cubic feet
22 per minute; and

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

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

29 (d) “HVAC Residential Technician” means a person
30 licensed to install, test, maintain, and repair residential
31 heating, ventilating, and cooling systems: *Provided*, That
32 such persons may perform work on nonresidential heating,
33 ventilating, and cooling systems subject to rules
34 promulgated by the commissioner pursuant to §21-16-3 of
35 this code.

36 (e) “Residential heating, ventilating, and cooling
37 system” means a system of no more than four separate
38 heating, ventilating, and cooling units each with a combined
39 capacity of five tons – 130,000 BTUs for: (1) A single or
40 dual family structure; or (2) a commercial location of no
41 more than 5,000 square feet in size where no fire damper is
42 required. Such term shall not apply to heating, ventilating,
43 and cooling systems that include any packaged rooftop
44 units.

45 (f) “HVAC technician in training” means a person with
46 interest in and an aptitude for performing installation,
47 maintenance, and repair work to a heating, ventilating, and
48 cooling system as defined in this article, but who alone is
49 not capable or authorized to perform heating, ventilating,
50 and cooling system work unless directly supervised by a
51 HVAC technician or an HVAC residential technician.

52 (g) “HVAC residential technician license” means a
53 valid and current license issued by the Commissioner of
54 Labor in accordance with the provisions of this article to
55 perform work as an HVAC residential technician.

56 (h) “HVAC technician license” means a valid and
57 current license issued by the Commissioner of Labor in
58 accordance with the provisions of this article to perform
59 work as an HVAC technician.

60 (i) “Routine maintenance” means work performed on a
61 routine schedule that includes cleaning and/or replacing
62 filters, greasing or lubricating motor bearings, adjusting
63 and/or replacing belts, checking system temperature,

64 checking gas temperature, adjusting gas pressure as
65 required, and checking voltage and amperage draw on
66 heating, ventilating, and cooling systems.

67 (j) “Single family dwelling” means a building that is
68 occupied as, or designed or intended for occupancy as, a
69 single residence for one or more persons.

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

1 (a) On and after January 1, 2016, a person performing
2 or offering to perform work on a heating, ventilating, and
3 cooling system in this state shall have a license issued by
4 the Commissioner of Labor, in accordance with the
5 provisions of this article and the legislative rules
6 promulgated pursuant hereto: *Provided*, That the
7 commissioner shall issue HVAC residential technician
8 licenses to qualified applicants without examination who
9 present satisfactory evidence no later than December 31,
10 2019, of having at least 2,000 hours of experience and/or
11 training working on heating, ventilating, and cooling
12 systems: *Provided, however*, That if a license issued under
13 the authority of this subsection subsequently lapses, the
14 applicant is subject to all licensure requirements, including
15 the examination.

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

19 (c) This article does not apply to:

20 (1) A person who personally performs work on a
21 heating, ventilating, and cooling system in a single family
22 dwelling owned by that person or by a member of that
23 person’s immediate family;

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

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

32 (4) A person who performs routine maintenance on any
33 heating, ventilating, and cooling system.

§21-16-5. Rule-making authority.

1 (a) The Commissioner of Labor shall propose rules for
2 legislative approval, in accordance with the provisions of
3 §21-16-5 *et seq.* of this code, for the implementation and
4 enforcement of the provisions of this article, which shall
5 provide:

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

8 (2) Provisions for the granting of HVAC technician
9 licenses, without examination, to applicants who present
10 satisfactory evidence no later than July 1, 2016, of having at
11 least 2,000 hours of experience and/or training working on
12 heating, ventilating, and cooling systems and at least 6,000
13 hours of experience and/or training in heating, ventilating,
14 and cooling or related work, to include other sheet metal
15 industry tasks: *Provided*, That if a license issued under the
16 authority of this subsection subsequently lapses, the
17 applicant is subject to all licensure requirements, including
18 the examination;

19 (3) Reciprocity provisions;

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

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

25 (6) Enforcement procedures; and

26 (7) Any other rules necessary to effectuate the purposes
27 of this article.

28 (b) The commissioner may promulgate emergency rules
29 pursuant to the provisions of §29A-3-15 of this code for the
30 purpose of describing:

31 (1) Provisions for the granting of HVAC residential
32 technician licenses without examination to qualified
33 applicants who present satisfactory evidence no later than
34 December 31, 2019, of having at least 2,000 hours of
35 experience and/or training working on heating, ventilating,
36 and cooling systems: *Provided*, That if a license issued
37 under the authority of this subsection subsequently lapses,
38 the applicant is subject to all licensure requirements,
39 including the examination;

40 (2) Provisions for developing an examination required
41 to obtain an HVAC residential technician license
42 commensurate with the scope of practice for HVAC
43 residential technicians as described in §21-16-2(d) of this
44 code: *Provided*, That applicants for such license
45 examination must provide satisfactory evidence of having
46 at least 2,000 hours of experience and/or training working
47 on heating, ventilating, and cooling systems: *Provided*,
48 *however*, That the rules proposed by the commissioner shall
49 provide that the HVAC residential license examination will
50 be developed in consultation with HVAC industry
51 representatives; and

52 (3) Provisions for allowing HVAC residential
53 technicians to perform work on nonresidential heating,
54 ventilating, and cooling systems subject to rules
55 promulgated by the commissioner.

●

CHAPTER 134

**(Com. Sub. for H. B. 2546 - By Delegates Foster,
Higginbotham, Howell, Wilson, Fast, Zatezalo, Kelly,
Harshbarger, Maynard and Walters)**

[Passed February 14, 2018; in effect ninety days from passage.]

[Approved by the Governor on February 23, 2018.]

AN ACT to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, all relating to the Wage Payment and Collection Act; relating to allowing actual cash value of employer provided property to be deducted from an employee's final paycheck if the property is not returned; setting forth conditions upon which an employer may withhold, deduct or divert the actual cash value of employer provided property that has not been timely returned; requiring written agreements before withholding or deductions for the actual cash value of employer provided property may be made; specifying certain contents of such written agreements; authorizing withholding, deduction or diversion of actual cash value of employer provided property with consent of employee; requiring employer to provide notice of intent to withhold, deduct or divert actual cash value of employer provided property; specifying contents of that notice; requiring employer to relinquish withheld wages if the employee provides the employer provided property by the deadline contained in the notice; providing exceptions; providing option to employee to object to actual cash value of employer provided property to be withheld, deducted or diverted; providing that employer place contested amounts in interest bearing escrow account; requiring employee to file civil action to recoup contested amounts within three months or contested amount in escrow account reverts to employer; providing that new subsection does not abolish or limit any

other remedies available to employers under law; exempting collective bargaining agreements; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION

§21-5-4. Cash orders; employees separated from payroll before paydays; employer provided property.

1 (a) In lieu of lawful money of the United States, any
2 person, firm or corporation may compensate employees for
3 services by cash order which may include checks, direct
4 deposits or money orders on banks convenient to the place
5 of employment where suitable arrangements have been
6 made for the cashing of the checks by employees or deposit
7 of funds for employees for the full amount of wages.

8 (b) Whenever a person, firm or corporation discharges
9 an employee, or whenever an employee quits or resigns
10 from employment, the person, firm or corporation shall pay
11 the employee's wages due for work that the employee
12 performed prior to the separation of employment on or
13 before the next regular payday on which the wages would
14 otherwise be due and payable: *Provided*, That fringe
15 benefits, as defined in section one of this article, that are
16 provided an employee pursuant to an agreement between
17 the employee and employer and that are due, but pursuant
18 to the terms of the agreement, are to be paid at a future date
19 or upon additional conditions which are ascertainable are
20 not subject to this subsection and are not payable on or
21 before the next regular payday, but shall be paid according
22 to the terms of the agreement. For purposes of this section,
23 "business day" means any day other than Saturday, Sunday
24 or any legal holiday as set forth in section one, article two,
25 chapter two of this code.

26 (c) Payment under this section may be made in person
27 in any manner permissible under section three of this article,
28 through the regular pay channels or, if requested by the
29 employee, by mail. If the employee requests that payment

30 under this section be made by mail, that payment shall be
31 considered to have been made on the date the mailed
32 payment is postmarked.

33 (d) When work of any employee is suspended as a result
34 of a labor dispute, or when an employee for any reason
35 whatsoever is laid off, the person, firm or corporation shall
36 pay in full to the employee not later than the next regular
37 payday, either through the regular pay channels or by mail
38 if requested by the employee, wages earned at the time of
39 suspension or layoff.

40 (e) If a person, firm or corporation fails to pay an
41 employee wages as required under this section, the person,
42 firm or corporation, in addition to the amount which was
43 unpaid when due, is liable to the employee for two times
44 that unpaid amount as liquidated damages. This section
45 regulates the timing of wage payments upon separation
46 from employment and not whether overtime pay is due.
47 Liquidated damages that can be awarded under this section
48 are not available to employees claiming they were
49 misclassified as exempt from overtime under state and
50 federal wage and hour laws. Every employee shall have a
51 lien and all other rights and remedies for the protection and
52 enforcement of his or her salary or wages, as he or she
53 would have been entitled to had he or she rendered service
54 therefor in the manner as last employed; except that, for the
55 purpose of liquidated damages, the failure shall not be
56 deemed to continue after the date of the filing of a petition
57 in bankruptcy with respect to the employer if he or she is
58 adjudicated bankrupt upon the petition.

59 (f)(1) Notwithstanding any provision in this section to
60 the contrary, if at the time of discharge or resignation, an
61 employee fails to return employer provided property, as set
62 forth by the parties under paragraph (C) of this subsection,
63 the employer may withhold, deduct or divert an employee's
64 final wages, in an amount not to exceed the replacement cost
65 of the employer provided property that was not returned as
66 set forth under paragraph (C) of this subsection, to recover

67 the replacement cost of the employer provided property,
68 subject to the following:

69 (A) The employer provided property had been provided
70 to the employee in the course of, and for use in, the
71 employer's business;

72 (B) The employer provided property has a value in
73 excess of \$100;

74 (C) The employee had signed a written agreement with
75 the employer contemporaneous with the obtaining of the
76 employer provided property, or signed and ratified an
77 agreement if property had been provided prior to the
78 effective date of this provision; and such agreement
79 contained, at a minimum, the following information:

80 (i) Specific itemization of the employer provided
81 property, with a specified replacement cost;

82 (ii) Clear statement that such items are to be returned
83 immediately upon discharge or resignation; and

84 (iii) Clear statement, coupled with the employee's
85 acknowledgement and agreement, that should the employee
86 fail to timely return the specified items, the replacement cost
87 of such items may be recovered by the employer from the
88 employee's final wages;

89 (D) The employer shall notify the employee in writing
90 at the time of discharge or resignation by personal service,
91 or as soon thereafter as practicable by personal service or
92 via certified mail with return receipt requested, as to the
93 replacement cost of the items and make a demand for return
94 of such employer provided property within a certain date,
95 not to exceed ten business days of the notification; and

96 (E) The employer shall relinquish the withheld,
97 deducted or diverted wages to the employee if the employee
98 returns the employer's property, equipment, supplies and
99 uniforms in a condition suitable for the age and usage of the

100 items within the deadline specified in paragraph (D) of this
101 subsection: *Provided*, That uniforms returned to the
102 employer within three years of their issuance shall be
103 deemed acceptable in their current condition at the time of
104 separation from employment for purposes of this section:
105 *Provided further*, replacement tools are deemed to be the
106 property of the employee and are not subject to the
107 provisions of this section.

108 (2) Nothing herein precludes an employee from
109 voluntarily consenting in writing to an employer's
110 withholding, deduction or diversion of a certain amount
111 from the employee's final wages in satisfaction of
112 subsection (1) of this section.

113 (3) If an employee objects to the replacement cost
114 amount to be deducted by an employer, and provides such
115 written objection within the deadline specified in paragraph
116 (D), subsection (1) of this subsection, then the employer
117 shall place the controverted amount in an interest bearing
118 escrow account: *Provided*, That if a civil action or equitable
119 relief is not brought by the employee for the claimed amount
120 within three months, the employee shall forfeit the amount
121 in escrow and such money shall revert to the employer.

122 (4) Nothing in this subsection is intended, nor shall it be
123 construed, to abolish or limit any other remedies available
124 to an employer to recover employer provided property,
125 damages related to employer provided property or any other
126 damages or relief, equitable or otherwise, available under
127 any applicable law.

128 (5) Notwithstanding any provision in this section to the
129 contrary, this provision shall not apply to employer-
130 employee business relationships that are subject to, and
131 governed by, collective bargaining agreements.

132 (6) For purposes of this section the following terms
133 mean:

134 (A) The term “employer provided property” means all
135 property provided by an employer to an employee for use in
136 the employer’s business, including but not limited to,
137 equipment, phone, computer, supplies or uniforms.

138 (B) The term “replacement cost” means actual cost paid
139 by an employer for employer provided property, or for the
140 same or similar property, if the original employer provided
141 property no longer exists. In calculating the “replacement
142 cost”, the cost shall include any vendor discounts provided
143 to the employer for such property.

144 (C) The term “replacement tools” means equipment,
145 other than uniforms, provided by the employer to the
146 employee for use in the course of the employer’s business
147 and to replace equipment provided by the employee that is
148 lost.



CHAPTER 135

**(Com. Sub. for H. B. 2799 - By Delegates Foster,
Higginbotham, Kessinger, Hill, Cowles, Fast, R.
Miller and Isner)**

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

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

AN ACT to amend and reenact §21-6-3 of the Code of West Virginia, 1931, as amended, all relating generally to the issuance of a minor’s work permit; prohibiting the superintendent of schools from requiring a physical examination to be included with the application for a minor’s work permit unless required by the prospective employer; and removing the requirement that the superintendent of schools certify that the minor personally appeared before him or her prior to the issuance, modification, or rejection of a work permit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CHILD LABOR.

§21-6-3. Issuance of work permit.

1 (a) A child fourteen or fifteen years of age may be
2 employed or permitted to work in any gainful occupation,
3 except as provided in section two of this article, when the
4 person, firm or corporation by whom the child is employed
5 or permitted to work, obtains and keeps on file and
6 accessible to officers charged with the enforcement of this
7 article, a work permit issued by the superintendent of
8 schools of the county in which the child resides, or by some
9 person authorized by him or her in writing. Whenever a
10 work permit has been issued, or wherever an age certificate
11 has been issued under the provisions of section five of this
12 article, it shall be conclusive as to the age of the child on
13 whose behalf the work permit or age certificate was issued.

14 (b) The superintendent of schools, or person authorized
15 by him or her in writing, shall issue the work permit only
16 upon receipt of the following documents:

17 (1) A written statement, signed by the person for whom
18 the child expects to work, that he or she intends legally to
19 employ the child;

20 (2) A brief written description of the job the child is
21 expected to perform;

22 (3) A birth certificate, or attested transcript thereof,
23 issued by the registrar of vital statistics or other officer
24 charged with the duty of recording births;

25 (4) A certificate signed by the principal or registrar of
26 the school attended showing that the child is attending
27 school; and

28 (5) The written consent of the parent or parents,
29 guardian or custodian of the child.

30 (c) The superintendent of schools may not require a
31 physical examination to be included in the application for a
32 work permit.

33 (d) The superintendent of schools is not required to
34 certify that the minor personally appeared before him or her
35 prior to the issuance, modification, or rejection of a work
36 permit.

CHAPTER 136

(Com. Sub. for H. B. 4368 - By Delegates Westfall,
Frich and Lane)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §21-5-3 of the Code of West Virginia, 1931, as amended, relating to voluntary assignments of wages by state employees who have been overpaid; and providing that state employees may voluntarily authorize an assignment or order of future wages to repay an overpayment, not to exceed a certain amount.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

1 (a) Every person, firm or corporation doing business in
2 this state, except railroad companies as provided in section
3 one of this article, shall settle with its employees at least
4 twice every month and with no more than 19 days between
5 settlements, unless otherwise provided by special
6 agreement, and pay them the wages due, less authorized

7 deductions and authorized wage assignments, for their work
8 or services.

9 (b) Payment required in subsection (a) of this section
10 shall be made:

11 (1) In lawful money of the United States;

12 (2) By cash order as described and required in §21-5-4
13 of this code;

14 (3) By deposit or electronic transfer of immediately
15 available funds into an employee's payroll card account in
16 a federally insured depository institution. The term "payroll
17 card account" means an account in a federally insured
18 depository institution that is directly or indirectly
19 established through an employer and to which electronic
20 fund transfers of the employee's wages, salary,
21 commissions or other compensation are made on a recurring
22 basis, whether the account is operated or managed by the
23 employer, a third person payroll processor, a depository
24 institution or another person. "Payroll card" means a card,
25 code or combination thereof or other means of access to an
26 employee's payroll card account, by which the employee
27 may initiate electronic fund transfers or use a payroll card
28 to make purchases or payments. Payment of employee
29 compensation by means of a payroll card must be agreed
30 upon in writing by both the person, firm or corporation
31 paying the compensation and the person being
32 compensated; or

33 (4) By any method of depositing immediately available
34 funds in an employee's demand or time account in a bank,
35 credit union or savings and loan institution that may be
36 agreed upon in writing between the employee and such
37 person, firm or corporation, which agreement shall
38 specifically identify the employee, the financial institution,
39 the type of account and the account number: *Provided*, That
40 nothing herein contained shall be construed in a manner to

41 require any person, firm or corporation to pay employees by
42 depositing funds in a financial institution.

43 (c) If, at any time of payment, any employee is absent
44 from his or her regular place of labor and does not receive
45 his or her wages through a duly authorized representative,
46 he or she is entitled to payment at any time thereafter upon
47 demand upon the proper paymaster at the place where his or
48 her wages are usually paid and where the next pay is due.

49 (d) Nothing herein contained may affect the right of an
50 employee to assign part of his or her claim against his or her
51 employer except as in subsection (e) of this section.

52 (e) No assignment of or order for future wages may be
53 valid for a period exceeding one year from the date of the
54 assignment or order. An assignment or order shall be
55 acknowledged by the party making the same before a notary
56 public or other officer authorized to take acknowledgments,
57 and any order or assignment shall specify thereon the total
58 amount due and collectible by virtue of the same and, unless
59 otherwise provided for in subsection (f) of this section,
60 three-fourths of the periodical earnings or wages of the
61 assignor are all times exempt from such assignment or order
62 and no assignment or order is valid which does not so state
63 upon its face: *Provided*, That no such order or assignment is
64 valid unless the written acceptance of the employer of the
65 assignor to the making thereof is endorsed thereon:
66 *Provided, however*, That nothing herein contained may be
67 construed as affecting the right of employer and employees
68 to agree between themselves as to deductions to be made
69 from the payroll of employees.

70 (f) If an employee of the state has been overpaid wages,
71 including incremental salary increases pursuant to §5-5-2 of
72 this code, an employee may voluntarily authorize a written
73 assignment or order for future wages to the state to repay
74 the overpayment in an amount not to exceed three-fourths
75 of his or her periodical earnings or wages.

●

CHAPTER 137

**(Com. Sub. for H. B. 4401 - By Delegates Ambler,
Sobonya, Westfall, Frich, Cooper, Foster,
Householder, Barrett and Phillips)**

[Passed March 9, 2018; in effect from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §21-3-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §21-3C-11; to amend and reenact §21-3D-8; to amend and reenact §21-5-5c; to amend and reenact §21-9-9; to amend and reenact §21-10-4; to amend and reenact §21-11-17; to amend and reenact §21-14-9; to amend and reenact §21-15-7; to amend and reenact §21-16-10; to amend and reenact §47-1-8, §47-1-20, §47-1-21 and §47-1-22; and to amend and reenact §47-1A-14, all relating to the collection and use of fees by the Commissioner of the Division of Labor; authorizing commissioner to utilize certain excess funds to meet the division's funding obligations through June 30, 2019; eliminating authority to use certain excess funds after June 30, 2019; eliminating authority to charge annual registration fee for service persons and service agencies; eliminating authority to charge annual device registration fee; and eliminating certain rule-making authority.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-7. Regulation of operation of steam boilers.

- 1 (a) Any person owning or operating a steam boiler
- 2 carrying more than fifteen pounds pressure per square inch

3 (except boilers on railroad locomotives subject to inspection
4 under federal laws; portable boilers used for agricultural
5 purposes; boilers on automobiles; boilers of steam fire
6 engines brought into the state for temporary use in times of
7 emergency for the purpose of checking conflagrations;
8 boilers used in private residences which are used solely for
9 residential purposes; any sectional boilers; small portable
10 boilers commonly used in the oil and gas industry about
11 their wells and tool houses; and boilers under the
12 jurisdiction of the United States) in this state shall first
13 obtain a permit to operate a steam boiler from the
14 Commissioner of Labor, or from an inspector working
15 under his or her jurisdiction.

16 (b) Applications for permits to operate a steam boiler
17 must be accompanied by a sworn statement made by the
18 owner or operator of such boiler, setting forth the condition
19 of the boiler and its appurtenances at which time, if the facts
20 disclosed by such statement meet the safety requirements
21 established under this article, the Commissioner of Labor
22 shall issue a temporary permit, which shall be valid until
23 such boiler has been inspected by a boiler inspector
24 authorized by the state Commissioner of Labor; thereupon,
25 if the boiler meets the safety requirements established under
26 this article, the Commissioner of Labor shall issue an annual
27 permit to operate such steam boiler: *Provided*, That boilers
28 which are insured by an insurance company operating in this
29 state and which are inspected by such insurance company's
30 boiler inspector shall not be subject to inspection by the state
31 Division of Labor, during any twelve-month period during
32 which an inspection is made by the insurance company's
33 boiler inspector.

34 (c) The Commissioner of Labor or state boiler inspector
35 shall have the authority to inspect steam boilers in this state.
36 To carry out the provisions of this section, the
37 Commissioner of Labor shall prescribe rules and regulations
38 under which boilers may be constructed and operated,
39 according to their class. The Commissioner of Labor may
40 revoke any permit to operate a steam boiler if the rules

41 prescribed by the Commissioner of Labor, or his or her
42 authorized representative, are violated or if a condition shall
43 prevail which is hazardous to the life and health of persons
44 operating or employed at or around the boiler. Any person
45 or corporation who shall operate a steam boiler for which a
46 permit is necessary under the provisions of this section,
47 without first obtaining such permit to operate a steam boiler,
48 is guilty of a misdemeanor, and, upon conviction thereof,
49 shall be fined not less than \$100 nor more than \$500. Every
50 day a steam boiler requiring a permit to operate is operated
51 without the permit is a separate offense.

52 (d) The commissioner shall charge an annual fee to be
53 established by legislative rule for the inspection of boilers
54 by the division, for the processing of inspection reports from
55 insurance companies, for the issuing of annual permits to
56 operate boilers and for the commissioning of insurance
57 company boiler inspectors. The commissioner shall propose
58 rules for legislative approval, in accordance with §29A-3-1
59 *et seq.* of this code for the implementation and enforcement
60 of this section. No fee may be charged for the inspection of
61 boilers used on mobile equipment or vehicles used for
62 occasional entertainment or display purposes.

63 (e) All fees paid pursuant to this section shall be paid to
64 the Commissioner of Labor and deposited in an
65 appropriated special revenue account hereby created in the
66 State Treasury to be known as the Steam Boiler Fund and
67 expended for the implementation and enforcement of this
68 section. Through June 30, 2019, amounts collected which
69 are found from time to time to exceed funds needed for the
70 purposes set forth in this section may be utilized by the
71 commissioner as needed to meet the division's funding
72 obligations: *Provided*, That beginning July 1, 2019,
73 amounts collected may not be utilized by the commissioner
74 as needed to meet the division's funding obligations.

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-11. Disposition of fees; legislative rules.

1 (a) The division shall propose rules for legislative
2 approval in accordance with §29A-3-1 *et seq.* of this code,
3 for the implementation and enforcement of the provisions
4 of this article, which shall provide:

5 (1) Standards, qualifications and procedures for
6 submitting applications, taking examinations and issuing
7 and renewing licenses, certificates of competency and
8 certificates of operation of the three licensure classifications
9 set forth in §21-3C-10a of this code;

10 (2) For the renewal of a license, even if the licensee is
11 unemployed or not working in the industry: *Provided*, That
12 to engage or offer to engage in the business of erecting,
13 constructing, installing, altering, servicing, repairing or
14 maintaining an elevator or related conveyance covered by
15 this article, the licensee shall be a contractor, or be
16 employed by a contractor licensed pursuant to §21-11-6 of
17 the code;

18 (3) Qualifications and supervision requirements for
19 elevator apprentices;

20 (4) Provisions for the granting of licenses without
21 examination, to applicants who present satisfactory
22 evidence of having the expertise required to perform work
23 as defined in this article and who apply for licensure on or
24 before July 1, 2010: *Provided*, That if a license issued under
25 the authority of this subsection subsequently lapses, the
26 applicant may, at the discretion of the commissioner, be
27 subject to all licensure requirements, including the
28 examination;

29 (5) Provisions for the granting of emergency licenses in
30 the event of an emergency due to disaster, act of God or
31 work stoppage when the number of persons in the state
32 holding licenses issued pursuant to this article is insufficient
33 to cope with the emergency;

34 (6) Provisions for the granting of temporary licenses in
35 the event that there are no elevator mechanics available to

36 engage in the work of an elevator mechanic as defined by
37 this article;

38 (7) Continuing education requirements;

39 (8) Procedures for investigating complaints and
40 revoking or suspending licenses, certificates of competency
41 and certificates of operation, including appeal procedures;

42 (9) Fees for testing, issuance and renewal of licenses,
43 certificates of competency and certificates of operation, and
44 other costs necessary to administer the provisions of this
45 article;

46 (10) Enforcement procedures; and

47 (11) Any other rules necessary to effectuate the
48 purposes of this article.

49 (b) The rules proposed for promulgation pursuant to
50 subsection (a) of this section shall establish the amount of
51 any fee authorized pursuant to the provisions of this article:
52 *Provided*, That in no event may the fees established for the
53 issuance of certificates of operation exceed \$90.

54 (c) All fees paid pursuant to this article shall be paid to
55 the Commissioner of Labor and deposited in an
56 appropriated special revenue account hereby created in the
57 State Treasury known as the Elevator Safety Fund and
58 expended for the implementation and enforcement of this
59 article. Through June 30, 2019, amounts collected which are
60 found from time to time to exceed funds needed for the
61 purposes set forth in this article may be utilized by the
62 commissioner as needed to meet the division's funding
63 obligations: *Provided*, That beginning July 1, 2019,
64 amounts collected may not be utilized by the commissioner
65 as needed to meet the division's funding obligations.

66 (d) The division may enter into agreements with
67 counties and municipalities whereby such counties and
68 municipalities be permitted to retain the inspection fees

69 collected to support the enforcement activities at the local
70 level.

71 (e) The commissioner or his or her authorized
72 representatives may consult with engineering authorities
73 and organizations concerned with standard safety codes,
74 rules and regulations governing the operation, maintenance,
75 servicing, construction, alteration, installation and the
76 qualifications which are adequate, reasonable and necessary
77 for the elevator mechanic and inspector.

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-8. Crane Operator Certification Fund; fees; disposition of funds.

1 (a) All fees paid pursuant to this article shall be paid to
2 the Commissioner of Labor and deposited in an
3 appropriated special revenue account known as the Crane
4 Operator Certification Fund in the State Treasury and
5 expended for the implementation and enforcement of this
6 article. Through June 30, 2019, amounts collected which are
7 found from time to time to exceed the funds needed for
8 purposes set forth in this article may be utilized by the
9 commissioner as needed to meet the division's funding
10 obligations: *Provided*, That beginning July 1, 2019,
11 amounts collected may not be utilized by the commissioner
12 as needed to meet the division's funding obligations.

13 (b) The commissioner may set reasonable application
14 fees for the issuance or renewal of certificates and other
15 services associated with crane operator certification.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

1 (a) No person, firm or corporation shall administer a
2 psychophysiological detection of deception examination, lie
3 detector or other similar examination utilizing mechanical
4 or electronic measures of physiological reactions to evaluate
5 truthfulness without holding a current valid license to do so
6 as issued by the Commissioner of Labor. No examination
7 shall be administered by a licensed corporation except by an
8 officer or employee thereof who is also licensed.

9 (b) A person is qualified to receive a license as an
10 examiner if he or she:

11 (1) Is at least twenty-one years of age;

12 (2) Is a citizen of the United States;

13 (3) Has not been convicted of a misdemeanor involving
14 moral turpitude or a felony;

15 (4) Has not been released or discharged with other than
16 honorable conditions from any of the armed services of the
17 United States or that of any other nation;

18 (5) Has passed an examination conducted by the
19 Commissioner of Labor or under his or her supervision to
20 determine his or her competency to obtain a license to
21 practice as an examiner;

22 (6) Has satisfactorily completed not less than six months
23 of internship training; and

24 (7) Has met any other qualifications of education or
25 training established by the Commissioner of Labor in his or
26 her sole discretion which qualifications are to be at least as
27 stringent as those recommended by the American Polygraph
28 Association.

29 (c) The Commissioner of Labor may designate and
30 administer any test he or she considers appropriate to those
31 persons applying for a license to administer
32 psychophysiological detection of deception, lie detector or

33 similar examination. The test shall be designed to ensure
34 that the applicant is thoroughly familiar with the code of
35 ethics of the American Polygraph Association and has been
36 trained in accordance with association rules. The test must
37 also include a rigorous examination of the applicant's
38 knowledge of and familiarity with all aspects of operating
39 psychophysiological detection of deception equipment and
40 administering psychophysiological detection of deception
41 examinations.

42 (d) The license to administer psychophysiological
43 detection of deception, lie detector or similar examinations
44 to any person shall be issued for a period of one year. It may
45 be reissued from year to year. The licenses to be issued are:

46 (1) "Class I license" which authorizes an individual to
47 administer psychophysiological detection of deception
48 examinations for all purposes which are permissible under
49 the provisions of this article and other applicable laws and
50 rules.

51 (2) "Class II license" which authorizes an individual
52 who is a full-time employee of a law-enforcement agency to
53 administer psychophysiological detection of deception
54 examinations to its employees or prospective employees
55 only.

56 (e) The Commissioner of Labor shall charge an annual
57 fee to be established by legislative rule. All fees paid
58 pursuant to this section shall be paid to the Commissioner
59 of Labor and deposited in an appropriated special revenue
60 account hereby created in the State Treasury to be known as
61 the Psychophysiological Examiners Fund and expended for
62 the implementation and enforcement of this section.
63 Through June 30, 2019, amounts collected which are found
64 from time to time to exceed funds needed for the purposes
65 set forth in this section may be utilized by the commissioner
66 as needed to meet the division's funding obligations:
67 *Provided*, That beginning July 1, 2019, amounts collected
68 may not be utilized by the commissioner as needed to meet

69 the division's funding obligations. In addition to any other
70 information required, an application for a license shall
71 include the applicant's Social Security number.

72 (f) The Commissioner of Labor shall propose rules for
73 legislative approval in accordance with §29A-3-1 *et seq.* of
74 this code governing the administration of
75 psychophysiological detection of deception, lie detector or
76 similar examination to any person: *Provided*, That all
77 applicable rules in effect on the effective date of §21-5-5a,
78 §21-5-5b, §21-5-5c and §21-5-5d of this code will remain
79 in effect until amended, withdrawn, revoked, repealed or
80 replaced. The legislative rules shall include:

81 (1) The type and amount of training or schooling
82 necessary for a person before which he or she may be
83 licensed to administer or interpret a psychophysiological
84 detection of deception, lie detector or similar examination;

85 (2) Testing requirements including the designation of
86 the test to be administered to persons applying for licensure;

87 (3) Standards of accuracy which shall be met by
88 machines or other devices to be used in psychophysiological
89 detection of deception, lie detector, or similar examination;

90 (4) The conditions under which a psychophysiological
91 detection of deception, lie detector, or similar examination
92 may be administered;

93 (5) Fees for licenses, renewals of licenses, and other
94 services provided by the commissioner;

95 (6) Any other qualifications or requirements, including
96 continuing education, established by the commissioner for
97 the issuance or renewal of licenses; and

98 (7) Any other purpose to carry out the requirements of
99 §21-5-5a, §21-5-5b, §21-5-5c and §21-5-5d of this code.

**ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION
AND SAFETY STANDARDS.****§21-9-9. License required; fees; form of license; display of
license; denial, suspension, or revocation.**

1 (a) No manufacturer, dealer, distributor or contractor
2 shall engage in business in this state without first having
3 applied for and received a license pursuant to this section.
4 The license shall authorize the holder to engage in the
5 business permitted by the license. All license applications
6 shall be accompanied by the required fee and surety bond or
7 other form of assurance or fee assessed in satisfaction of
8 assurance as required by rule or regulation promulgated by
9 the board.

10 (b) All licenses shall be granted or refused within thirty
11 days after proper and complete application. All licenses
12 shall expire on June 30 of each year, unless sooner revoked
13 or suspended. Applications shall be deemed valid for a
14 period of thirty days.

15 (c) The annual license fees shall be in the amounts
16 prescribed from time to time by rules promulgated by the
17 board but in no event less than the following amounts:

18 (1) For manufacturers, \$300;

19 (2) For dealers, \$100;

20 (3) For distributors, \$100; and

21 (4) For contractors, \$50: *Provided*, That if a contractor
22 has met the licensing requirements of this article and the
23 West Virginia Contractor Licensing Act in §21-11-1 *et seq.*
24 of this code, has paid the annual license fee under §21-11-8
25 of this code and has furnished bond or other assurance or
26 fee under §21-9-10 of this code, he or she shall not be
27 required to pay the annual license fee set forth in this
28 section.

29 (d) The board shall prescribe the form of license and
30 each license shall have affixed thereon the seal of the state
31 Division of Labor.

32 (e) Each licensee shall conspicuously display the license
33 in its established place of business.

34 (f) Pursuant to such rules and regulations as may be
35 promulgated by the board, the board may deny the issuance
36 of a license or revoke or suspend any license.

37 (g) All fees paid pursuant to this article shall be paid to
38 the Commissioner of Labor and deposited in an
39 appropriated special revenue account in the State Treasury
40 to be known as the State Manufactured Housing
41 Administration Fund. Expenditures from the fund shall be
42 for the administration and enforcement of this article.
43 Through June 30, 2019, amounts collected which are found
44 from time to time to exceed funds needed for the purposes
45 set forth in this article may be utilized by the commissioner
46 as needed to meet the division's funding obligations:
47 *Provided*, That beginning July 1, 2019, amounts collected
48 may not be utilized by the commissioner as needed to meet
49 the division's funding obligations.

ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.

§21-10-4. Inspection and permit fees.

1 (a) The division shall charge inspection and permit fees.
2 The annual permit fee is \$100 for each ride or attraction. The
3 annual inspection fee, if an inspection is to be done by the
4 division, is \$100 for each ride or attraction. The annual
5 inspection fee, if an inspection is to be done by the division, is
6 due at the time of application for the annual permit. The
7 division shall waive the inspection fee for any ride or attraction
8 whose owner provides proof of nonprofit business status or for
9 any ride or attraction whose owner provides proof that an
10 inspection has been completed within the last year by a
11 certified special inspector as provided in §21-10-6 of this code.

12 (b) The division may charge additional inspection fees
13 equal to the annual inspection fee for additional inspections
14 required as the result of the condemnation of a device for
15 safety standards violations and for inspections required as a
16 result of accidents involving serious or fatal injury. If any
17 owner or operator requires an inspection as the result of a
18 violation of the permitting requirements of §21-10-6 of this
19 code, the division shall charge the owner or operator \$75 per
20 hour in addition to the established inspection fee, including
21 travel time.

22 (c) All fees paid pursuant to this article shall be paid to
23 the Commissioner of Labor and deposited in an
24 appropriated special revenue account in the State Treasury
25 known as the Amusement Rides and Amusement
26 Attractions Safety Fund and expended for the
27 implementation and enforcement of this article. Through
28 June 30, 2019, amounts collected which are found from time
29 to time to exceed funds needed for the purposes set forth in
30 this article may be utilized by the commissioner as needed
31 to meet the division's funding obligations: *Provided*, That
32 beginning July 1, 2019, amounts collected may not be
33 utilized by the commissioner as needed to meet the
34 division's funding obligations.

35 (d) No inspection fee may be charged public agencies.

36 (e) The division shall issue, and the owner, operator, or
37 both of the amusement rides and amusement attractions
38 shall visibly display to the public, inspection stickers
39 denoting and signifying that the inspection and permit fee
40 authorized by this section has been paid or waived.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-17. Recordkeeping; fees.

1 (a) The division shall keep a record of all actions taken
2 and account for moneys received. All fees paid pursuant to
3 this article shall be paid to the Commissioner of Labor and

4 deposited in an appropriated special revenue account in the
5 State Treasury to be known as the West Virginia Contractor
6 Licensing Board Fund and expended for the implementation
7 and enforcement of this article. Through June 30, 2019,
8 amounts collected which are found from time to time to
9 exceed the funds needed for purposes set forth in this article
10 may be utilized by the commissioner as needed to meet the
11 division's funding obligations: *Provided*, That beginning
12 July 1, 2019, amounts collected may not be utilized by the
13 commissioner as needed to meet the division's funding
14 obligations.

15 (b) The division shall maintain at its principal office,
16 open for public inspection during regular office hours, a
17 complete indexed record of all applications, licenses issued,
18 licenses renewed and all revocations, cancellations, and
19 suspensions of licenses. Applications shall show the date of
20 application, name, qualifications, place of business and
21 place of residence of each applicant; and whether the
22 application was approved or refused.

23 (c) (1) All investigations, complaints, reports, records,
24 proceedings, and other information received by the
25 commissioner and board and related to complaints made to
26 the commissioner or board or investigations conducted by
27 the commissioner or board pursuant to this article, including
28 the identity of the complainant or respondent, shall be
29 confidential and shall not be knowingly and improperly
30 disclosed by any member or former member of the board,
31 the commissioner or staff, except as follows:

32 (A) Upon a finding that probable cause exists to believe
33 that a respondent has violated the provisions of this article,
34 the complaint and all reports, records, nonprivileged and
35 nondeliberative materials introduced at any probable cause
36 hearing held pursuant to the complaint are thereafter not
37 confidential: *Provided*, That confidentiality of such
38 information shall remain in full force and effect until the
39 respondent has been served with a copy of the statement of
40 charges.

41 (B) Any subsequent hearing held in the matter for the
42 purpose of receiving evidence or the arguments of the
43 parties or their representatives shall be open to the public
44 and all reports, records, and nondeliberative materials
45 introduced into evidence at such subsequent hearing, as well
46 as the board's and commissioner's orders, are not
47 confidential.

48 (C) The commissioner or board may release any
49 information relating to an investigation at any time if the
50 release has been agreed to in writing by the respondent.

51 (D) The complaint as well as the identity of the
52 complainant shall be disclosed to a person named as
53 respondent in any such complaint filed immediately upon
54 such respondent's request.

55 (E) Where the commissioner or board is otherwise
56 required by the provisions of this article to disclose such
57 information or to proceed in such a manner that disclosure
58 is necessary and required to fulfill such requirements.

59 (2) If, in a specific case, the commissioner or board
60 finds that there is a reasonable likelihood that the
61 dissemination of information or opinion in connection with
62 a pending or imminent proceeding will interfere with a fair
63 hearing or otherwise prejudice the due administration of
64 justice, the commissioner or board shall order that all or a
65 portion of the information communicated to the
66 commissioner or board to cause an investigation and all
67 allegations of violations or misconduct contained in a
68 complaint shall be confidential, and the person providing
69 such information or filing a complaint shall be bound to
70 confidentiality until further order of the board.

71 (d) If any person violates the provisions of subsection
72 (c) of this section by knowingly and willfully disclosing any
73 information made confidential by such section or by the
74 commissioner or board, such person is guilty of a
75 misdemeanor and, upon conviction thereof, shall be fined

76 not less than \$500 nor more than \$5,000, or confined in jail
77 not more than one month, or both fined and confined.

78 (e) The commissioner shall certify to the State Auditor
79 and to the board a detailed statement of all moneys received
80 and spent during the preceding fiscal year.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-9. Disposition of fees.

1 All fees paid pursuant to this article shall be paid to the
2 Commissioner of Labor and deposited in a special revenue
3 account in the State Treasury to be known as the Plumbing
4 Work Fund and expended for the implementation and
5 enforcement of this article. Through June 30, 2019, amounts
6 collected which are found from time to time to exceed funds
7 needed for the purposes set forth in this article may be
8 utilized by the commissioner as needed to meet the
9 division's funding obligations: *Provided*, That beginning
10 July 1, 2019, amounts collected may not be utilized by the
11 commissioner as needed to meet the division's funding
12 obligations.

ARTICLE 15. ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT.

§21-15-7. Inspection and permit fees.

1 (a) The division shall charge inspection and permit fees.
2 The annual permit fee is \$100 for each zipline or canopy
3 tour.

4 (1) The annual inspection fee, if an inspection is to be
5 done by the division, is \$100 for each zipline or canopy tour.

6 (2) The annual inspection fee, if an inspection is to be
7 done by the division, is due at the time of application for the
8 annual permit.

9 (3) The division shall waive the inspection fee for a
10 zipline or canopy tour whose operator provides proof of

11 nonprofit business status or for any zipline or canopy tour
12 whose operator provides proof that an inspection has been
13 completed within the last year by a certified special
14 inspector as provided in §21-15-9 of this code.

15 (b) The division may charge additional inspection fees
16 equal to the annual inspection fee for additional inspections
17 required as the result of the condemnation of a device for
18 safety standards violations and for inspections required as a
19 result of accidents involving serious or fatal injury. If any
20 operator requires an inspection as the result of a violation of
21 the permitting requirements of §21-15-9 of this code, the
22 division shall charge the operator \$75 per hour in addition
23 to the established inspection fee, including travel time.

24 (c) All fees paid pursuant to this article shall be paid to
25 the Commissioner of Labor and deposited in an
26 appropriated special revenue account in the State Treasury
27 known as the Amusement Rides and Amusement
28 Attractions Safety Fund and expended for the
29 implementation and enforcement of this article. Through
30 June 30, 2019, amounts collected which are found from time
31 to time to exceed funds needed for the purposes set forth in
32 this article may be utilized by the commissioner as needed
33 to meet the division's funding obligations: *Provided*, That
34 beginning July 1, 2019, amounts collected may not be
35 utilized by the commissioner as needed to meet the
36 division's funding obligations.

37 (d) No inspection fee may be charged public agencies.

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

§21-16-10. Disposition of fees.

1 All fees paid pursuant to this article shall be paid to the
2 Commissioner of Labor and deposited in an appropriated
3 special revenue account hereby created in the State Treasury
4 to be known as the HVAC Fund and expended for the
5 implementation and enforcement of this article. Through

6 June 30, 2019, amounts collected which are found from time
7 to time to exceed funds needed for the purposes set forth in
8 this article may be utilized by the commissioner as needed
9 to meet the division's funding obligations: *Provided*, That
10 beginning July 1, 2019, amounts collected may not be
11 utilized by the commissioner as needed to meet the
12 division's funding obligations.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 1. WEIGHTS AND MEASURES.

§47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.

1 (a) The uniform regulation for the voluntary registration
2 of service persons and service agencies for commercial
3 weighing and measuring devices as adopted by The
4 National Conference of Weights and Measures and
5 published in the National Institute of Standards and
6 Technology Handbook 130, Uniform Laws and Regulations
7 and supplements thereto or revisions thereof, shall apply to
8 the registration of service persons and service agencies in
9 the state, except insofar as modified or rejected by
10 legislative rule.

11 (b) Beginning January 1, 2018, the commissioner shall
12 charge an annual registration fee for service persons and
13 service agencies to be established by legislative rule:
14 *Provided*, That upon the effective date of the amendments
15 to this section adopted in the 2018 Regular Session of the
16 Legislature, the division may not charge an annual
17 registration fee.

18 (c) All fees paid pursuant to this section shall be paid to
19 the Commissioner of Labor and deposited in the Weights
20 and Measures Fund for use by the commissioner for the
21 implementation and enforcement of this article. Through
22 June 30, 2019, amounts collected which are found from time
23 to time to exceed funds needed for the purposes set forth in

24 this article may be utilized by the commissioner as needed
25 to meet the division's funding obligations: *Provided*, That
26 beginning July 1, 2019, amounts collected may not be
27 utilized by the commissioner as needed to meet the
28 division's funding obligations.

§47-1-20. State measurement laboratory.

1 (a) The commissioner shall operate and maintain a state
2 measurement laboratory certified and approved by the
3 National Institute of Standards and Technology. The
4 laboratory shall be used to both house and maintain the state
5 primary standards and secondary standards as traceable to
6 the national standards and to test or calibrate any secondary
7 or working standards which are submitted for test as
8 required by this article.

9 (b) The commissioner shall promulgate rules, pursuant
10 to §29A-1-1 *et seq.* of this code to assess fees for weights
11 and measures, laboratory calibration, and testing. All fees
12 paid pursuant to this section shall be paid to the
13 Commissioner of Labor and deposited into an appropriated
14 special revenue account in the State Treasury to be known
15 as the Weights and Measures Fund and expended for the
16 implementation and enforcement of this article. Through
17 June 30, 2019, amounts collected which are found from time
18 to time to exceed the funds needed for the purposes set forth
19 in this article may be utilized by the commissioner as needed
20 to meet the division's funding obligations: *Provided*, That
21 beginning July 1, 2019, amounts collected may not be
22 utilized by the commissioner as needed to meet the
23 division's funding obligations.

24 (c) The commissioner shall provide such personnel as
25 required to operate the laboratory in a manner which is
26 consistent with the needs of this article. Personnel shall be
27 trained and certified to perform all such calibrations and
28 tests as required by the National Institute of Standards and
29 Technology to maintain traceability of the state standards to
30 national standards, and to properly maintain the laboratory

31 facility as certified and traceable to the National Institute of
32 Standards and Technology.

§47-1-21. Registration of business.

1 (a) On or before October 1, 1994, every commercial
2 business in the state which, in the course of conducting
3 business, utilizes weights, measures, and weighing and
4 measuring devices covered by this article shall obtain a
5 certificate of device registration for the commercial devices
6 covered by this article, from the division. After October 1,
7 1994, it shall be unlawful in the state to conduct business
8 subject to the provisions of this article without having first
9 obtained a certificate of device registration from the
10 division. Application for a certificate of device registration
11 shall be made on a form provided by the division.

12 (b) A certificate of device registration is valid for 12
13 months from the date of issue. The certificate of device
14 registration shall be posted within the place of business.

15 (c) Application for the renewal of a certificate of device
16 registration shall be made on a form provided by the
17 division at least 30 days prior to the renewal due date. The
18 commissioner may deny the renewal of device registration
19 for cause where the cause is the result of the conviction of
20 the applicant, in a court of competent jurisdiction, for a
21 violation of this article.

22 (d) Beginning January 1, 2018, the division shall charge
23 an annual device registration fee, to be established by
24 legislative rule: *Provided*, That upon the effective date of
25 the amendments to this section adopted in the 2018 Regular
26 Session of the Legislature, the division may not charge an
27 annual device registration fee.

28 (e) All fees paid pursuant to this section shall be paid to
29 the Commissioner of Labor and deposited in the Weights
30 and Measures Fund for use by the commissioner for the
31 implementation and enforcement of this article. Through
32 June 30, 2019, amounts collected which are found from time

33 to time to exceed funds needed for the purposes set forth in
34 this article may be utilized by the commissioner as needed
35 to meet the division's funding obligations: *Provided*, That
36 beginning July 1, 2019, amounts collected may not be
37 utilized by the commissioner as needed to meet the
38 division's funding obligations.

§47-1-22. Civil penalties.

1 (a) No person may:

2 (1) Use or have in possession for use in commerce any
3 incorrect weight or measure;

4 (2) Sell or offer for sale for use in commerce any
5 incorrect weight or measure;

6 (3) Remove any tag, seal, or mark from any weight or
7 measure, without specific authorization from the Weights
8 and Measures Section; or

9 (4) Violate any provisions of this article or rules
10 promulgated under it, not defined in §47-1-23(a) of this
11 code.

12 (b) Any person who violates subsection (a) of this
13 section or any rule promulgated by the commissioner may
14 be assessed a civil penalty by the commissioner, which
15 penalty may not be more than \$1,000 for each violation.
16 Each violation shall constitute a separate offense. In
17 determining the amount of the penalty, the commissioner
18 shall consider the person's history of previous violations,
19 the appropriateness of such penalty to the size of the
20 business of the person charged, the gravity of the violation
21 and the demonstrated good faith of the person charged in
22 attempting to achieve rapid compliance after notification of
23 a violation.

24 (c) All civil penalties paid pursuant to this section shall
25 be paid to the Commissioner of Labor and deposited in the
26 Weights and Measures Fund for use by the commissioner
27 for the implementation and enforcement of this article.
28 Through June 30, 2019, amounts collected which are found

29 from time to time to exceed funds needed for the purposes
30 set forth in this article may be utilized by the commissioner
31 as needed to meet the division's funding obligations:
32 *Provided*, That beginning July 1, 2019, amounts collected
33 may not be utilized by the commissioner as needed to meet
34 the division's funding obligations.

35 (d) A civil penalty may be assessed by the commissioner
36 only after the commissioner has given at least ten days'
37 notice to the person. Notice shall be in writing, shall contain
38 a short, plain statement of the matter asserted and shall
39 designate a time and place for a hearing where the person
40 may show cause why the civil penalty should not be
41 imposed. Notice of hearing shall be sent by certified mail.
42 The person may, at the time designated for the hearing,
43 produce evidence on his or her behalf and be represented by
44 counsel.

45 (e) Any person aggrieved by a decision of the
46 commissioner has the right to a contested case hearing under
47 §29A-5-1 *et seq.* of this code.

ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY BUSINESSES.

***§47-1A-14. Annual registration and permit fees.**

1 (a) The annual registration fee for all manufacturers
2 shipping or selling articles of bedding and for upholsterers
3 or renovators, as defined in this article, in the State of West
4 Virginia shall be \$90, payable on the first day of the fiscal
5 year. Any manufacturer, upholsterer, or renovator who
6 submits an annual registration fee on or after July 16, shall
7 pay a \$25 late fee in addition to the annual fee.

8 (b) The annual sterilizer permit fee shall be \$90, payable
9 on the first day of the fiscal year. Any sterilizer who submits
10 an annual permit fee on or after July 16, shall pay a \$25 late
11 fee in addition to the annual fee.

*NOTE: This section was also amended by H. B. 4350 (Chapter 221),
which passed subsequent to the act.

12 (c) The fee for reissuing a revoked or expired
13 registration or permit shall be \$90.

14 (d) All fees paid pursuant to this article shall be paid
15 to the Commissioner of Labor and deposited in an
16 appropriated special revenue account hereby created in
17 the State Treasury to be known as the Bedding and
18 Upholstery Fund and expended for the implementation
19 and enforcement of this article. Through June 30, 2019,
20 amounts collected which are found from time to time to
21 exceed funds needed for the purposes set forth in this
22 article may be utilized by the commissioner as needed to
23 meet the division's funding obligations: *Provided*, That
24 beginning July 1, 2019, amounts collected may not be
25 utilized by the commissioner as needed to meet the
26 division's funding obligations.

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CHAPTER 138

**(H. B. 4436 - By Delegates Frich, Atkinson, Byrd,
Cooper, A. Evans, Hamilton, Love, Maynard,
Pushkin, Statler and Ward)
[By Request of the West Virginia 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 §21-6-2 of the Code of West Virginia, 1931, as amended, relating to clarifying when a minor between the ages of 16 and 18 may be employed by or elected as a member of a volunteer fire department to perform fire fighting functions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CHILD LABOR.

§21-6-2. Employment of children under eighteen in certain occupations; determination as to other occupations; appeal to supreme court.

1 (a) A child under eighteen years of age may not be
2 employed, permitted or suffered to work in, about, or in
3 connection with any of the following occupations:

4 (1) Motor vehicle driver and outside helper whose work
5 includes riding on a motor vehicle outside the cab for the
6 purpose of assisting in transporting or delivery of goods;

7 (2) The manufacture, storage, handling or transportation
8 of explosives or highly flammable substances;

9 (3) Ore reduction works, smelters, hot rolling mills,
10 furnaces, foundries, forging shops, or in any other place in
11 which the heating, melting or heat treatment of metals is
12 carried on;

13 (4) Logging and saw milling occupations;

14 (5) Power-driven woodworking machine occupations;

15 (6) Occupations involving exposure to radioactive
16 substances and ionizing radiations;

17 (7) Power-driven hoisting apparatus occupations;

18 (8) Power-driven metal-forming, punching, and
19 shearing machine occupations;

20 (9) Mining, including coal mining;

21 (10) Occupations involving slaughtering, meat-packing,
22 or processing or rendering;

23 (11) Power-driven bakery machines;

24 (12) Power-driven paper-products machine occupations;

25 (13) Occupations involved in the manufacturing of
26 brick, tile, and kindred products;

27 (14) Occupations involved in the operation of power-
28 driven circular saws, band saws, and guillotine shears;

29 (15) Occupations involved in wrecking, demolition, and
30 ship-breaking operations;

31 (16) Roofing operations above ground level; and

32 (17) Excavation operations.

33 (b) A child under eighteen years of age may not be
34 employed or permitted to work in a bar, or be permitted,
35 employed or suffered to sell, dispense or serve alcoholic
36 beverages in any place or establishment where the
37 consumption of alcoholic beverages is permitted by law.

38 (c) A child under eighteen years of age may not be
39 employed or permitted to work in any occupation prohibited
40 by law or determined by the commissioner to be dangerous
41 or injurious: *Provided*, That a child between the ages of
42 sixteen and eighteen years who is enrolled in, participating
43 in, or has completed the minimum training requirements of
44 the West Virginia State Fire Commission, West Virginia
45 Department of Education Public Service Training, or West
46 Virginia University fire service extension, or equivalent
47 approved program, and who has the written consent of his
48 or her parents or guardian may be employed by or elected
49 as a member of a volunteer fire department to perform fire
50 fighting functions: *Provided, however*, That no child may
51 be permitted to operate any fire fighting vehicles, enter a
52 burning building in the course of his or her employment or
53 work or enter into any area determined by the fire chief or
54 fireman in charge at the scene of a fire or other emergency
55 to be an area of danger exposing the child to physical harm
56 by reason of impending collapse of a building or explosion,
57 unless the child is under the immediate supervision of a fire
58 line officer.

CHAPTER 139

**(Com. Sub. for H. B. 4238 - By Delegates Fleischauer,
Williams, Pyles, Statler, Frich, Hamrick, Robinson,
Brewer, Storch, Howell and Miley)**

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §8A-3-3 of the Code of West Virginia, 1931, as amended, relating to authorizing counties and municipalities to establish a joint airport hazard comprehensive plan for the purpose of satisfying requirements of federal aviation law, protecting the public safety, and preventing hazardous conditions; describing requirements for written agreements; requiring submission of a plan and public hearing; providing for modifications to written agreements; and providing just compensation for diminution of property value.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. COMPREHENSIVE PLAN.

§8A-3-3. Authority for planning commission.

1 (a) A planning commission shall prepare a
2 comprehensive plan for the development of land within its
3 jurisdiction. A planning commission shall then recommend
4 the comprehensive plan to the appropriate governing body
5 for adoption.

6 (b) A county, multicounty, regional or joint
7 comprehensive plan may include the planning of towns,
8 villages or municipalities to the extent to which, in the
9 planning commission's judgment, they are related to the
10 planning of the unincorporated territory of the county as a

11 whole: *Provided*, That the comprehensive plan shall not be
12 considered a comprehensive plan for any town, village or
13 municipality without the consent of the planning commission
14 and/or the governing body of the town, village or municipality.

15 (c) A comprehensive plan should be coordinated with
16 the plans of the Department of Transportation, insofar as it
17 relates to highways, thoroughfares, trails, and pedestrian
18 ways under the jurisdiction of that planning commission.

19 (d) A county planning commission may prepare a
20 comprehensive plan for either the entire county or a part of
21 the county.

22 (e) A multicounty, regional or joint planning
23 commission may prepare a comprehensive plan for land
24 within its jurisdiction.

25 (f) Counties and municipalities may by written agreement
26 establish a joint airport hazard comprehensive plan for the
27 purpose of satisfying requirements of federal aviation law,
28 protecting the public safety, and preventing hazardous
29 conditions. The joint written agreement shall set forth the
30 boundaries of the airport overlay district and any requirements
31 that would apply within the district, without the need for the
32 adoption of a full comprehensive plan within a municipality or
33 county. The joint agreement becomes effective once each
34 entity takes the appropriate steps, including submission to a
35 planning commission and public hearing, for the establishment
36 or modification of a full or comprehensive plan within its
37 jurisdiction. Any modifications to the written agreement made
38 by one entity must be adopted by the other entity or entities for
39 the agreement to become valid: *Provided*, That where the
40 provisions of any such agreement result in a diminution in
41 property value to a property owner, the governing authority
42 responsible shall provide just compensation: *Provided*,
43 *however*, That any joint written agreement affecting a regional
44 airport shall require the approval of the regional airport's
45 governing body to be effective.

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CHAPTER 140

(Com. Sub. for S. B. 154 - By Senator Maynard)

[Passed February 15, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT to amend and reenact §64-2-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Department of Administration to promulgate a legislative rule relating to parking; and authorizing the Department of Administration to promulgate a legislative rule relating to state-owned vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

1 (a) The legislative rule filed in the State Register on July
2 25, 2017, authorized under the authority of §5A-10-3a of
3 this code, relating to the Department of Administration
4 (parking, 148 CSR 6), is authorized.

5 (b) The legislative rule filed in the State Register on July
6 26, 2017, authorized under the authority of §5A-3-48 of this
7 code, modified by the Department of Administration to
8 meet the objections of the Legislative Rule-Making Review
9 Committee and refiled in the State Register on December
10 11, 2017, relating to the Department of Administration
11 (state-owned vehicles, 148 CSR 3), is authorized with the
12 amendments set forth below:

13 On page 5, subsection 7.4, after the word “as”, by
14 inserting the words “well as”;

15 On page 5, subdivision 7.4.b, by striking out the words
16 “or replacement” and inserting in lieu thereof the words “to
17 or replacement of a state-owned vehicle”;

18 On page 6, subsection 8.4, after the words “otherwise
19 exchange information. The use of” by inserting the word
20 “a”;

21 On page 6, subsection 8.5, by striking out the word
22 “regulations” and inserting in lieu thereof the word “rules”;

23 On page 7, subsection 9.2, after the words “Subsection
24 9.1.”, by adding the words “of this section”;

25 On page 7, subdivision 9.3.c, by striking out the words
26 “bases where the” and inserting in lieu thereof the words
27 “basis where the location requiring the”;

28 On page 7, subdivision 9.3.e, by striking out the word
29 “lien” and inserting in lieu thereof the word “liens”;

30 On page 7, subdivision 9.4, by striking out “9.3.b. or
31 9.3.c.” and inserting in lieu thereof the words “subdivision
32 9.3.b or subdivision 9.3.c of this subsection”;

33 On page 9, subdivision 11.2.f, by striking out the word
34 “state”;

35 On page 10, subdivision 11.2.j, by striking out the word
36 “state-owned”;

37 On page 10, subdivision 11.2.k, by striking out the word
38 “state-owned”;

39 On page 10, subdivision 11.2.l, by striking out the word
40 “state-owned”;

41 On page 10, subsection 11.3, by striking out the words
42 “cost and” and inserting in lieu thereof the words “costs and
43 the”;

44 And,

45 On page 10, subdivision 12.2.a, after the word “outside”
46 by inserting the word “the”.

CHAPTER 141

(Com. Sub. for S. B. 163 - By Senator Maynard)

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

AN ACT to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, relating generally to authorizing the Department of Environmental Protection to promulgate certain legislative rules as filed, as modified, and as amended and to repeal certain legislative and procedural rules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to underground storage tanks; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to West Virginia surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from municipal solid waste

landfills; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from hazardous waste treatment, storage, and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment; directing the Department of Environmental Protection to repeal a legislative rule relating to state construction grants program rule; and directing the Department of Environmental Protection to repeal a procedural rule relating to Freedom of Information Act requests.

Be it enacted by the Legislature of West Virginia:

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

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

1 (a) The legislative rule filed in the State Register on July
2 21, 2017, authorized under the authority of §22-18-6 of this
3 code, relating to the Department of Environmental
4 Protection (hazardous waste management system, 33 CSR
5 20), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 25, 2017, authorized under the authority of §22-17-6 of this
8 code, modified by the Department of Environmental
9 Protection to meet the objections of the Legislative Rule-
10 Making Review Committee, and refiled in the State Register
11 on December 4, 2017, relating to the Department of
12 Environmental Protection (underground storage tanks, 33
13 CSR 30), is authorized.

14 (c) The legislative rule filed in the State Register on July
15 27, 2017, authorized under the authority of §22-3-13 of this
16 code, modified by the Department of Environmental
17 Protection to meet the objections of the Legislative Rule-
18 Making Review Committee and refiled in the State Register
19 on January 22, 2018, relating to the Department of
20 Environmental Protection (West Virginia surface mining
21 reclamation, 38 CSR 2), is authorized with the following
22 amendments:

23 On page 147, by striking out all of paragraph 12.2.a.4.
24 and inserting in lieu thereof a new paragraph 12.2.a.4. to
25 read as follows:

26 12.2.a.4. Notwithstanding any other provisions of this
27 rule to the contrary, the Secretary will not release or reduce
28 the bond if, at the time, water discharged from or affected
29 by the operation requires chemical or passive treatment in
30 order to comply with applicable effluent limitations
31 standards. Permit-approved measures taken during
32 operations to prevent the formation of acid drainage shall
33 not be considered passive treatment: *Provided*, That the
34 Secretary may approve a request for release if the applicant
35 demonstrates to the satisfaction of the Secretary that either:

36 And,

37 On page 148, by striking out all of subparagraph
38 12.2.a.4.B. and inserting in lieu thereof a new subparagraph
39 12.2.a.4.B. to read as follows:

40 12.2.a.4.B. The operator has provided irrevocable
41 financial assurances in a form satisfactory to the Secretary
42 through a contract or other mechanism enforceable under
43 provisions of law, such as delineated in subsection 11.3 of
44 this rule, adequate to provide for long term treatment of the
45 drainage as required by the federal Clean Water Act at 33
46 U.S.C 1251 *et seq.*, the West Virginia Water Pollution
47 Control Act at §22-11-1 *et seq.* of this code and the
48 operator's National Pollutant Discharge Elimination

49 System permit issued under 47 CSR 30. Default on a
50 treatment obligation under this paragraph will subject the
51 operator to penalties and sanctions, including permit
52 blocking.

53 In order to make this demonstration, the applicant shall
54 address, at a minimum, the current and projected quantity
55 and quality of drainage to be treated, the anticipated
56 duration of treatment, the estimated capital and operating
57 cost of the treatment facility, and the calculations that
58 demonstrate the adequacy of the remaining bond or other
59 financial assurance.

60 (d) The legislative rule filed in the State Register on July
61 21, 2017, authorized under the authority of §22-5-4 of this
62 code, relating to the Department of Environmental
63 Protection (standards of performance for new stationary
64 sources, 45 CSR 16), is authorized.

65 (e) The legislative rule filed in the State Register on July
66 21, 2017, authorized under the authority of §22-5-4 of this
67 code, modified by the Department of Environmental
68 Protection to meet the objections of the Legislative Rule-
69 Making Review Committee and refiled in the State Register
70 on August 24, 2017, relating to the Department of
71 Environmental Protection (control of air pollution from
72 combustion of solid waste, 45 CSR 18), is authorized.

73 (f) The legislative rule filed in the State Register on July
74 21, 2017, authorized under the authority of §22-5-4 of this
75 code, relating to the Department of Environmental
76 Protection (control of air pollution from municipal solid
77 waste landfills, 45 CSR 23), is authorized.

78 (g) The legislative rule filed in the State Register on July
79 21, 2017, authorized under the authority of §22-5-4 of this
80 code, relating to the Department of Environmental
81 Protection (ambient air quality standards, 45 CSR 8), is
82 authorized.

83 (h) The legislative rule filed in the State Register on July
84 21, 2017, authorized under the authority of §22-5-4 of this
85 code, relating to the Department of Environmental
86 Protection (control of air pollution from hazardous waste
87 treatment, storage, and disposal facilities, 45 CSR 25), is
88 authorized.

89 (i) The legislative rule filed in the State Register on July
90 21, 2017, authorized under the authority of §22-5-4 of this
91 code, relating to the Department of Environmental
92 Protection (emission standards for hazardous air pollutants,
93 45 CSR 34), is authorized.

94 (j) The legislative rule filed in the State Register on July
95 11, 2017, authorized under the authority of §22-22-3 of this
96 code, relating to the Department of Environmental
97 Protection (voluntary remediation and redevelopment, 60
98 CSR 3), is authorized with the following amendment:

99 On page 53, by striking out all of subdivision 15.7.b.
100 and inserting in lieu thereof a new subdivision 15.7.b. to
101 read as follows:

102 15.7.b. Public Notice of Application for the Voluntary
103 Remediation Program. – The applicant shall produce and
104 circulate a public notice of its application to the Voluntary
105 Remediation program in accordance with subsection 7.1 of
106 this rule, which shall also include the following:

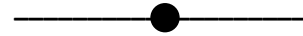
107 15.7.b.1. A summary of the proposed future use of the
108 site; and

109 15.7.b.2. A summary of the public’s right under the Act
110 to become involved in the development and remediation and
111 reuse of the site, as well as the time, date, and location of an
112 informational meeting the applicant will hold with regard to
113 the application.

114 (k) The legislative rule effective on May 7, 1999,
115 authorized under the authority of §22C-2-6 of this code,
116 relating to the Department of Environmental Protection

117 (state construction grants program rule, 47 CSR 33), is
118 repealed.

119 (l) The procedural rule effective on July 30, 2010,
120 authorized under the authority of §29A-3-3 of this code,
121 relating to the Department of Environmental Protection
122 (Freedom of Information Act requests, 60 CSR 2), is
123 repealed.



CHAPTER 142

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

[Passed February 19, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT to amend and reenact §64-5-1 and §64-5-2 of the Code of West Virginia, 1931, as amended, relating generally to authorizing various health agencies to promulgate certain legislative rules as filed, modified, and amended by the Legislature; authorizing various health agencies to repeal certain legislative rules; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to hospital licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia clearance for access: registry and employment screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to development of methodologies to examine needs for substance use disorder treatment facilities within the state; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to collection and

exchange of data related to overdoses; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child care centers licensing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to family child care facility licensing requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to family child care home registration requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to informal and relative family child care home registration requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to out-of-school-time child care center licensing requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to pilot program for drug screening of applicants for cash assistance; directing the Department of Health and Human Resources to repeal a legislative rule relating to regulation of opioid treatment programs; authorizing the Health Care Authority to promulgate a legislative rule relating to financial disclosure; and repealing a Health Care Authority legislative rule relating to certificate of need.

Be it enacted by the Legislature of West Virginia:

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

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

1 (a) The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §16-5B-8 of this
3 code, modified by the Department of Health and Human
4 Resources to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on August 30, 2017, relating to the Department of Health
7 and Human Resources (hospital licensure, 64 CSR 12), is
8 authorized.

9 (b) The legislative rule filed in the State Register on July
10 28, 2017, authorized under the authority of §16-1-9a of this
11 code, modified by the Department of Health and Human
12 Resources to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register
14 on October 25, 2017, relating to the Department of Health
15 and Human Resources (public water systems, 64 CSR 3), is
16 authorized with the following amendment:

17 On page six, by striking out all of subdivision 8.1. and
18 inserting in lieu thereof a new subdivision 8.1., to read as
19 follows:

20 8.1. A public water system which artificially adjusts
21 fluoride levels shall strive to maintain those levels between
22 0.6 milligrams per liter and 0.8 milligrams per liter. The
23 optimum target concentration for artificially adjusted
24 fluoride is 0.7 milligrams per liter. If the drinking water of
25 a public water system is found to be outside of the 0.6 to 0.8
26 milligrams per liter range, the public water system shall
27 make any treatment or operational changes necessary to
28 return the fluoride level to within the range within 24 hours
29 of receiving the analytical result unless doing so is
30 impracticable, in which case, the correction shall be made
31 as soon as possible. A public water system shall identify in
32 its annual report to the Bureau the date and time of each
33 instance where the fluoride levels were found to be outside
34 the target range and how long it took to implement
35 responsive adjustments.

36 (c) The legislative rule filed in the State Register on July
37 28, 2017, authorized under the authority of §16-4C-6 of this
38 code, modified by the Department of Health and Human
39 Resources to meet the objections of the Legislative Rule-
40 Making Review Committee and refiled in the State Register
41 on December 11, 2017, relating to the Department of Health
42 and Human Resources (emergency medical services, 64
43 CSR 48), is authorized.

44 (d) The legislative rule filed in the State Register on July
45 27, 2017, authorized under the authority of §16-49-9 of this
46 code, relating to the Department of Health and Human
47 Resources (West Virginia clearance for access: registry and
48 employment screening, 69 CSR 10), is authorized with the
49 following amendment:

50 On page five, by striking out all of subdivision 7.3.a.
51 and inserting in lieu thereof a new subdivision 7.3.a., to read
52 as follows:

53 7.3.a. The passage of time. The length of time an
54 applicant is barred from employment in direct access care
55 starts from the date of conviction or the date of release from
56 the penalty imposed, whichever is later.

57 (e) The legislative rule filed in the State Register on July
58 28, 2017, authorized under the authority of §16-53-3 of this
59 code, modified by the Department of Health and Human
60 Resources to meet the objections of the Legislative Rule-
61 Making Review Committee and refiled in the State Register
62 on October 25, 2017, relating to the Department of Health
63 and Human Resources (development of methodologies to
64 examine needs for substance use disorder treatment
65 facilities within the state, 69 CSR 13), is authorized with the
66 following amendments:

67 On page two, subdivision 2.6, by striking out the word
68 “six” and inserting in lieu thereof the word “seven”;

69 On page two, in subdivision 2.6.c, by striking out
70 “Roane,”;

71 On page two, in subdivision 2.6.e, by striking out
72 “Kanawha,” and “Clay,”;

73 On page two, in subdivision 2.6.f, by striking out
74 “Fayette,” and “Nicholas,”; and

75 On page two, following subdivision 2.6.f, creating a
76 new subdivision by inserting the following: “2.6.g. Region
77 7: Clay, Fayette, Kanawha, Nicholas, and Roane counties.”.

78 (f) The legislative rule filed in the State Register on July
79 28, 2017, authorized under the authority of §16-5T-5 of this
80 code, modified by the Department of Health and Human
81 Resources to meet the objections of the Legislative Rule-
82 Making Review Committee and refiled in the State Register
83 on December 11, 2017, relating to the Department of Health
84 and Human Resources (collection and exchange of data
85 related to overdoses, 69 CSR 14), is authorized.

86 (g) The legislative rule filed in the State Register on July
87 27, 2017, authorized under the authority of §49-2-121 of
88 this code, modified by the Department of Health and Human
89 Resources to meet the objections of the Legislative Rule-
90 Making Review Committee and refiled in the State Register
91 on October 4, 2017, relating to the Department of Health
92 and Human Resources (child care centers licensing, 78 CSR
93 1), is authorized.

94 (h) The legislative rule filed in the State Register on July
95 28, 2017, authorized under the authority of §49-2-121 of
96 this code, modified by the Department of Health and Human
97 Resources to meet the objections of the Legislative Rule-
98 Making Review Committee and refiled in the State Register
99 on October 4, 2017, relating to the Department of Health
100 and Human Resources (family child care facility licensing
101 requirements, 78 CSR 18), is authorized.

102 (i) The legislative rule filed in the State Register on July
103 27, 2017, authorized under the authority of §49-2-121 of
104 this code, relating to the Department of Health and Human
105 Resources (family child care home registration
106 requirements, 78 CSR 19), is authorized.

107 (j) The legislative rule filed in the State Register on July
108 28, 2017, authorized under the authority of §49-2-121 of
109 this code, modified by the Department of Health and Human

110 Resources to meet the objections of the Legislative Rule-
111 Making Review Committee and refiled in the State Register
112 on December 11, 2017, relating to the Department of Health
113 and Human Resources (informal and relative family child
114 care home registration requirements, 78 CSR 20), is
115 authorized.

116 (k) The legislative rule filed in the State Register on July
117 28, 2017, authorized under the authority of §49-2-121 of
118 this code, relating to the Department of Health and Human
119 Resources (out-of-school-time child care center licensing
120 requirements, 78 CSR 21), is authorized.

121 (l) The legislative rule filed in the State Register on July
122 28, 2017, authorized under the authority of §9-3-6 of this
123 code, modified by the Department of Health and Human
124 Resources to meet the objections of the Legislative Rule-
125 Making Review Committee and refiled in the State Register
126 on December 11, 2017, relating to the Department of Health
127 and Human Resources (pilot program for drug screening of
128 applicants for cash assistance, 78 CSR 26), is authorized.

129 (m) The legislative rule effective on October 10, 2013,
130 authorized under the authority of §16-1-4 of this code,
131 relating to the Department of Health and Human Resources
132 (regulation of opioid treatment programs, 69 CSR 7), is
133 repealed.

§64-5-2. Health Care Authority.

1 (a) The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §16-29B-8 of
3 this code, modified by the Health Care Authority to meet
4 the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 25,
6 2017, relating to the Health Care Authority (financial
7 disclosure, 65 CSR 13), is authorized with the following
8 amendment:

9 On page nine, by inserting a new section seven to read
10 as follows:

§65-13-7. Exemption.

1 The provisions of this rule do not apply to the legally
2 authorized practice of medicine by any one or more persons
3 in the private office of any healthcare provider.

4 (b) The legislative rule effective on April 13, 2011,
5 authorized under the authority of §16-2D-3 of this code,
6 relating to the Health Care Authority (certificate of need
7 rule, 65 CSR 7), is repealed.



CHAPTER 143

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

[Passed March 2, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §64-6-1, §64-6-2, and §64-6-3 of the Code of West Virginia, 1931, as amended, all relating generally to the Department of Military Affairs and Public Safety; authorizing and directing certain agencies to promulgate certain legislative rules as filed and as modified and repealing an obsolete rule; authorizing the State Fire Commission to promulgate a legislative rule relating to hazardous substance emergency response training programs; directing the State Fire Marshal to promulge a legislative rule relating to electrician licensing; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law-enforcement training and certification standards; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to protocol for law-enforcement response to domestic violence; and repealing a Governor's Committee on Crime, Delinquency

and Correction rule relating to motor vehicle stop data collection standards for the study of racial profiling.

Be it enacted by the Legislature of West Virginia:

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

§64-6-1. Fire Commission.

1 The legislative rule filed in the State Register on July
2 25, 2017, authorized under the authority of §29-3-5a of this
3 code, modified by the State Fire Commission to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December
6 13, 2017, relating to the State Fire Commission (hazardous
7 substance emergency response training programs, 87 CSR
8 3), is authorized.

§64-6-2. State Fire Marshal.

1 The Legislature directs the State Fire Marshal, pursuant
2 to the authority given to the division in §29-3B-5 of this
3 code, to promulgate the legislative rule filed in the State
4 Register by the State Fire Marshal on January 26, 2018,
5 relating to the State Fire Marshal (electrician licensing rules,
6 103 CSR 5).

§64-6-3. Governor's Committee on Crime, Delinquency and Correction.

1 (a) The legislative rule filed in the State Register on
2 October 20, 2017, authorized under the authority of §30-29-
3 3 of this code, modified by the Governor's Committee on
4 Crime, Delinquency and Correction to meet the objections
5 of the Legislative Rule-Making Review Committee and
6 refiled in the State Register on December 13, 2017, relating
7 to the Governor's Committee on Crime, Delinquency and
8 Correction (law-enforcement training and certification
9 standards, 149 CSR 2), is authorized.

10 (b) The legislative rule filed in the State Register on July
11 28, 2017, authorized under the authority of §48-27-1102 of
12 this code, modified by the Governor’s Committee on Crime,
13 Delinquency and Correction to meet the objections of the
14 Legislative Rule-Making Review Committee and refiled in
15 the State Register on December 14, 2017, relating to the
16 Governor’s Committee on Crime, Delinquency and
17 Correction (protocol for law-enforcement response to
18 domestic violence, 149 CSR 3), is authorized with the
19 following amendment:

20 On page 13, section 6.4.9(e), by striking through the
21 words “As a general rule, do” and inserting in lieu thereof
22 the words “It is recommended to”

23 And,

24 On page 13, section 6.4.10, by inserting after the word
25 “children” the words “the following is recommended”

26 (c) The legislative rule effective on May 10, 2006,
27 authorized under the authority of §17G-2-3 of this code,
28 relating to the Governor’s Committee on Crime,
29 Delinquency and Correction (motor vehicle stop data
30 collection standards for the study of racial profiling, 149
31 CSR 5), is repealed.



CHAPTER 144

(Com. Sub. for S. B. 184 - By Senator Maynard)

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

AN ACT to amend and reenact §64-8-1 of the Code of West Virginia, 1931, as amended, relating generally to authorizing

and directing the Division of Highways to promulgate certain legislative rules as filed, as modified, and as amended, and repealing a rule; authorizing the Division of Highways to promulgate a legislative rule relating to the disposal, lease, and management of real property and appurtenant structures, and relocation assistance; directing the Division of Highways to promulgate a legislative rule relating to employment procedures; and repealing the Division of Highways legislative rule relating to waste tire remediation/environmental clean-up.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Highways.

1 (a) The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §17-2A-19 of
3 this code, modified by the Division of Highways to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December
6 13, 2017, relating to the Division of Highways (disposal,
7 lease, and management of real property and appurtenant
8 structures and relocation assistance, 157 CSR 2), is
9 authorized with the following amendments:

10 On page 7, subsection 8.1, after the word “conditions”,
11 by adding “unless longer lease terms have been approved by
12 the Commissioner for utility accommodation leases.”; and

13 On page 8, subsection 8.4, after the word “conditions”,
14 by adding “unless longer lease terms have been approved by
15 the Commissioner for utility accommodation leases.”

16 (b) The Legislature directs the Division of Highways,
17 pursuant to the authority given to the division in §17-2A-24
18 of this code, to promulgate the legislative rule filed in the
19 State Register by the division on January 22, 2018, relating

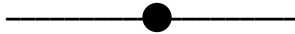
20 to the division (employment procedures, 157 CSR 12) with
21 the following amendments:

22 On page 2, by striking out all of subsection 2.8;

23 And,

24 By renumbering the remaining subsections.

25 (c) The legislative rule effective on May 4, 2001,
26 authorized under the authority of §17-23-2 of this code,
27 relating to the Division of Highways (waste tire
28 remediation/environmental clean-up, 157 CSR 8), is
29 repealed.



CHAPTER 145

(Com. Sub. for S. B. 230 - By Senator Maynard)

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

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

AN ACT to amend and reenact §64-10-1, §64-10-2, §64-10-3, and §64-10-4 of the Code of West Virginia, 1931, as amended, relating generally to the Department of Commerce; authorizing certain agencies to promulgate rules as filed, modified, and amended by the Legislature; repealing a rule; authorizing the Division of Natural Resources to promulgate a legislative rule relating to controlling the public land corporation's sale, lease, exchange, or transfer of land or minerals; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, fishing, and other outfitters and guides; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special migratory

game bird hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to miscellaneous permits and licenses; authorizing the Division of Labor to promulgate a legislative rule relating to Zipline and Canopy Tour Responsibility Act; authorizing the Division of Labor to promulgate a legislative rule relating to bedding and upholstered furniture; authorizing the Division of Labor to promulgate a legislative rule relating to Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to employer wage bonds; authorizing the Division of Labor to promulgate a legislative rule relating to registration of service persons and service agencies; authorizing the Division of Labor to promulgate a legislative rule relating to registration of weighing and measuring devices used by businesses in commercial transactions; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to operating diesel equipment in underground mines in West Virginia; and repealing the Division of Energy legislative rule relating to community development assessment and real property valuation procedures for Office of Coalfield Community Development.

Be it enacted by the Legislature of West Virginia:

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

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

1 (a) The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §20-1A-1 of this
3 code, relating to the Division of Natural Resources
4 (controlling the public land corporation's sale, lease,
5 exchange, or transfer of land or minerals, 58 CSR 2), is
6 authorized.

7 (b) The legislative rule filed in the State Register on July
8 28, 2017, authorized under the authority of §20-1-7 of this
9 code, modified by the Division of Natural Resources to
10 meet the objections of the Legislative Rule-Making Review
11 Committee and refiled in the State Register on December
12 18, 2017, relating to the Division of Natural Resources
13 (hunting, fishing, and other outfitters and guides, 58 CSR
14 11), is authorized.

15 (c) The legislative rule filed in the State Register on July
16 28, 2017, authorized under the authority of §20-1-7 of this
17 code, relating to the Division of Natural Resources (general
18 hunting, 58 CSR 49), is authorized.

19 (d) The legislative rule filed in the State Register on July
20 28, 2017, authorized under the authority of §20-1-7 of this
21 code, relating to the Division of Natural Resources (special
22 migratory game bird hunting, 58 CSR 56), is authorized.

23 (e) The legislative rule filed in the State Register on July
24 28, 2017, authorized under the authority of §20-1-7 of this
25 code, relating to the Division of Natural Resources
26 (miscellaneous permits and licenses, 58 CSR 64), is
27 authorized.

§64-10-2. Division of Labor.

1 (a) The legislative rule filed in the State Register on July
2 27, 2017, authorized under the authority of §21-15-6 of this
3 code, relating to the Division of Labor (Zipline and Canopy
4 Tour Responsibility Act, 42 CSR 10), is authorized.

5 (b) The legislative rule filed in the State Register on July
6 27, 2017, authorized under the authority of §47-1A-15 of
7 this code, relating to the Division of Labor (bedding and
8 upholstered furniture, 42 CSR 12), is authorized.

9 (c) The legislative rule filed in the State Register on July
10 27, 2017, authorized under the authority of §21-10-3 of this
11 code, relating to the Division of Labor (Amusement Rides

12 and Amusement Attractions Safety Act, 42 CSR 17), is
13 authorized.

14 (d) The legislative rule filed in the State Register on July
15 27, 2017, authorized under the authority of §21-3C-11 of
16 this code, relating to the Division of Labor (Elevator Safety
17 Act, 42 CSR 21), is authorized, with the amendments set
18 forth below:

19 On page 5, subsection 8 to read as follows:

20 8.1. The fee for an inspection of an elevator by a
21 Division inspector shall be \$100.00.

22 8.2. The Division's fee for the inspection of more than
23 one elevator in a building is \$100.00 for the first elevator
24 inspected and \$25.00 for each additional elevator
25 inspected.

26 8.3. If changes or repairs are required prior to the
27 issuance of a certificate of operation, the Division shall
28 not charge an inspection fee for the first follow-up
29 inspection.

30 8.4. If subsequent follow-up inspections are required
31 because of the owner's or operator's failure to make the
32 required repairs or changes, the Division's inspection fees
33 shall be the same rates as set forth in subsections 8.1 and 8.2
34 of this rule for each subsequent follow-up inspection.

35 8.5. If an owner or operator fails to pay the required
36 inspection fee, the Commissioner shall withhold the
37 issuance of a certificate of operation until the fee is
38 paid.

39 (e) The legislative rule filed in the State Register on July
40 27, 2017, authorized under the authority of §21-5-13 of this
41 code, relating to the Division of Labor (employer wage
42 bonds, 42 CSR 33), is authorized.

43 (f) The legislative rule filed in the State Register on July
44 27, 2017, authorized under the authority of §47-1-3 of this
45 code, relating to the Division of Labor (registration of
46 service persons and service agencies, 42 CSR 35), is
47 authorized, with the amendments set forth below:

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

49 1.1. Scope. – This rule governs the voluntary
50 registration of service persons and service agencies, and the
51 issuance of certificates of registration.

52 On page one, subsection 3.2 to read as follows:

53 3.2. “Certificate of registration” means the document
54 issued by the Division of Labor upon receipt of a complete
55 application from a service person or service agency.

56 On page four, subsection 6.1. to read as follows:

57 6.1. A service person desiring to register with the
58 Division shall submit a written application requesting that
59 he or she be registered, and shall provide all information as
60 the Commissioner may require on a form supplied by the
61 Division, and shall include the documentation required in
62 section 7 of this rule.

63 On page four, subsection 6.2. to read as follows:

64 6.2. A service agency desiring to register with the
65 Division shall submit a written application requesting that
66 the agency be registered, and shall provide all information
67 as the Commissioner may require on a form supplied by the
68 Division, including the documentation required in section 7
69 of this rule, and a sample security seal required in section 8
70 of this rule.

71 On page four, striking subsection 6.3. in its entirety, and
72 renumbering the remaining subsections.

73 And,

74 On page five, striking section 7 in its entirety, and
75 renumbering the remaining sections.

76 (g) The legislative rule filed in the State Register on July
77 27, 2017, authorized under the authority of §47-1-3 of this
78 code, modified by the Division of Labor to meet the
79 objections of the Legislative Rule-Making Review
80 Committee and refiled in the State Register on December 8,
81 2017, relating to the Division of Labor (registration of
82 weighing and measuring devices used by businesses in
83 commercial transactions, 42 CSR 36), is authorized, with
84 the amendments set forth below:

85 On page 1, subsection 1.1. to read as follows:

86 1.1.Scope. — This rule governs the registration of
87 weighing and measuring devices used by businesses in
88 commercial transactions, and the issuance of certificates of
89 device registration.

90 On page 1, subsection 3.1., striking the words “and
91 payment of the required fee for each weighing or measuring
92 device used in commercial transactions”.

93 On page 2, subsection 5.1., striking the words “and shall
94 pay the applicable registration fee as prescribed in section 6
95 of this rule”.

96 On page 2, striking subsection 5.3. in its entirety, and
97 renumbering the remaining subsections.

98 On page 2, striking section 6 in its entirety, and
99 renumbering the remaining section.

100 On page 3, striking Appendix A in its entirety.

101 And,

102 On page 4, striking Appendix B in its entirety.

§64-10-3. Office of Miners' Health, Safety, and Training.

1 The legislative rule filed in the State Register on July
2 27, 2017, authorized under the authority of §22A-2A-308 of
3 this code, relating to the Office of Miners' Health, Safety,
4 and Training (operating diesel equipment in underground
5 mines in West Virginia, 56 CSR 23), is authorized.

§64-10-4. Division of Energy.

1 The legislative rule effective on July 1, 2010, authorized
2 under the authority of §5B-2A-12 of this code, relating to
3 the Division of Energy (community development
4 assessment and real property valuation procedures for office
5 of coalfield community development, 207 CSR 1), is
6 repealed.



CHAPTER 146

(Com. Sub. for S. B. 237 - By Senator Maynard)

[Passed February 26, 2018; in effect from passage.]
[Approved by the Governor on March 6, 2018.]

AN ACT to amend and reenact §64-7-1, §64-7-2, and §64-7-3 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing and directing certain agencies within the Department of Revenue to promulgate certain legislative rules as filed, modified, and amended; relating to authorizing the State Tax Department to promulgate a legislative rule relating to farm-to-food bank tax credit; removing value-added products related to the farm-to-food bank tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to payment of taxes by electronic funds transfer; authorizing the State Tax Department to promulgate a legislative rule relating to property transfer tax;

authorizing the State Tax Department to promulgate a legislative rule relating to municipal sales and service and use tax administration; directing the State Tax Department to promulgate a legislative rule relating to a personnel rule for the Tax Division; authorizing the Lottery Commission to promulgate a legislative rule relating to state lottery rules; and authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing.

Be it enacted by the Legislature of West Virginia:

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

§64-7-1. State Tax Department.

1 (a) The legislative rule filed in the State Register on July
2 27, 2017, authorized under the authority of §11-13DD-5 of
3 this code, modified by the State Tax Department to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on September 1,
6 2017, relating to the State Tax Department (farm-to-food
7 bank tax credit, 110 CSR 13DD), is authorized, with the
8 following amendment set forth below:

9 On page two, by striking out all of subsection 2.10; and,
10 on page two, by striking out all of subdivision 4.1.e.

11 (b) The legislative rule filed in the State Register on July
12 27, 2017, authorized under the authority of §11-10-5t of this
13 code, relating to the State Tax Department (payment of
14 taxes by electronic funds transfer, 110 CSR 10F), is
15 authorized.

16 (c) The legislative rule filed in the State Register on July
17 27, 2017, authorized under the authority of §11-22-5 of this
18 code, relating to the State Tax Department (property transfer
19 tax, 110 CSR 22), is authorized.

20 (d) The legislative rule filed in the State Register on July
21 28, 2017, authorized under the authority of §11-10-11c of

22 this code, modified by the State Tax Department to meet the
23 objections of the Legislative Rule-Making Review
24 Committee and refiled in the State Register on September 8,
25 2017, relating to the State Tax Department (municipal sales
26 and service and use tax administration, 110 CSR 28), is
27 authorized.

28 (e) The Legislature directs the State Tax Department,
29 pursuant to the authority given to the department in §11B-
30 1-8 of this code, to promulgate the legislative rule filed in
31 the State Register by the department on January 12, 2018,
32 relating to the State Tax Department (personnel rule for the
33 Tax Division, 110 CSR 42), is authorized, with the
34 amendment set forth below:

35 On page 23, subsection 12.2., after the word “manner.”
36 by inserting the following: “The Tax Commissioner shall
37 comply with West Virginia and federal law prohibiting
38 nepotism, favoritism, discrimination or unethical practices
39 related to employment and promotion, and the public
40 employee grievance system.”

§64-7-2. Lottery Commission.

1 The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §29-22-5 of this
3 code, modified by the Lottery Commission to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December
6 11, 2017, relating to the Lottery Commission (state lottery
7 rules, 179 CSR 1), is authorized.

§64-7-3. Racing Commission.

1 The legislative rule filed in the State Register on July
2 27, 2017, authorized under the authority of §19-23-6 and
3 §19-23-8 of this code, relating to the Racing Commission
4 (thoroughbred racing, 178 CSR 1), is authorized with the
5 amendments set forth below:

6 On page 39, subdivision 24.1.f., to read as follows:

7 24.1.f. The fees that shall be paid to the Racing
 8 Commission for occupational permits issued effective for
 9 calendar year 2012 and thereafter are set forth in table 178-
 10 1A at the end of this rule.

11 And,

12 That Table 178-1A read as follows:

TABLE 178-1 A
OCCUPATIONAL PERMIT FEES
(Effective for calendar year 2012 and thereafter)

Stable Name	\$40.00
Corporation	\$40.00
Vendor	\$40.00
Owner (with registration of colors)	\$30.00
Owner-Trainer (same person)	\$60.00
Trainer	\$30.00
Assistant Trainer	\$30.00
Jockey	\$30.00
Apprentice Jockey	\$20.00
Jockey Agent	\$20.00
Practicing Veterinarian	\$30.00
Veterinarian's Assistant	\$20.00
Blacksmith	\$30.00

Authorized Agent (must apply for permit and pay permit fee for each person represented)	\$20.00
Mutuel Employee	\$20.00
Photographers, totalisator, film patrol	\$20.00
Stable Foreman	\$20.00
Starter	\$30.00
Assistant Starter	\$20.00
Association Racing Secretary	\$30.00
Association Assistant Racing Secretary	\$30.00
Paddock Judge	\$20.00

TABLE 178-1 A

continued

OCCUPATIONAL PERMIT FEES

(Effective for calendar year 2012 and thereafter)

Horsemen's Bookkeeper	\$20.00
Clerk of Scales	\$20.00
Clocker	\$20.00
Timer	\$20.00

Horse Identifier	\$20.00
Jockey Room Custodian	\$20.00
Placing Judge	\$20.00
Outrider	\$20.00
Stable Hand	\$20.00
Concession	\$20.00
Maintenance	\$20.00
Groom	\$20.00
Admission	\$20.00
Pony Riders	\$20.00
Parking	\$20.00
Security	\$20.00
Exercise Rider	\$20.00
Video Lottery employees	\$20.00
Others not specified	\$20.00



CHAPTER 147

(Com. Sub. for H. B. 4079 - By Delegates Sobonya and Frich)

[Passed March 9, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-9-8, §64-9-9, §64-9-10, §64-9-11, §64-9-12, §64-9-13, §64-9-14, §64-9-15, and §64-9-16 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by various executive or administrative agencies of the state; authorizing certain agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with amendments recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with amendments recommended by the Legislature; directing various agencies to amend and promulgate certain legislative rules; repealing certain legislative rules; authorizing the Board of Accountancy to promulgate a legislative rule relating to board rules and rules of professional conduct; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to noxious weeds; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to inspection of meat

and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia apiary law; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to inspection of nontraditional, domesticated animals; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to schedule of charges for inspection services; fruit; authorizing the Athletic Commission to promulgate a legislative rule relating to administrative rules of the West Virginia State Athletic Commission; authorizing the Athletic Commission to promulgate a legislative rule relating to regulation of mixed martial arts; authorizing the Board of Licensed Dietitians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing the Board of Hearing Aid Dealers to promulgate a legislative rule relating to rules governing the West Virginia Board of Hearing Aid Dealers; authorizing the Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures, continuing education and physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatric physicians; directing the Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures: physicians; podiatrists; authorizing the Board of Optometry to promulgate a legislative rule relating to rules of the West Virginia Board of Optometry; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to pharmacist recovery networks; authorizing the Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists and pharmacy interns; authorizing the Board of Pharmacy to promulgate a legislative rule relating to centralized prescription processing; authorizing the Board of Pharmacy to promulgate a legislative rule relating to uniform controlled substances act; authorizing the Board of Pharmacy to

promulgate a legislative rule relating to registration of pharmacy technicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the controlled substances monitoring program; authorizing the Board of Psychologists to promulgate a legislative rule relating to fees; authorizing the Board of Psychologists to promulgate a legislative rule relating to requirements for licensure as a psychologist and/or a school psychologist; authorizing the Board of Psychologists to promulgate a legislative rule relating to code of conduct; authorizing the Board of Real Estate Appraiser Licensing and Certification to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real Estate Commission to promulgate a legislative rule relating to licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business; authorizing the Real Estate Commission to promulgate a legislative rule relating to schedule of fees; authorizing the Real Estate Commission to promulgate a legislative rule relating to requirements for real estate courses, course providers and instructors; directing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to policies, standards and criteria for the evaluation and accreditation of colleges, departments or schools of nursing; repealing a Division of Rehabilitation Services rule relating to case services; repealing a Division of Rehabilitation Services rule relating to a resources manual; authorizing the Secretary of State to promulgate a legislative rule relating to procedures for canvassing elections; authorizing the Secretary of State to promulgate a legislative rule relating to procedures for handling ballots and counting write-in votes in counties using optical scan ballots; authorizing the Secretary of State to promulgate a legislative rule relating to vote by mail pilot project phase 2: Voting by Mail; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to organization and operation and licensing of veterinarians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to schedule of fees.

Be it enacted by the Legislature of West Virginia:

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

§64-9-1. Board of Accountancy.

1 The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §30-9-5 of this
3 code, modified by the Board of Accountancy to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on September
6 29, 2017, relating to the Board of Accountancy (board rules
7 and rules of professional conduct, 1 CSR 1), is authorized.

§64-9-2. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §19-9-2 of this
3 code, modified by the Commissioner of Agriculture to meet
4 the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December
6 19, 2017, relating to the Commissioner of Agriculture
7 (animal disease control, 61 CSR 1), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 28, 2017, authorized under the authority of §19-2C-3(a) of
10 this code, modified by the Commissioner of Agriculture to
11 meet the objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on December
13 19, 2017, relating to the Commissioner of Agriculture
14 (auctioneers, 61 CSR 11B), is authorized with the following
15 amendment:

16 On page one, subsection 4.1, by striking out “ten
17 thousand dollars (\$10,000)” and inserting in lieu thereof
18 “twenty-five thousand dollars (\$25,000)”.

19 (c) The legislative rule filed in the State Register on July
20 28, 2017, authorized under the authority of §19-12D-4 of

21 this code, modified by the Commissioner of Agriculture to
22 meet the objections of the Legislative Rule-Making Review
23 Committee and refiled in the State Register on December
24 19, 2017, relating to the Commissioner of Agriculture
25 (noxious weeds, 61 CSR 14A), is authorized.

26 (d) The legislative rule filed in the State Register on July
27 17, 2017, authorized under the authority of §19-2B-3 of this
28 code, modified by the Commissioner of Agriculture to meet
29 the objections of the Legislative Rule-Making Review
30 Committee and refiled in the State Register on September
31 18, 2017, relating to the Commissioner of Agriculture
32 (inspection of meat and poultry, 61 CSR 16), is authorized.

33 (e) The legislative rule filed in the State Register on July
34 18, 2017, authorized under the authority of §19-13-3 of this
35 code, modified by the Commissioner of Agriculture to meet
36 the objections of the Legislative Rule-Making Review
37 Committee and refiled in the State Register on September
38 18, 2017, relating to the Commissioner of Agriculture (West
39 Virginia apiary law, 61 CSR 2), is authorized.

40 (f) The legislative rule filed in the State Register on July
41 17, 2017, authorized under the authority of §19-29-4 of this
42 code, modified by the Commissioner of Agriculture to meet
43 the objections of the Legislative Rule-Making Review
44 Committee and refiled in the State Register on September
45 29, 2017, relating to the Commissioner of Agriculture
46 (inspection of nontraditional, domesticated animals, 61
47 CSR 23D), is authorized.

48 (g) The legislative rule filed in the State Register on
49 December 1, 2017, authorized under the authority of §19-2-
50 5 of this code, modified by the Commissioner of Agriculture
51 to meet the objections of the Legislative Rule-Making
52 Review Committee and refiled in the State Register on
53 December 19, 2017, relating to the Commissioner of
54 Agriculture (schedule of charges for inspection services:
55 fruit, 61 CSR 8B), is authorized.

§64-9-3. Athletic Commission.

1 (a) The legislative rule filed in the State Register on July
2 27, 2017, authorized under the authority of §29-5A-24 of
3 this code, modified by the Athletic Commission to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 3,
6 2017, relating to the Athletic Commission (administrative
7 rules of the West Virginia State Athletic Commission, 177
8 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 27, 2017, authorized under the authority of §29-5A-24 of
11 this code, modified by the Athletic Commission to meet the
12 objections of the Legislative Rule-Making Review
13 Committee and refiled in the State Register on October 3,
14 2017, relating to the Athletic Commission (regulation of
15 mixed martial arts, 177 CSR 2), is authorized.

§64-9-4. Board of Licensed Dietitians.

1 The legislative rule filed in the State Register on July
2 24, 2017, authorized under the authority of §30-35-4 of this
3 code, modified by the Board of Licensed Dietitians to meet
4 the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December 4,
6 2017, relating to the Board of Licensed Dietitians (licensure
7 and renewal requirements, 31 CSR 1), is authorized with the
8 following amendments:

9 On page two, subsection 6.3, following the words
10 “provisional permit renewal fee” by striking the words “as
11 stated in 4.1.2.3.” and inserting in lieu thereof the words
12 “\$50.”;

13 On page three, subsection 7.5, following the words
14 “professional license reinstatement fee” by striking the
15 words “as stated in 4.1.2.5.” and inserting in lieu thereof the
16 words “as stated in paragraph 4.1.2.3. of this rule”;

17 On page three, paragraph 8.1.1.3, following the words
18 “professional license reinstatement fee” by striking the
19 words “as stated in 4.1.2.5.” and inserting in lieu thereof the
20 words “as stated in paragraph 4.1.2.3. of this rule”;

21 On page three, subdivision 8.1.2, by renumbering the
22 incorrectly numbered subsections of that section to 8.1.2.1,
23 8.1.2.2, and 8.1.2.3, respectively;

24 And,

25 On page three, in the incorrectly numbered section
26 8.1.1.3, following the words “reinstatement fee as stated” by
27 striking the words “in 4.1.2.5.” and inserting in lieu thereof
28 the words “in paragraph 4.1.2.3. of this rule.”

§64-9-5. Board of Hearing Aid Dealers.

1 The legislative rule filed in the State Register on July
2 26, 2017, authorized under the authority of §30-26-3 of this
3 code, relating to the Board of Hearing Aid Dealers (rules
4 governing the West Virginia Board of Hearing Aid Dealers,
5 8 CSR 1), is authorized.

§64-9-6. Board of Medicine.

1 The legislative rule filed in the State Register on August
2 29, 2017, authorized under the authority of §30-3E-3 of this
3 code, modified by the Board of Medicine to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December 6,
6 2017, relating to the Board of Medicine (licensure,
7 disciplinary and complaint procedures, continuing
8 education, physician assistants, 11 CSR 1B), is authorized.

9 The legislative rule filed in the State Register on July
10 26, 2017, authorized under the authority of §30-3-7 of this
11 code, relating to the Board of Medicine (continuing
12 education for physicians and podiatric physicians, 11 CSR
13 6), is authorized with the amendment set forth below:

14 On page one, subsection 1.2 by striking out the words,
15 “§30-3-12 and §30-1-7a” and inserting in lieu thereof “§30-
16 3-7”.

17 (c) The Legislature directs the Board of Medicine,
18 pursuant to the authority given to the board in §30-3-7 of
19 this code, to promulgate the legislative rule filed in the State
20 Register by the Board on June 5, 2017, relating to the Board
21 (licensing and disciplinary procedures: physicians;
22 podiatrists, 11 CSR 1A) with the following amendment:

23 On page 18, by striking out all of paragraph 12.1.ii.B.
24 and re-lettering the remaining paragraphs.

§64-9-7. Board of Optometry.

1 The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §30-8-6 of this
3 code, relating to the Board of Optometry (rules of the West
4 Virginia Board of Optometry, 14 CSR 1), is authorized.

§64-9-8. Board of Osteopathic Medicine.

1 The legislative rule filed in the State Register on
2 October 17, 2017, authorized under the authority of §30-3E-
3 3 of this code, modified by the Board of Osteopathic
4 Medicine to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on December 6, 2017, relating to the Board of Osteopathic
7 Medicine (osteopathic physician assistants, 24 CSR 2), is
8 authorized.

§64-9-9. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §30-5-7 of this
3 code, relating to the Board of Pharmacy (licensure and
4 practice of pharmacy, 15 CSR 1), is authorized with the
5 following amendments:

6 On page fifteen, subdivision 6.5.1 after the words,
7 “submit a fee of” by striking out “\$125)” and inserting in
8 lieu thereof “\$250”.

9 (b) The legislative rule filed in the State Register on July
10 28, 2017, authorized under the authority of §30-5-7 of this
11 code, modified by the Board of Pharmacy to meet the
12 objections of the Legislative Rule-Making Review
13 Committee and refiled in the State Register on November 7,
14 2017, relating to the Board of Pharmacy (pharmacist
15 recovery networks, 15 CSR 10), is authorized.

16 (c) The legislative rule filed in the State Register on July
17 28, 2017, authorized under the authority of §30-5-7 of this
18 code, modified by the Board of Pharmacy to meet the
19 objections of the Legislative Rule-Making Review
20 Committee and refiled in the State Register on November 6,
21 2017, relating to the Board of Pharmacy (immunizations
22 administered by pharmacists and pharmacy interns, 15 CSR
23 12), is authorized.

24 (d) The legislative rule filed in the State Register on July
25 28, 2017, authorized under the authority of §30-5-7 of this
26 code, modified by the Board of Pharmacy to meet the
27 objections of the Legislative Rule-Making Review
28 Committee and refiled in the State Register on December
29 18, 2017, relating to the Board of Pharmacy (centralized
30 prescription processing, 15 CSR 14), is authorized.

31 (e) The legislative rule filed in the State Register on July
32 28, 2017, authorized under the authority of §60A-3-301 of
33 this code, modified by the Board of Pharmacy to meet the
34 objections of the Legislative Rule-Making Review
35 Committee and refiled in the State Register on November 6,
36 2017, relating to the Board of Pharmacy (uniform controlled
37 substances act, 15 CSR 2), is authorized.

38 (f) The legislative rule filed in the State Register on July
39 28, 2017, authorized under the authority of §30-5-7 of this
40 code, modified by the Board of Pharmacy to meet the

41 objections of the Legislative Rule-Making Review
42 Committee and refiled in the State Register on December
43 18, 2017, relating to the Board of Pharmacy (registration of
44 pharmacy technicians, 15 CSR 7), is authorized.

45 (g) The legislative rule filed in the State Register on
46 September 19, 2017, authorized under the authority of
47 §60A-9-6 of this code, modified by the Board of Pharmacy
48 to meet the objections of the Legislative Rule-Making
49 Review Committee and refiled in the State Register on
50 November 7, 2017, relating to the Board of Pharmacy
51 (controlled substances monitoring program, 15 CSR 8), is
52 authorized.

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

1 (a) The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §30-21-6 of this
3 code, modified by the Board of Examiners of Psychologists
4 to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the State Register on
6 December 13, 2017, relating to the Board of Psychologists
7 (fees, 17 CSR 1), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 28, 2017, authorized under the authority of §30-21-6 of this
10 code, modified by the Board of Examiners of Psychologists
11 to meet the objections of the Legislative Rule-Making
12 Review Committee and refiled in the State Register on
13 December 15, 2017, relating to the Board of Examiners of
14 Psychologists (requirements for licensure as a psychologist
15 and/or a school psychologist, 17 CSR 3), is authorized.

16 (c) The legislative rule filed in the State Register on July
17 28, 2017, authorized under the authority of §30-21-6 of this
18 code, relating to the Board of Examiners of Psychologists
19 (code of conduct, 17 CSR 6), is authorized.

§64-9-11. Real Estate Appraiser Licensing and Certification Board.

1 The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §30-38-9 of this
3 code, relating to the Real Estate Appraiser Licensing and
4 Certification Board (requirements for licensure and
5 certification, 190 CSR 2), is authorized.

§64-9-12. Real Estate Commission.

1 (a) The legislative rule filed in the State Register on July
2 27, 2017, authorized under the authority of §30-40-8 of this
3 code, modified by the Real Estate Commission to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December 6,
6 2017, relating to the Real Estate Commission (licensing real
7 estate brokers, associate brokers and salespersons and the
8 conduct of brokerage business, 174 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 27, 2017, authorized under the authority of §30-40-8 of this
11 code, relating to the Real Estate Commission (schedule of
12 fees, 174 CSR 2), is authorized.

13 (c) The legislative rule filed in the State Register on July
14 27, 2017, authorized under the authority of §30-40-8 of this
15 code, modified by the Real Estate Commission to meet the
16 objections of the Legislative Rule-Making Review
17 Committee and refiled in the State Register on December 6,
18 2017, relating to the Real Estate Commission (requirements
19 for real estate courses, course providers and instructors, 174
20 CSR 3), is authorized with the amendment set forth below:

21 On page six, by striking out all of subsection 3.9. and
22 inserting in lieu thereof a new subsection 3.9. to read as
23 follows:

24 3.9. All approved pre-license and continuing education
25 instructors shall complete annual instructor development
26 workshops when offered by the Commission, unless the
27 attendance is waived by the Commission or the individual
28 is an out-of-state instructor who a) is approved by the

29 National Association of Realtors (NAR) or b) holds a
30 Distinguished Real Estate Instructor (DREI) designation.

§64-9-13 Board of Examiners for Registered Professional Nurses.

1 The Legislature directs the Board of Examiners of
2 Registered Professional Nurses, pursuant to the authority
3 given to the Board in §30-7-4 of this code, to promulgate
4 the legislative rule filed in the State Register by the Board
5 on July 9, 2009, relating to the Board (policies, standards
6 and criteria for the evaluation and accreditation of colleges,
7 departments or schools of nursing, 19 CSR 1), with the
8 following amendments:

9 On page three, by striking out all of subdivision 4.1.b.
10 and renumbering the remaining subdivisions;

11 On page six, by striking out all of subsection 8.3. and
12 renumbering the remaining subsections;

13 And,

14 On page nine, by striking out all of subsection 13.3 and
15 renumbering the remaining subsections.

§64-9-14. Division of Rehabilitation Services.

1 (a) The legislative rule effective on May 1, 2007,
2 authorized under the authority of §18-10A-1 of this code,
3 relating to the Division of Rehabilitation Services (case
4 services, 130 CSR 1), is repealed.

5 (b) The legislative rule effective on May 1, 2007,
6 authorized under the authority of §18-10A-1 of this code,
7 relating to the Division of Rehabilitation Services
8 (resources manual, 130 CSR 2), is repealed.

§64-9-15. Secretary of State.

1 (a) The legislative rule filed in the State Register on July
2 28, 2017, authorized under the authority of §3-1A-6 of this

3 code, modified by the Secretary of State to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December
6 12, 2017, relating to the Secretary of State (procedures for
7 canvassing elections, 153 CSR 18), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 28, 2017, authorized under the authority of §3-1A-6 of this
10 code, modified by the Secretary of State to meet the
11 objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on December
13 12, 2017, relating to the Secretary of State (procedures for
14 handling ballots and counting write-in votes in counties
15 using optical scan ballots, 153 CSR 27), is authorized.

16 (c) The legislative rule filed in the State Register on July
17 28, 2017, authorized under the authority of §3-3A-3 of this
18 code, relating to the Secretary of State (vote by mail pilot
19 project phase 2: voting by mail, 153 CSR 39), is authorized.

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

1 (a) The legislative rule filed in the State Register on July
2 18, 2017, authorized under the authority of §30-10-6 of this
3 code, modified by the Board of Veterinary Medicine to meet
4 the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on August 29,
6 2017, relating to the Board of Veterinary Medicine
7 (organization and operation and licensing of veterinarians,
8 26 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 18, 2017, authorized under the authority of §30-10-6 of this
11 code, modified by the Board of Veterinary Medicine to meet
12 the objections of the Legislative Rule-Making Review
13 Committee and refiled in the State Register on September
14 20, 2017, relating to the Board of Veterinary Medicine
15 (certified animal euthanasia technicians, 26 CSR 5), is
16 authorized with the following amendments:

17 On page two, after subdivision 2.1.e., by adding the
18 following new subdivisions:

19 “2.1.f. Verification of the status of the applicant’s
20 certification in each state or jurisdiction where he or she
21 currently holds or ever held a certificate;

22 2.1.g. Verification that the applicant has never been
23 denied a certification in another state or jurisdiction, had his
24 or her certification restricted, suspended or revoked or been
25 disciplined in any manner;”

26 And,

27 By renumbering the remaining subdivisions.

28 (c) The legislative rule filed in the State Register on July
29 18, 2017, authorized under the authority of §30-10-6 of this
30 code, modified by the Board of Veterinary Medicine to meet
31 the objections of the Legislative Rule-Making Review
32 Committee and refiled in the State Register on August 29,
33 2017, relating to the Board of Veterinary Medicine
34 (schedule of fees, 26 CSR 6), is authorized.



CHAPTER 148

**(Com. Sub. for H. B. 2890 - By Delegates Lovejoy,
Sobonya, C. Romine, Rohrbach, Hornbuckle,
Canestraro, Thompson, Hicks, Isner and C. Miller)**

[Passed March 2, 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 §10-1-24, relating
to establishing a Library Facilities Improvement Fund that
will serve to support library facilities construction,

maintenance and improvement projects; setting forth general structure of fund and distribution of funds; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-24. Library Facilities Improvement Fund.

1 (a) There is created in the State Treasury a special fund
2 known as the “Library Facilities Fund”. Expenditures from
3 the fund shall be for the purposes set forth in this section.
4 The fund shall be administered by the West Virginia Library
5 Commission.

6 (b) The fund shall consist of moneys received from the
7 following sources:

8 (1) All appropriations made by the Legislature to the
9 fund;

10 (2) Any moneys available from sources outside the
11 West Virginia Library Commission;

12 (3) Repayment of loans made by the West Virginia
13 Library Commission pursuant to this section; and

14 (4) All interest and other income earned from
15 investment of moneys in the fund.

16 (c) The West Virginia Library Commission shall utilize
17 moneys in the fund to support public library facilities
18 construction, renovation, maintenance and improvement
19 projects. The West Virginia Library Commission shall
20 evaluate potential recipient projects of funds from the fund
21 on a competitive basis.

22 (1) The West Virginia Library Commission may
23 provide loans to public libraries to support energy savings
24 and critical maintenance projects with moneys in the fund.

25 (2) With the exception of loans made under this section,
26 the West Virginia Library Commission may not expend any
27 money from the fund toward a particular project unless the
28 proposed expenditure is matched on a dollar-for-dollar basis
29 by other sources.

30 (d) The West Virginia Library Commission shall
31 propose a rule for legislative approval in accordance with
32 §29A-3-1 *et seq.* of this code to implement the provisions of
33 this section. The rule shall contain at least the following:

34 (1) A process for submitting and reviewing proposals;

35 (2) The content of proposals;

36 (3) Criteria for evaluating proposals; and

37 (4) Other provisions the West Virginia Library
38 Commission considers necessary to administer the program
39 in accordance with this section.

40 (e) Any balance, including accrued interest and any
41 other returns, in the fund at the end of each fiscal year will
42 not expire to the General Revenue Fund but remain in the
43 fund and be expended for the purposes provided by this
44 section.

45 (f) In a given year, the West Virginia Library
46 Commission may not allocate an amount in excess of four
47 percent of the balance of the fund on December 31st of the
48 immediately preceding calendar year for administrative
49 expenses.

50 (g) The West Virginia Library Commission may invest
51 any or all of the balance of the fund with the state's
52 Consolidated Investment Fund.

●

CHAPTER 149

**(Com. Sub. for H. B. 4268 - By Delegates Anderson,
Kelly, Zatezalo, Westfall, Fast, Higginbotham, Ward,
Hollen, Atkinson, Foster and Lane)**

[Passed March 5, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 9, 2018.]

AN ACT to amend and reenact §22C-9-3 and §22C-9-4 of the Code of West Virginia, 1931, as amended, to amend and reenact §37-7-2 of said code; and to amend said code by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6, §37B-1-7, §37B-2-1, §37B-2-2, §37B-2-3, §37B-2-4, §37B-2-5, §37B-2-6, §37B-2-7, §37B-2-8, and §37B-2-9, all relating generally to real property; providing the Oil and Gas Conservation Commission enforcement authority for certain mineral development by covenants; providing an exception to waste and trespass for certain oil or natural gas developments; providing a short title; providing declarations of public policy and legislative findings; providing definitions; providing that, in cases where there are seven or more royalty owners, consent for the lawful use and development of oil or natural gas mineral property by the persons owning an undivided three fourths of the royalty interests, as defined, in an oil or natural gas mineral property is permissible, is not waste, and is not trespass; providing that nonconsenting covenants may elect a production royalty interest or a working interest share of production; providing an election period and default elections; providing a certain right of appeal; providing that interests owned by unknown or unlocatable owners be reserved, reported, and deposited in a fund administered by the State Treasurer; providing methods for determination of leasehold and contractual

terms; providing for the development of specifically targeted stratigraphic formations; providing the Oil and Gas Conservation Commission rule-making authority; providing a mechanism for surface owners to acquire title to certain severed oil and gas interests; providing limitations of liability for certain nonconsenting cotenants and unknown or unlocatable interest owners; prohibiting surface use or disturbance in certain circumstances; preserving common law rights; providing for severability of provisions; providing a short title; providing that the article shall be read in conjunction and not in conflict with the West Virginia Uniform Unclaimed Property Act; providing definitions; providing for quarterly reporting and remittance of each reserved interest for each unknown or unlocatable interest owner to the State Treasurer; providing reporting requirements and administrative duties; creating a fund known as the Unknown and Unlocatable Interest Owners Fund, to be administered by the State Treasurer; permitting investment of moneys in the fund with the West Virginia Board of Treasury Investments; requiring payment of lawful claims of unknown and unlocatable interest owners; permitting deduction of certain expenses; requiring that certain funds be transferred to the Oil and Gas Reclamation Fund and the Public Employees Insurance Agency Stability Fund in equal amounts; providing for certain notice requirements; providing for the crediting of certain amounts to each owner's account and payment of certain interest earned; providing for rule-making authority; providing for severability of provisions; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS AND
COMPACTS.**

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section,
2 the provisions of this article shall apply to all lands located
3 in this state, however owned, including any lands owned or
4 administered by any government or any agency or
5 subdivision thereof, over which the state has jurisdiction
6 under its police power. The provisions of this article are in
7 addition to and not in derogation of or substitution for the
8 provisions of §22-6-1 *et seq.* of this code.

9 (b) This article shall not apply to or affect:

10 (1) Shallow wells other than those utilized in secondary
11 recovery programs as set forth in in §22C-9-8 of this code
12 and those provided for in §22C-9-4 of this code;

13 (2) Any well commenced or completed prior to March
14 9, 1972, unless such well is, after completion (whether such
15 completion is prior or subsequent to that date):

16 (A) Deepened subsequent to that date to a formation at
17 or below the top of the uppermost member of the
18 “Onondaga Group”; or

19 (B) Involved in secondary recovery operations for oil
20 under an order of the commission entered pursuant to §22C-
21 9-8 of this code;

22 (3) Gas storage operations or any well employed to
23 inject gas into or withdraw gas from a gas storage reservoir
24 or any well employed for storage observation; or

25 (4) Free gas rights.

26 (c) The provisions of this article shall not be construed
27 to grant to the commissioner or the commission authority or
28 power to:

29 (1) Limit production or output, or prorate production of
30 any oil or gas well, except as provided in §22C-9-7(a)(6) of
31 this code; or

32 (2) Fix prices of oil or gas.

33 (d) Nothing contained in either this chapter or §22-1-1
34 *et seq.* may be construed so as to require, prior to
35 commencement of plugging operations, a lessee under a
36 lease covering a well to give or sell the well to any person
37 owning an interest in the well, including, but not limited to,
38 a respective lessor, or agent of the lessor, nor shall the lessee
39 be required to grant to a person owning an interest in the
40 well, including, but not limited to, a respective lessor, or
41 agent of a lessor, an opportunity to qualify under §22-6-26
42 of this code to continue operation of the well.

**§22C-9-4. Oil and gas conservation commissioner and
commission; commission membership; qualifications of
members; terms of members; vacancies on commission;
meetings; compensation and expenses; appointment and
qualifications of commissioner; general powers and
duties.**

1 (a) The “oil and gas conservation commission” shall be
2 composed of five members. The director of the Department
3 of Environmental Protection and the chief of the office of
4 oil and gas shall be members of the commission *ex officio*.
5 The remaining three members of the commission shall be
6 appointed by the Governor, by and with the advice and
7 consent of the Senate, and may not be employees of the
8 Department of Environmental Protection. Of the three
9 members appointed by the Governor, one shall be an
10 independent producer and at least one shall be a public
11 member not engaged in an activity under the jurisdiction of
12 the Public Service Commission or the federal energy
13 regulatory commission. The third appointee shall possess a
14 degree from an accredited college or university in petroleum
15 engineering or geology and must be a registered
16 professional engineer with particular knowledge and
17 experience in the oil and gas industry and shall serve as
18 commissioner and as chair of the commission.

19 (b) The members of the commission appointed by the
20 Governor shall be appointed for overlapping terms of six
21 years each, except that the original appointments shall be for
22 terms of two, four and six years, respectively. Each member
23 appointed by the Governor shall serve until the members
24 successor has been appointed and qualified. Members may
25 be appointed by the Governor to serve any number of terms.
26 The members of the commission appointed by the
27 Governor, before performing any duty hereunder, shall take
28 and subscribe to the oath required by section 5, article IV of
29 the Constitution of West Virginia. Vacancies in the
30 membership appointed by the Governor shall be filled by
31 appointment by the Governor for the unexpired term of the
32 member whose office is vacant and such appointment shall
33 be made by the Governor within 60 days of the occurrence
34 of such vacancy. Any member appointed by the Governor
35 may be removed by the Governor in case of incompetency,
36 neglect of duty, gross immorality or malfeasance in office.
37 A commission member's appointment shall be terminated
38 as a matter of law if that member fails to attend three
39 consecutive meetings. The Governor shall appoint a
40 replacement within 30 days of the termination.

41 (c) The commission shall meet at such times and places
42 as shall be designated by the chair. The chair may call a
43 meeting of the commission at any time, and shall call a
44 meeting of the commission upon the written request of two
45 members or upon the written request of the oil and gas
46 conservation commissioner or the chief of the office of oil
47 and gas. Notification of each meeting shall be given in
48 writing to each member by the chair at least 14 calendar
49 days in advance of the meeting. Three members of the
50 commission, at least two of whom are appointed members,
51 shall constitute a quorum for the transaction of any business.

52 (d) The commission shall pay each member the same
53 compensation as is paid to members of the Legislature for
54 their interim duties as recommended by the citizens
55 legislative compensation commission and authorized by law

56 for each day or portion thereof engaged in the discharge of
57 official duties and shall reimburse each member for actual
58 and necessary expenses incurred in the discharge of official
59 duties.

60 (e) The commission is hereby empowered and it is the
61 commission's duty to execute and carry out, administer and
62 enforce the provisions of this article in the manner provided
63 herein. Subject to the provisions of §22C-9-3 of this code,
64 the commission has jurisdiction and authority over all
65 persons and property necessary therefor. The commission is
66 authorized to make such investigation of records and
67 facilities as the commission deems proper. In the event of a
68 conflict between the duty to prevent waste and the duty to
69 protect correlative rights, the commission's duty to prevent
70 waste shall be paramount.

71 (f) Without limiting the commission's general authority,
72 the commission shall have specific authority to:

73 (1) Regulate the spacing of deep wells;

74 (2) Make and enforce reasonable rules and orders
75 reasonably necessary to prevent waste, protect correlative
76 rights, govern the practice and procedure before the
77 commission and otherwise administer the provisions of this
78 article;

79 (3) Issue subpoenas for the attendance of witnesses and
80 subpoenas duces tecum for the production of any books,
81 records, maps, charts, diagrams and other pertinent
82 documents, and administer oaths and affirmations to such
83 witnesses, whenever, in the judgment of the commission, it
84 is necessary to do so for the effective discharge of the
85 commission's duties under the provisions of this article; and

86 (4) Serve as technical advisor regarding oil and gas to
87 the Legislature, its members and committees, to the chief of
88 office of oil and gas, to the Department of Environmental

89 Protection and to any other agency of state government
90 having responsibility related to the oil and gas industry.

91 (g) The commission may delegate to the commission
92 staff the authority to approve or deny an application for new
93 well permits, to establish drilling units or special field rules
94 if:

95 (1) The application conforms to the rules of the
96 commission; and

97 (2) No request for hearing has been received.

98 (h) The commission may not delegate its authority to:

99 (1) Propose legislative rules;

100 (2) Approve or deny an application for new well
101 permits, to establish drilling units or special field rules if the
102 conditions set forth in subsection (g) of this section are not
103 met; or

104 (3) Approve or deny an application for the pooling of
105 interests within a drilling unit.

106 (i) Any exception to the field rules or the spacing of
107 wells which does not conform to the rules of the
108 commission, and any application for the pooling of interests
109 within a drilling unit, must be presented to and heard before
110 the commission.

111 (j) The commission is hereby empowered and it is the
112 commission's duty to execute and carry out, administer,
113 and enforce the relevant provisions of §37B-1-1 *et seq.* of
114 this code concerning mineral development by cotenants
115 for all wells at all depths. The commission has
116 jurisdiction and authority over all persons and property
117 necessary therefor. The commission is authorized to
118 make such investigation of records and facilities as the
119 commission deems proper.

CHAPTER 37. REAL PROPERTY.

ARTICLE 7. WASTE.

§37-7-2. Waste by cotenant.

1 If a tenant in common, joint tenant, or parcener commits
2 waste, he or she is liable to his or her cotenants, jointly or
3 severally, for damages. The lawful use or development of
4 oil or natural gas and their constituents in compliance with
5 the provisions of §37B-1-1 *et seq.* of this code is not the
6 commission of waste.

CHAPTER 37B. MINERAL DEVELOPMENT.

ARTICLE 1. MINERAL DEVELOPMENT BY A MAJORITY OF COTENANTS.

§37B-1-1. Short title.

1 This article shall be known as the Cotenancy
2 Modernization and Majority Protection Act.

§37B-1-2. Declaration of public policy; legislative findings.

1 It is declared to be the public policy of this state and in
2 the public interest to:

3 (1) Foster, encourage and promote exploration for and
4 development, production, and conservation of oil, natural
5 gas and their constituents;

6 (2) Prohibit waste of oil, natural gas, and their
7 constituents and unnecessary surface loss of oil, natural gas,
8 and their constituents;

9 (3) Encourage the maximum recovery of oil, natural
10 gas, and their constituents;

11 (4) Safeguard, protect and enforce the correlative rights
12 of operators and mineral owners in that each such operator
13 and mineral owner may obtain his or her just and equitable
14 share of production;

15 (5) Safeguard, protect and enforce the integrity of the
16 passive royalty owner's interest in his or her minerals.

17 (6) Safeguard, protect and enforce the rights of surface
18 owners; and

19 (7) Protect and enforce the clear provisions of contracts
20 lawfully made.

§37B-1-3. Definitions.

1 As used in this article:

2 "Consenting Cotenant" means a tenant in common, joint
3 tenant, or parcener having an interest in the mineral property
4 who consents in writing to a lawful use of the mineral
5 property through a bona fide lease made in an arms-length
6 transaction.

7 "Nonconsenting Cotenant" means an owner who for any
8 reason chooses not to consent to a lawful use of the mineral
9 property agreed to by the consenting cotenants owning,
10 cumulatively, at least an undivided three-fourths interest in
11 and to the mineral property.

12 "Operator" means any owner of at least an undivided
13 three-fourths interest of the right to develop, operate and
14 produce oil, natural gas, or their constituents, and to
15 appropriate the oil, natural gas, or their constituents
16 produced therefrom.

17 "Person" means any individual, corporation,
18 partnership, joint venture, limited liability company,
19 association, receiver, trustee, executor, administrator,
20 guardian, fiduciary or other representative of any kind, and
21 includes any government or any political subdivision or any
22 agency thereof.

23 "Post-production expense" means an expense or cost
24 subsequent to production including, but not limited to, an
25 expense or cost related to severance taxes, pipelines, surface

26 facilities, telemetry, gathering, dehydration, transportation,
27 fractionation, compression, manufacturing, processing,
28 treating or marketing of oil or natural gas and their
29 constituents.

30 “Prorata share” means the allocation of revenues and
31 costs attributable to the lawful use of a mineral property that
32 is calculated based on the proportion that the net acreage of
33 such ownership interest bears to the total net acreage in the
34 mineral property, in a development or production unit that
35 includes, all or part of, that mineral property.

36 “Royalty owner” means any owner in place of oil or
37 natural gas and their constituents, owners of oil or natural
38 gas leasing rights, and owners vested with any leasehold
39 estate less than 25 percent of the total, to the extent that the
40 owners are not an operator as defined in this section. A
41 royalty owner does not include a person whose interest is
42 limited to: (A) A working interest in a wellbore only; (B)
43 overriding royalties; (C) nonparticipating royalty interests;
44 (D) nonexecutive mineral interests; or (E) net profit
45 interests.

46 “Unknown or unlocatable interest owner” means a
47 person vested with a present ownership interest in the oil or
48 natural gas and their constituents in place in a mineral
49 property whose present identity or location cannot be
50 determined from:

51 (A) A reasonable review of the records of the clerk of
52 the county commission, the sheriff, the assessor, and the
53 clerk of the circuit court in the county or counties in which
54 the interest is located, and includes unknown heirs,
55 successors and assigns known to be alive;

56 (B) A reasonable inquiry in the vicinity of the owner’s
57 last known place of residence;

58 (C) A diligent inquiry into known interest owners in the
59 same tract; and

60 (D) A reasonable review of available Internet resources
61 commonly utilized by the industry.

§37B-1-4. Lawful use and development by cotenants; election of interests; reporting and remitting of interests of unknown or unlocatable cotenants; establishment of terms and provisions for development; and merging of surface and oil and gas.

1 (a) In cases where there are seven or more royalty
2 owners, if an operator or owner makes or has made
3 reasonable efforts to negotiate with all royalty owners in an
4 oil or natural gas mineral property and royalty owners
5 vested with at least three fourths of the right to develop,
6 operate, and produce oil, natural gas, or their constituents
7 consent to the lawful use or development of the oil or natural
8 gas mineral property, the operator's or owner's use or
9 development of the oil or natural gas mineral property is
10 permissible, is not waste, and is not trespass. In that case,
11 the consenting cotenants and their lessees, operators, agents,
12 contractors or assigns are not liable for damages for waste
13 or trespass due to the lawful use or development and shall
14 pay the nonconsenting cotenants in accordance with
15 subsections (b) and (c) of this section, reserve the amounts
16 specified in subsection (d) of this section for the benefit of
17 unknown or unlocatable interest owners, and report and
18 remit the reserved interests as provided in subsection (d) of
19 this section.

20 (b) A nonconsenting cotenant is entitled to receive,
21 based on his or her election, either:

22 (1) A prorata share of production royalty, paid on the
23 gross proceeds received at the first point of sale to an
24 unaffiliated third-party purchaser and free of post-
25 production expenses, equal to the highest royalty percentage
26 paid to his or her consenting cotenants in the same mineral
27 property, under a bona fide, arms-length lease transaction
28 and lease bonus and delay rental payments or other non-

29 royalty mineral payments, calculated on a weighted-average
30 net mineral acre basis; or

31 (2) To participate in the development and receive his or
32 her prorata share of the revenue and cost equal to his or her
33 share of production attributable to the tract or tracts being
34 developed according to the interest of such nonconsenting
35 cotenant, exclusive of any royalty or overriding royalty
36 reserved in any lease, assignments thereof or agreements
37 relating thereto, after the market value of such
38 nonconsenting cotenant's share of production, exclusive of
39 such royalty and overriding royalty, equals double the share
40 of such costs payable or charged to the interest of such
41 nonconsenting cotenant.

42 (c) A nonconsenting cotenant shall have 45 days
43 following the operator's written delivery of its best and final
44 lease offer in which to make his or her election for either a
45 production royalty or a revenue share as specified in
46 subsection (b) of this section. If the nonconsenting cotenant
47 fails to deliver a written election to the operator prior to the
48 expiration of such 45-day period, he or she shall be deemed
49 to have made the election set forth in subdivision (1),
50 subsection (b) of this section. Within thirty days after a
51 nonconsenting cotenant has chosen or is deemed to have
52 chosen the production royalty option, the nonconsenting
53 cotenant shall have the right to appeal to the Commission
54 regarding the issue of whether there has been compliance
55 with subdivision (1) of subsection (b) of this section, to
56 verify the highest royalty paid in the same mineral property
57 and the value for the lease bonus and delay rental payments:
58 *Provided, however,* That the operations upon the parcel may
59 continue during the proceedings.

60 (d) Unknown or unlocatable interest owners are deemed
61 to have made the election provided by subdivision (1),
62 subsection (b) of this section and are only entitled to receive
63 the amount provided by that subdivision. Within 120 days
64 from the date upon which an amount is reserved for an
65 unknown or unlocatable interest owner pursuant to

66 subsection (a) of this section, the consenting cotenants and
67 their lessees, operators, agents, contractors or assigns shall
68 make a report to the State Treasurer as the Unclaimed
69 Property administrator and each calendar quarter, thereafter,
70 concerning each reserved interest for each unknown or
71 unlocatable interest owner and shall concurrently remit the
72 amount reserved, in accordance with the provisions of
73 §37B-2-1 *et seq.* and §36-8-1 *et seq.* of this code and as
74 determined by the State Treasurer. The quarterly report and
75 remittances shall be submitted by the first day of the month
76 following each calendar quarter.

77 (e) Unless otherwise agreed to in writing or defined by
78 this section, any nonconsenting cotenant and any unknown
79 or unlocatable interest owner who elects or is deemed to
80 elect a production royalty under subdivision (1), subsection
81 (b) of this section is subject to and shall benefit from the
82 other terms and provisions defined by the lease executed by
83 a consenting cotenant which contains terms and provisions
84 most favorable to the nonconsenting cotenant or the
85 unknown or unlocatable interest owner: *Provided*, That
86 nonconsenting cotenants and unknown or unlocatable
87 interest owners shall not be subject to or liable under any
88 warranty of title, jurisdictional or choice of law provisions,
89 arbitration provisions, injection well provisions, disposal
90 well provisions, and storage provisions: *Provided further*,
91 That consenting cotenants and their lessees, operators,
92 agents, contractors or assigns shall only develop the
93 specifically targeted stratigraphic formation and 100 feet
94 above and below said formation; nonconsenting cotenants
95 and unknown or unlocatable interest owners will retain all
96 rights to all other formations unless or until reasonable
97 efforts are made to renegotiate under this section for each
98 additional formation. If a consenting cotenant has made a
99 lease only for the targeted formation, in that case the
100 nonconsenting cotenants and unknown and unlocatable
101 cotenants shall receive the highest royalty, bonus and delay
102 rental in the lease which was executed for the targeted
103 formation.

104 (f) Unless otherwise agreed to in writing or defined by
105 this section, a nonconsenting cotenant who elects to
106 participate under subdivision (2), subsection (b), of this
107 section, shall be subject to and shall benefit from other terms
108 and provisions determined to be just and reasonable by the
109 Oil and Gas Conservation Commission in a manner similar
110 to the provisions of §22C-9-7(b)(5)(B) of this code
111 governing deep wells. The commission may propose rules
112 for legislative approval in accordance with the provisions of
113 §29A-3-1 *et seq.* of this code, to implement and make
114 effective the provisions of this section and the powers and
115 authority conferred and the duties imposed upon the
116 commission under the provisions of this section.
117 Notwithstanding the determination of participation terms by
118 the commission, an operator may proceed with the
119 development of oil, natural gas, or their constituents
120 pursuant to this section.

121 (g) After seven (7) years from the date of the first
122 report to the Treasurer, a bonafide surface owner may file
123 an action to quiet title to the interests of all unknown and
124 unlocatable interest owners of the oil and natural gas
125 estate underlying the surface tract. To the extent relevant
126 and practical, such action shall follow the provisions of
127 W.Va. Code §55-12A-1 *et seq.* Upon presentation of
128 sufficient proof, a bonafide surface owner shall be
129 entitled to receive a special commissioner's deed
130 transferring title to the interest of any or all unknown or
131 unlocatable interest owners in an oil and natural gas estate
132 which underlies the surface tract. The surface owner shall
133 only be entitled to their proportionate share of all future
134 proceeds and is not entitled to any of the accrued funds
135 which have been remitted to the Treasurer prior to the
136 execution of the special commissioner's deed. The
137 unknown or unlocatable interest owners are not entitled
138 to any amounts paid to the grantees of the special
139 commissioner's deed after delivery of said deed.

§37B-1-5. Limitations of liability for certain covenants.

1 Nonconsenting covenants who elect to receive a
2 production royalty pursuant to §37B-1-4(b)(1) of this code
3 and unknown or unlocatable interest owners shall have no
4 liability for bodily injury, property damage, warranty of
5 title, or environmental claims, arising out of site
6 preparation, mineral extraction, maintenance, reclamation,
7 and other operations with respect to minerals produced from
8 the covenant's property, except nonconsenting covenants and
9 unknown or unlocatable interest owners are liable for their
10 intentional acts.

§37B-1-6. Surface use.

1 (a) When any tract of mineral property where an interest
2 in the oil or natural gas in place is owned by a nonconsenting
3 covenant is used or developed pursuant to §37B-1-4 of this
4 code, in no event shall drilling be initiated upon, or other
5 surface disturbance occur, without the surface owner's
6 consent regardless of whether such surface owner possesses
7 any actual ownership in the mineral interest: *Provided*, That
8 this subsection shall not require surface owner consent for
9 tracts on which surface disturbance does not occur or tracts
10 otherwise subject to an existing surface use agreement, oil
11 and gas lease which includes surface use rights, or other
12 valid contractual arrangement in which the owner has
13 granted rights to the operator to use the surface for
14 horizontal drilling or any other use for which this article is
15 used.

16 (b) Except as specifically described in subsection (a) of
17 this section, nothing contained in this chapter is intended to
18 alter in any way, and this chapter shall not diminish or
19 increase, the rights of the owners of the surface overlying
20 the minerals developed in this state. Except as specifically
21 described in subsection (a) of this section, in enacting this
22 chapter in 2018, it is the intention of the Legislature to leave
23 unchanged the common law of this state as it relates to the

24 mineral owner's right to utilize the surface for the extraction
25 of minerals.

§37B-1-7. Severability.

1 The provisions of this article are severable and
2 accordingly, if any part of this article is adjudged to be
3 unconstitutional or invalid, that determination does not
4 affect the continuing validity of the remaining provisions of
5 this article.

ARTICLE 2. UNKNOWN AND UNLOCATABLE INTEREST OWNERS ACT.

§37B-2-1. Short title.

1 This article shall be known and may be cited as the
2 "Unknown and Unlocatable Interest Owners Act."

§37B-2-2. Relationship between unknown and unlocatable interest provisions and unclaimed property provisions.

1 The provisions of this article shall be read in
2 conjunction and not in conflict with the provisions of the
3 West Virginia Uniform Unclaimed Property Act in §36-8-1
4 *et seq.* of this code.

§37B-2-3. Definitions.

1 Terms used in this article shall have the meanings as
2 provided in §36-8-1 *et seq.* and §37B-1-1 *et seq.* of this
3 code. In addition, as used in this article:

4 "Reserved interests" means all amounts payable for the
5 use, development, extraction, production or sale of minerals
6 due for an unknown or unlocatable interest owner. The term
7 includes amounts payable:

8 (i) For the acquisition and retention of a mineral lease,
9 including bonuses, royalties, compensatory royalties, shut-
10 in royalties, minimum royalties and delay rentals;

11 (ii) For the extraction, production or sale of minerals,
12 including net revenue interests, royalties, overriding
13 royalties, extraction payments and production payments;
14 and

15 (iii) Under an agreement or option, including a joint
16 operating agreement, unit agreement, pooling agreement
17 and farm-out agreement.

§37B-2-4. Report of unknown and unlocatable interest owners.

1 (a) The holder shall make a report to the administrator
2 each calendar quarter concerning each reserved interest for
3 each unknown or unlocatable interest owner and shall
4 concurrently remit the amount reserved to the administrator.
5 The quarterly report and remittances shall be submitted by
6 the first day of the month following each calendar quarter.

7 (b) The report shall contain:

8 (1) A full legal description of the real property interest
9 and any other information that identifies the interest,
10 including without limitation, division orders;

11 (2) If known, the name, last known address, and social
12 security number or taxpayer identification number of the
13 unknown or unlocatable interest owner or apparent owner;

14 (3) The date or dates on which the reserved interest
15 became payable with respect to the property; and

16 (4) All other information the administrator by rule
17 prescribes as necessary for the administration of this article.

18 (c) Before the date for filing the report, the holder of the
19 reserved interests may request the administrator extend the
20 time for filing the report. The administrator may grant the
21 extension for good cause.

22 (d) The holder is not liable to any person for the
23 wrongful use or appropriation of personal information of

24 interest owners by another person described in the reports
25 required under this section.

26 (e) With respect to all unknown or unlocatable interest
27 owners, all obligations under this chapter of the holder are
28 satisfied once an adequate report is filed and reserved
29 interests are remitted to the administrator.

**§37B-2-5. Unknown and unlocatable interest owners fund;
duties of the State Treasurer.**

1 (a) The Unknown and Unlocatable Interest Owners
2 Fund is created in the State Treasury as a special revenue
3 and interest-bearing account to be administered by the State
4 Treasurer for the purposes prescribed in this article.

5 (b) The administrator shall deposit all moneys received
6 pursuant to §37B-1-1 *et seq.* and §37B-2-1 *et seq.* of this
7 code into the fund. All expenditures from the fund shall be
8 in accordance with this article and as otherwise determined
9 by the Legislature.

10 (c) The administrator may invest the moneys in the fund
11 with the West Virginia Board of Treasury Investments. All
12 earnings shall accrue to the fund and are available for
13 expenditure in accordance with this article.

14 (d) The administrator shall pay all lawful claims of
15 unknown and unlocatable interest owners from the fund.

16 (e) The administrator may deduct the following
17 expenses from the fund:

18 (1) Expenses incurred identifying, locating, and
19 returning the property to owners, including without
20 limitation the costs of mailing, publication, and real estate
21 title investigations within this state and in other
22 jurisdictions;

23 (2) Reasonable service charges; and

24 (3) Expenses incurred in examining the reports of the
25 holder and in collecting the reserved interest from the
26 holders.

27 (f) After deducting the claims paid and the expenses
28 specified in subsection (e) of this section and maintaining
29 a sum of money which the administrator estimates will be
30 needed to pay claims and expenses duly allowed from the
31 reserved interests received and deposited in the fund, the
32 administrator shall determine the amount that is
33 transferrable from the Fund. Beginning July 1, 2023, and
34 every six months thereafter, the administrator shall
35 transfer 50 percent of the amount the administrator
36 determines is transferrable to the Oil And Gas
37 Reclamation Fund established under §22-6-29 of this
38 code and expended for the purposes provided by that
39 section and §22-10-6 of this code, and 50 percent of the
40 revenue shall be deposited into the Public Employees
41 Insurance Agency Stability Fund and expended pursuant
42 to §11B-2-32 of this code.

43 (g) At least sixty days prior to the seven year
44 anniversary of the first report to the administrator
45 concerning the property of an unknown or unlocatable
46 interest owner, the administrator shall publish a notice in a
47 newspaper of general circulation in each county of this state
48 where the minerals are located once a week for two
49 successive weeks as provided by the West Virginia Rules of
50 Civil Procedure. Said publication should provide
51 notification of the impending seven year anniversary to all
52 possible surface owners and unknown or unlocatable
53 interest owners.

§37B-2-6. Crediting of interest to owner's account.

1 (a) The administrator shall credit the amount of interest
2 earned to each owner's account and shall pay the interest
3 earned when a claim is paid on that account.

4 (b) In no event shall the administrator be required to pay
5 the owner any income or gain realized or accruing on the
6 account after the third anniversary of the payment of the
7 owner's interest to the administrator.

8 (c) Nothing in this section shall be construed to entitle
9 an owner to interest on property which did not realize or
10 accrue income or gain while in possession of the
11 administrator.

§37B-2-7. Rules.

1 On or before July 1, 2018, the administrator shall
2 promulgate emergency legislative rules in accordance with
3 the provisions of §29A-3-15 of this code. The administrator
4 shall propose legislative rules for promulgation in
5 accordance with the requirements of the Secretary of State
6 and the provisions of §29A-1-1 *et seq.* of this code to
7 otherwise effectuate the purposes of this article.

§37B-2-8. Severability clause.

1 The provisions of this article are severable and
2 accordingly, if any part of this article is adjudged to be
3 unconstitutional or invalid, that determination does not
4 affect the continuing validity of the remaining provisions of
5 this article.

§37B-2-9. Effective date.

1 This article shall take effect on July 1, 2018.

●

CHAPTER 150

**(Com. Sub. for H. B. 4270 - By Delegates Deem,
Kelly, Zatezalo, Anderson, R. Romine, Hollen, A.
Evans, White, Lane, Harshbarger and Shott)**

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

AN ACT to amend and reenact §22-6-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding a new chapter, designated §37C-1-1, §37C-1-2, and §37C-1-3, all relating generally to real property; providing for quarterly reporting to the West Virginia Department of Environmental Protection and publication of same; providing rule-making authority; requiring specified information to be remitted with certain payments to interest owners; providing for written request in the event an interest owner does not receive the required information; providing for a period to provide the required information beginning when the operator or producer receives the written request for information; providing for a cause of action to enforce compliance; providing for the accumulation of proceeds under certain circumstances; providing for timely payment of moneys owed from oil and natural gas production; and establishing interest penalties for certain late payments.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.

§22-6-22. Well report, logs, core samples, and cuttings to be filed; confidentiality and permitted use; authority to

promulgate rules; reporting of production data for horizontal wells.

1 (a) Within a reasonable time after the completion of the
2 drilling of a shallow well or deep well, the well operator
3 shall file with the secretary and with the state Geological
4 and Economic Survey a completion report containing the
5 following:

6 (1) The character, depth, and thickness of geological
7 formations encountered, including fresh water, coal seams,
8 mineral beds, brine, and oil and gas bearing formations; and

9 (2) Such other information as the secretary may require
10 to effectuate the purposes of this chapter.

11 The secretary may promulgate such reasonable rules in
12 accordance with §29A-3-1 *et seq.* of this code, as may be
13 considered necessary to ensure that the character, depth, and
14 thickness of geological formations encountered are
15 accurately logged: *Provided*, That the secretary shall not
16 require logging by the use of an electrical logging device:
17 *Provided, however*, That if electrical, mechanical, or
18 geophysical logs are recorded in the well, the secretary may
19 request copies of these logs: *Provided further*, That
20 mechanical or geophysical logs may not include vertical
21 seismic profiles or two-dimensional or three-dimensional
22 seismic information.

23 (b) If a well operator takes core samples, that activity
24 shall be noted within the report, and, within 60 days after
25 filing the completion report, the operator shall, subject to
26 the terms of this article, provide the state Geological and
27 Economic Survey with a complete set of cores, consisting
28 of at least quarter slabs, correctly labeled and identified
29 according to depth. The core samples requested by and
30 provided to the state Geological and Economic Survey may
31 not contain any materials or documents made with regard to
32 analyzing or interpreting the core samples.

33 (c) If a well operator catches cuttings during the drilling
34 of any deep or shallow well, that activity shall be noted
35 within the report and, within 60 days after filing the
36 completion report, the operator shall, subject to the terms of
37 this article, provide the state Geological and Economic
38 Survey with a sample of the cuttings, correctly labeled and
39 identified according to depth.

40 (d) Any information, reports, cuttings, and core samples
41 requested by and provided to the state Geological and
42 Economic Survey by the operator shall be kept confidential
43 at the written request of the operator for a specified amount
44 of time as follows:

45 (1) Except for core samples, any logs, drill cuttings,
46 reports and other information or materials that reveal trade
47 secrets or other confidential business information relating to
48 the competitive interests of the operator or the operator's
49 privy may not be disclosed to the public for one year
50 following delivery, unless the operator consents in writing
51 to a shorter time. At the operator's written request, the
52 period of confidentiality may be extended in annual
53 increments: *Provided*, That the total period of
54 confidentiality may not exceed three years.

55 (2) Any core samples may not be disclosed to the public
56 for five years following delivery to the state Geological and
57 Economic Survey, unless the operator consents in writing to
58 a shorter time. At the operator's written request, the period
59 of confidentiality may be extended for an additional five
60 years: *Provided*, That the total period of confidentiality may
61 not exceed 10 years.

62 (e) Notwithstanding the provisions of subsection (d) of
63 this section, the state Geological and Economic Survey may
64 store and process confidential information within its
65 minerals mapping or geographic information systems;
66 however, that confidential information may not be revealed
67 to the public until the lapsing of the period of confidentiality
68 created pursuant to subsection (d) of this section. After the

69 period of confidentiality has lapsed, statistics or other
70 information generated as the result of storage and
71 processing may be disclosed in the aggregate through
72 articles, reports, maps, or lectures presented in accordance
73 with generally accepted academic or scientific practices and
74 in a manner to preclude the identification of a particular well
75 or operator.

76 (f) A quarterly report of the monthly volumes of oil,
77 natural gas, and natural gas liquids produced from any
78 horizontal well drilled shall be filed with the Chief of the
79 Office of Oil and Gas on a form prescribed by the Secretary
80 of the West Virginia Department of Environmental
81 Protection. All reported data shall be made available to the
82 public through the Office of Oil and Gas' website within a
83 reasonable time. The secretary has the express authority
84 pursuant to this article, as well as pursuant to the powers
85 enumerated in §22-6-2 of this code, to promulgate rules and
86 to amend the current rules to require timely quarterly
87 reporting of production data as well as to establish a process
88 for collecting such data.

CHAPTER 37C. MINERAL DEVELOPMENT.

ARTICLE 1. INFORMATION REPORTING AND PAYMENTS TO OWNERS.

§37C-1-1. Oil and natural gas production information reporting from horizontal wells.

1 (a) An operator or producer or their agents, contractors
2 or assigns shall provide the following information with each
3 payment to all interest owners receiving payments resulting
4 from the development and production of oil, natural gas, or
5 their constituents by horizontal wells governed by §22-6A-
6 1 *et seq.* of this code, being the Natural Gas Horizontal Well
7 Control Act:

8 (1) A name, number, or combination of name and
9 number, and the state issued American Petroleum Institute
10 number that identifies each lease, property, unit, pad, and

11 well, for which payment is being made, and the county in
12 which the lease, property, and well are located;

13 (2) Month and year of production;

14 (3) Total barrels of oil; number of MCF, MMBTU, or
15 DTH of natural gas; and volume of natural gas liquids
16 produced from each well and sold;

17 (4) Price received per unit of oil, natural gas, and natural
18 gas liquids produced;

19 (5) Gross value of the total proceeds from the sale of oil,
20 natural gas, and natural gas liquids from each well less taxes
21 and deductions set forth in §37B-1-1(a)(6) of this code;

22 (6) Aggregate amounts for each category of deductions
23 for each well which affect payment and are allowed by law,
24 including without limitation those deductions provided for
25 under the terms of the governing lease;

26 (7) Interest owner's interest in production from each
27 well expressed as a decimal or fraction and reported
28 pursuant to §37B-1-1(a)(1) of this code;

29 (8) Interest owner's ratable share of the total value of
30 the proceeds of the sale of oil, natural gas, and natural gas
31 liquids prior to the deduction of taxes, if applicable, and
32 other deductions set forth in §37B-1-1(a)(6) of this code;

33 (9) Interest owner's ratable share of the proceeds from
34 the sale of oil, natural gas, and natural gas liquids less the
35 interest owner's ratable share of taxes, if applicable, and
36 other deductions set forth in §37B-1-1(a)(6) of this code;
37 and

38 (10) Contact information of the producer of the oil,
39 natural gas, or natural gas liquids, including a mailing
40 address and telephone number.

41 (b) An interest owner who does not receive the
42 information required to be provided under this section in a
43 timely manner may send a written request for the information
44 by certified mail. Not later than the 60th day after the date the
45 operator or producer receives the written request for
46 information under this section, the operator or producer shall
47 provide the requested information to the interest owner. If the
48 interest owner makes a written request for information under
49 this section and the operator or producer does not provide the
50 information within the 60-day period, the interest owner may
51 bring a civil action against the operator or producer to enforce
52 the provisions of this section, and a prevailing interest owner
53 shall be entitled to recover reasonable attorneys' fees and court
54 costs incurred in the civil action.

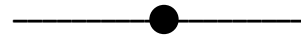
§37C-1-2. Accumulation and payment of proceeds from production from horizontal wells.

1 Notwithstanding any of the other provisions of this article,
2 proceeds from production of oil, natural gas, and natural gas
3 liquids from horizontal wells may be accumulated by the
4 owners, cotenants, lessees, operators, or their agents,
5 contractors, or assigns, until such time as proceeds attributable
6 to any interest owner exceeds \$100 before making a
7 remittance: *Provided*, That, regardless of the amount of money
8 accumulated, the owners, cotenants, lessees, operators, or their
9 agents, contractors, or assigns shall remit proceeds from
10 horizontal wells attributable to the interest owners not less than
11 once annually: *Provided, however*, That all accumulated
12 proceeds from horizontal wells shall be paid to the interest
13 owners entitled thereto immediately, or as soon as practicable,
14 upon cessation of production of oil, natural gas, or natural gas
15 liquids or upon relinquishment or transfer of the payment
16 responsibility to another party.

§37C-1-3. Payments from horizontal wells to be made timely; interest penalties.

1 All regular production payments from horizontal wells
2 due and owing to an interest owner shall be tendered in a

3 timely manner, which shall not exceed 120 days from the
4 first date of sale of oil, natural gas, or natural gas liquids is
5 realized and within 60 days thereafter for each additional
6 sale, unless such failure to remit is due to lack of record title
7 in the interest owner, a legal dispute concerning the interest,
8 a missing or unlocatable owner of the interest, or due to
9 conditions otherwise specified in this article. Failure to
10 remit timely payment for horizontal wells shall result in a
11 mandatory additional payment of an interest penalty to be
12 set at the prime rate plus an additional two percent until such
13 payment is made, to be compounded quarterly. The prime
14 rate shall be the rate published on the day of the sale of oil,
15 natural gas, and natural gas liquids in the Wall Street Journal
16 reflecting the base rate on corporate loans posted by at least
17 75 percent of the nation's 30 largest banks.



CHAPTER 151

**(S. B. 525 - By Senators Gaunch, Maynard, Baldwin,
Bosco, Clements, Facemire, Jeffries, Maroney,
Palumbo, Smith, Sypolt and Weld)**

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

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

AN ACT to repeal §16-4C-6c of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22A-10-3, relating to emergency medical technicians – mining; transferring certification requirements for emergency medical technician – mining to the chapter governing miners' health, safety and training; eliminating the authority of the Director of Miners' Health Safety and Training to authorize providers to administer certification courses and examinations; modifying requirements for

training personnel and independent trainers; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6c. Certification requirements for emergency medical technician – mining.

1 [Repealed.]

ARTICLE 10. EMERGENCY MEDICAL PERSONNEL.

§22A-10-3. Certification requirements for emergency medical technician – mining.

1 (a) An applicant for certification as an emergency
2 medical technician - mining shall:

3 (1) Be at least 18 years old;

4 (2) Apply on a form prescribed by the Director of
5 Miners' Health, Safety and Training;

6 (3) Pay the application fee;

7 (4) Possess a valid cardiopulmonary resuscitation
8 certification;

9 (5) Successfully complete an emergency medical
10 technician - mining education program authorized by the
11 Director of Miners' Health, Safety and Training in
12 consultation with the Board of Coal Mine Health and
13 Safety; and

14 (6) Successfully complete emergency medical
15 technician - mining cognitive and skills examinations
16 authorized by the Director of Miners' Health, Safety and
17 Training in consultation with the Board of Coal Mine Health
18 and Safety.

19 (b) The emergency medical technician - mining
20 certification is valid for three years.

21 (c) A certified emergency medical technician - mining
22 may only practice on mining operations, as defined in §11-
23 13C-3 of this code.

24 (d) To be recertified as an emergency medical
25 technician - mining, a certificate holder shall:

26 (1) Apply on a form prescribed by the Director of
27 Miners' Health, Safety and Training;

28 (2) Pay the application fee;

29 (3) Possess a valid cardiopulmonary resuscitation
30 certification;

31 (4) Successfully complete one of the following:

32 (A) A one-time 32-hour emergency medical technician
33 - mining recertification course authorized by the Director of
34 Miners' Health, Safety and Training in consultation with the
35 Board of Coal Mine Health and Safety; or

36 (B) Three annual eight-hour retraining and testing
37 programs authorized by the Director of Miners' Health,
38 Safety and Training in consultation with the Board of Coal
39 Mine Health and Safety; and

40 (5) Successfully complete emergency medical
41 technician - mining cognitive and skills recertification
42 examinations authorized by the Director of Miners' Health,
43 Safety and Training in consultation with the Board of Coal
44 Mine Health and Safety.

45 (e) The education program, training, courses, and
46 cognitive and skills examinations required for certification
47 and recertification as an emergency medical technician -
48 miner, also known as emergency medical technician -
49 mining, in existence on January 1, 2014, shall remain in

50 effect for the certification and recertification of emergency
51 medical technician - industrial until they are changed by
52 legislative rule by the director in consultation with the
53 Board of Coal Mine Health and Safety.

54 (f) The administration of the emergency medical
55 technician - mining certification and recertification program
56 by the Director of Miners' Health, Safety and Training shall
57 be done in consultation with the Board of Coal Mine Health
58 and Safety.

59 (g) The Director of Miners' Health, Safety and Training
60 shall propose rules for legislative approval, pursuant to the
61 provisions of §29A-3-1 *et seq.* of this code, in consultation
62 with the Board of Coal Mine Health and Safety and may
63 propose emergency rules to:

64 (1) Establish emergency medical technician - mining
65 certification and recertification courses and examinations;

66 (2) Authorize providers to administer the recertification
67 courses and examinations, including mine training
68 personnel, independent trainers, community and technical
69 colleges, regional education service agencies, and
70 educational service cooperatives: *Provided*, That the mine
71 training personnel and independent trainers must obtain an
72 EMT-M Instructor Certification issued by the West Virginia
73 Office of Miners' Health, Safety and Training;

74 (3) Establish a fee schedule: *Provided*, That the
75 application fee may not exceed \$10 and there shall be no fee
76 for a certificate; and

77 (4) Implement the provisions of this section.



CHAPTER 152

(S. B. 626 - By Senator Smith)

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

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

AN ACT to amend and reenact §22-3-9 and §22-3-20 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-11-7a of said code; to amend and reenact §22A-1-36 of said code; to amend said code by adding thereto a new section, designated §22A-1-42; to amend and reenact §22A-2-2, §22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-2-25, §22A-2-26, §22A-2-37, and §22A-2-55 of said code; and to amend and reenact §22A-2A-1001 of said code, all relating generally to coal mining; establishing new notice requirements regarding permit applications under the Surface Coal Mining and Reclamation Act; clarifying when a certification is granted under the Water Pollution Control Act; clarifying when a comprehensive mine safety program is subject to annual review; establishing the use of MSHA-approved ground control plans for surface operations; requiring automated external defibrillators be present on surface operations; requiring the Director of the Office of Miners' Health, Safety, and Training to promulgate emergency rules; providing that one MSHA-approved plan may be submitted to the director in lieu of separate state-approved plans for ventilation, seals, roof control, belt air, self-contained self-rescuer storage, tracking and communication, and emergency shelters; requiring that the MSHA-approved comprehensive safety plan be forwarded to the director in a timely manner; and permitting the use of diesel-powered generators in underground mines under certain conditions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-9. Permit application requirements and contents.

1 (a) The surface mining permit application shall contain:

2 (1) The names and addresses of: (A) The permit
3 applicant; (B) the owner of record of the property, surface,
4 and mineral to be mined; (C) the holders of record of any
5 leasehold interest in the property; (D) any purchaser of
6 record of the property under a real estate contract; (E) the
7 operator, if different from the applicant; and (F) if any of
8 these are business entities other than a single proprietor, the
9 names and addresses of the principals, officers, and resident
10 agent;

11 (2) The names and addresses of the owners of record of
12 all surface and subsurface areas contiguous to any part of
13 the proposed permit area: *Provided*, That all residents living
14 on property contiguous to the proposed permit area shall be
15 notified by the applicant, by registered or certified mail, of
16 such application on or before the first day of publication of
17 the notice provided for in §22-3-9(a)(6) of this code;

18 (3) A statement of any current surface mining permits
19 held by the applicant in the state and the permit number and
20 each pending application;

21 (4) If the applicant is a partnership, corporation,
22 association, or other business entity, the following where
23 applicable: The names and addresses of every officer,
24 partner, resident agent, director or person performing a
25 function similar to a director, together with the names and
26 addresses of any person owning of record 10 percent or
27 more of any class of voting stock of the applicant; and a list
28 of all names under which the applicant, officer, director,

29 partner, or principal shareholder previously operated a
30 surface mining operation in the United States within the
31 five-year period preceding the date of submission of the
32 application;

33 (5) A statement of whether the applicant, or any officer,
34 partner, director, principal shareholder of the applicant, any
35 subsidiary, affiliate, or persons controlled by or under
36 common control with the applicant, has ever been an officer,
37 partner, director, or principal shareholder in a company
38 which has ever held a federal or state mining permit which
39 in the five-year period prior to the date of submission of the
40 application has been permanently suspended or revoked or
41 has had a mining bond or similar security deposited in lieu
42 of bond forfeited and, if so, a brief explanation of the facts
43 involved;

44 (6) A copy of the applicant's advertisement to be
45 published in a newspaper of general circulation in the
46 locality of the proposed permit area at least once a week for
47 four successive weeks on a form and in a manner prescribed
48 by the secretary, which manner may be electronic. The
49 advertisement shall contain, in abbreviated form, the
50 information required by this section including the
51 ownership and map of the tract location and boundaries of
52 the proposed site so that the proposed operation is readily
53 locatable by local residents, the location of the office of the
54 department where the application is available for public
55 inspection, and stating that written protests will be accepted
56 by the secretary until a certain date which is at least 30 days
57 after the last publication of the applicant's advertisement;

58 (7) A description of the type and method of surface
59 mining operation that exists or is proposed, the engineering
60 techniques used or proposed, and the equipment used or
61 proposed to be used;

62 (8) The anticipated starting and termination dates of
63 each phase of the surface mining operation and the number
64 of acres of land to be affected;

65 (9) A description of the legal documents upon which the
66 applicant's legal right to enter and conduct surface mining
67 operations on the proposed permit area is based and whether
68 that right is the subject of pending court litigation: *Provided*,
69 That nothing in this article may be construed as vesting in
70 the secretary the jurisdiction to adjudicate property-rights
71 disputes;

72 (10) The name of the watershed and location of the
73 surface stream or tributary into which surface and pit
74 drainage will be discharged;

75 (11) A determination of the probable hydrologic
76 consequences of the mining and reclamation operations,
77 both on and off the mine site, with respect to the hydrologic
78 regime, quantity and quality of water in surface and
79 groundwater systems, including the dissolved and
80 suspended solids under seasonal flow conditions and the
81 collection of sufficient data for the mine site and
82 surrounding areas so that an assessment can be made by the
83 secretary of the probable cumulative impacts of all
84 anticipated mining in the area upon the hydrology of the
85 area, and particularly upon water availability: *Provided*,
86 That this determination is not required until the time
87 hydrologic information on the general area prior to mining
88 is made available from an appropriate federal or state
89 agency or, if existing and in the possession of the applicant,
90 from the applicant: *Provided, however*, That the permit
91 application shall not be approved until the information is
92 available and is incorporated into the application;

93 (12) Accurate maps to an appropriate scale clearly
94 showing: (A) The land to be affected as of the date of
95 application; (B) the area of land within the permit area upon
96 which the applicant has the legal right to enter and conduct
97 surface mining operations; and (C) all types of information
98 set forth on enlarged topographical maps of the United
99 States geological survey of a scale of 1:24,000 or larger,
100 including all man-made features and significant known
101 archaeological sites existing on the date of application. In

102 addition to other things specified by the secretary, the map
103 shall show the boundary lines and names of present owners
104 of record of all surface areas abutting the proposed permit
105 area and the location of all structures within 1,000 feet of
106 the proposed permit area;

107 (13) Cross-section maps or plans of the proposed
108 affected area, including the actual area to be mined,
109 prepared by, or under the direction of, and certified by a
110 person approved by the secretary, showing pertinent
111 elevation and location of test borings or core samplings,
112 where required by the secretary, and depicting the following
113 information: (A) The nature and depth of the various strata
114 or overburden; (B) the location of subsurface water, if
115 encountered, and its quality; (C) the nature and thickness of
116 any coal or rider seams above the seam to be mined; (D) the
117 nature of the stratum immediately beneath the coal seam to
118 be mined; (E) all mineral crop lines and the strike and dip
119 of the coal to be mined, within the area of land to be
120 affected; (F) existing or previous surface mining limits; (G)
121 the location and extent of known workings of any
122 underground mines, including mine openings to the surface;
123 (H) the location of any significant aquifers; (I) the estimated
124 elevation of the water table; (J) the location of spoil, waste,
125 or refuse areas and topsoil preservation areas; (K) the
126 location of all impoundments for waste or erosion control;
127 (L) any settling or water treatment facility or drainage
128 system; (M) constructed or natural drainways and the
129 location of any discharges to any surface body of water on
130 the area of land to be affected or adjacent thereto; and (N)
131 adequate profiles at appropriate cross sections of the
132 anticipated final surface configuration that will be achieved
133 pursuant to the operator's proposed reclamation plan;

134 (14) A statement of the result of test borings or core
135 samples from the permit area, including: (A) Logs of the
136 drill holes; (B) the thickness of the coal seam to be mined
137 and analysis of the chemical and physical properties of the
138 coal; (C) the sulfur content of any coal seam; (D) chemical

139 analysis of potentially acid or toxic forming sections of the
140 overburden; and (E) chemical analysis of the stratum lying
141 immediately underneath the coal to be mined: *Provided*,
142 That the provisions of this subdivision may be waived by
143 the secretary with respect to the specific application by a
144 written determination that such requirements are
145 unnecessary;

146 (15) For those lands in the permit application which a
147 reconnaissance inspection suggests may be prime
148 farmlands, a soil survey shall be made or obtained according
149 to standards established by the Commissioner of
150 Agriculture in order to confirm the exact location of the
151 prime farmlands;

152 (16) A reclamation plan as presented in §22-3-10 of this
153 code;

154 (17) Information pertaining to coal seams, test borings,
155 core samplings, or soil samples as required by this section
156 shall be made available to any person with an interest who
157 is or may be adversely affected: *Provided*, That information
158 which pertains only to the analysis of the chemical and
159 physical properties of the coal, except information
160 regarding mineral or elemental content which is potentially
161 toxic to the environment, shall be kept confidential and not
162 made a matter of public record;

163 (18) When requested by the secretary, the
164 climatological factors that are peculiar to the locality of the
165 land to be affected, including the average seasonal
166 precipitation, the average direction and velocity of
167 prevailing winds, and the seasonal temperature ranges; and

168 (19) Other information that may be required by rules
169 reasonably necessary to effectuate the purposes of this
170 article.

171 (b) If the secretary finds that the probable total annual
172 production at all locations of any coal surface mining

173 operator will not exceed 300,000 tons, the determination of
174 probable hydrologic consequences including the
175 engineering analyses and designs necessary as required by
176 this article or rules promulgated thereunder; the
177 development of cross-section maps and plans as required by
178 this article or rules promulgated thereunder; the geologic
179 drilling and statement of results of test borings and core
180 samplings as required by this article or rules promulgated
181 thereunder; preblast surveys required by this article or rules
182 promulgated thereunder; the collection of site-specific
183 resource information and production of protection and
184 enhancement plans for fish and wildlife habitats and other
185 environmental values required by this article or rules
186 promulgated thereunder; and the collection of
187 archaeological and historical information required by this
188 article and rules promulgated thereunder and any other
189 archaeological and historical information required by the
190 federal Department of the Interior and the preparation of
191 plans that may be necessitated thereby shall, upon the
192 written request of the operator, be performed by a qualified
193 public or private laboratory designated by the secretary and
194 a reasonable cost of the preparation of the determination and
195 statement shall be assumed by the department from funds
196 provided by the United States Department of the Interior
197 pursuant to the federal Surface Mining Control and
198 Reclamation Act of 1977, as amended.

199 (c) Before the first publication of the applicant's
200 advertisement as provided in this section, each applicant for
201 a surface mining permit shall file, except for that
202 information pertaining to the coal seam itself, a copy of the
203 application for public inspection in the nearest office of the
204 department as specified in the applicant's advertisement.

205 (d) Each applicant for a permit shall be required to
206 submit to the secretary as a part of the permit application a
207 certificate issued by an insurance company authorized to do
208 business in this state covering the surface mining operation
209 for which the permit is sought, or evidence that the applicant

210 has satisfied state self-insurance requirements. The policy
211 shall provide for personal injury and property damage
212 protection in an amount adequate to compensate any
213 persons damaged as a result of surface coal mining and
214 reclamation operations, including use of explosives, and
215 entitled to compensation under the applicable provisions of
216 state law. The policy shall be maintained in full force and
217 effect during the terms of the permit or any renewal,
218 including the length of all reclamation operations.

219 (e) Each applicant for a surface mining permit shall
220 submit to the secretary as part of the permit application a
221 blasting plan where explosives are to be used, which shall
222 outline the procedures and standards by which the operator
223 will meet the provisions of the blasting performance
224 standards.

225 (f) The applicant shall file, as part of the permit
226 application, a schedule listing all notices of violation, bond
227 forfeitures, permit revocations, cessation orders, or
228 permanent suspension orders resulting from a violation of
229 the federal Surface Mining Control and Reclamation Act of
230 1977, as amended, this article or any law or regulation of
231 the United States or any department or agency of any state
232 pertaining to air or environmental protection received by the
233 applicant in connection with any surface mining operation
234 during the three-year period prior to the date of application,
235 and indicating the final resolution of any notice of violation,
236 forfeiture, revocation, cessation, or permanent suspension.

237 (g) Within five working days of receipt of an application
238 for a permit, the secretary shall notify the operator in
239 writing, stating whether the application is administratively
240 complete and whether the operator's advertisement may be
241 published. If the application is not administratively
242 complete, the secretary shall state in writing why the
243 application is not administratively complete.

**§22-3-20. Public notice; written objections; public hearings;
informal conferences.**

1 (a) At the time of submission of an application for a
2 surface mining permit or a significant revision of an existing
3 permit pursuant to the provisions of this article, the
4 applicant shall submit to the department a copy of the
5 required advertisement for public notice on a form and in a
6 manner prescribed by the secretary, which manner may be
7 electronic. At the time of submission, the applicant shall
8 place the advertisement in a local newspaper of general
9 circulation in the county of the proposed surface-mining
10 operation at least once a week for four consecutive weeks.
11 The secretary shall notify various appropriate federal and
12 state agencies as well as local governmental bodies,
13 planning agencies, and sewage and water treatment
14 authorities or water companies in the locality in which the
15 proposed surface mining operation will take place, notifying
16 them of the operator's intention to mine on a particularly
17 described tract of land and indicating the application
18 number and where a copy of the proposed mining and
19 reclamation plan may be inspected. These local bodies,
20 agencies, authorities, or companies may submit written
21 comments within a reasonable period established by the
22 secretary on the mining application with respect to the effect
23 of the proposed operation on the environment which is
24 within their area of responsibility. The comments shall be
25 immediately transmitted by the secretary to the applicant
26 and to the appropriate office of the department. The
27 secretary shall provide the name and address of each
28 applicant to the Commissioner of the Division of Labor who
29 shall, within 15 days from receipt, notify the secretary as to
30 the applicant's compliance, if necessary, pursuant to §21-5-
31 14 of this code.

32 (b) Any person having an interest which is or may be
33 adversely affected, or the officer or head of any federal,
34 state, or local governmental agency, has the right to file
35 written objections to the proposed initial or revised permit
36 application for a surface mining operation with the secretary
37 within 30 days after the last publication of the advertisement
38 required in §22-3-20(a) of this code. The objections shall be

39 immediately transmitted to the applicant by the secretary
40 and shall be made available to the public. If written
41 objections are filed and an informal conference requested
42 within 30 days of the last publication of the above notice,
43 the secretary shall then hold a conference in the locality of
44 the proposed mining within a reasonable time after the close
45 of the public comment period. Those requesting the
46 conference shall be notified and the date, time, and location
47 of the informal conference shall also be advertised by the
48 secretary in a newspaper of general circulation in the
49 locality on a form and in a manner prescribed by the
50 secretary, which manner may be electronic, at least two
51 weeks prior to the scheduled conference date. The secretary
52 may arrange with the applicant, upon request by any party
53 to the conference proceeding, access to the proposed mining
54 area for the purpose of gathering information relevant to the
55 proceeding. An electronic or stenographic record shall be
56 made of the conference proceeding unless waived by all
57 parties. The record shall be maintained and shall be
58 accessible to the parties at their respective expense until
59 final release of the applicant's bond or other security posted
60 in lieu thereof. The secretary's authorized agent shall
61 preside over the conference. In the event all parties
62 requesting the informal conference stipulate agreement
63 prior to the conference and withdraw their request, a
64 conference need not be held.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions.

1 (a) Any applicant for the water quality certification that
2 seeks certification of activities covered by the United States
3 Army Corps of Engineers permits issued in accordance with
4 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 may be
5 issued a certification in accordance with the legislative rules
6 entitled Rules for Individual State Certification of Activities
7 Requiring a Federal Permit, 47 C.S.R. 5A.

8 (1) The proposed activity shall comply with all
9 applicable state and federal laws, rules, and regulations.

10 (2) The secretary shall propose rules for legislative
11 approval in accordance with §29A-3-1 *et seq.* of this code,
12 for the purpose of implementing the provisions of this
13 section which rules shall include, but not be limited to, the
14 following:

15 (A) Establishing all necessary operational and
16 performance requirements for a person undertaking
17 activities covered by this section;

18 (B) Modifying the provisions of this section, when
19 necessary and appropriate to bring the provisions of this
20 section into compliance with state or federal law or
21 regulation; and

22 (C) Establishing the specific operational requirements
23 for the activity consistent with this section appropriate to
24 protect the waters of this state during and following the
25 activity.

26 (b) The Joint Committee on Government and Finance
27 may undertake or facilitate a study of the impact of
28 mountaintop mining and valley fills upon the State of West
29 Virginia.

30 (1) To facilitate the study, the Joint Committee on
31 Government and Finance is further authorized to coordinate
32 with and seek funding from appropriate federal agencies to
33 facilitate the study including, but not limited to: The federal
34 Environmental Protection Agency, Army Corps of
35 Engineers, Office of Surface Mining Reclamation and
36 Enforcement, and Fish and Wildlife Service.

37 (2) In order to facilitate the research, the Joint
38 Committee on Government and Finance shall appoint a
39 council to coordinate and direct the research. The
40 composition of the council shall be determined by the joint
41 committee, but shall include representatives from the

42 various interested parties as determined solely by the joint
43 committee.

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY, AND
TRAINING; ADMINISTRATION; ENFORCEMENT.**

§22A-1-36. Mandatory safety programs; penalties.

1 (a) The director, in consultation with the state Board of
2 Coal Mine Health and Safety, shall promulgate rules in
3 accordance with §29A-1-1 *et seq.* of this code, detailing the
4 requirements for mine safety programs to be established by
5 coal operators, as provided in §22A-1-36(b) of this code.
6 The rules may require different types of safety programs to
7 be developed, depending upon the output of the particular
8 mine, the number of employees of the particular mine, the
9 location of the particular mine, the physical features of the
10 particular mine, or any other factor deemed relevant by the
11 director.

12 (b) Within six months of the date when the rules
13 required in §22A-1-36(a) of this code become final, each
14 operator shall develop and submit to the director a
15 comprehensive mine safety program for each mine, in
16 accordance with such rules. Each employee of the mine
17 shall be afforded an opportunity to review and submit
18 comments to the director regarding the modification or
19 revision of such program, prior to submission of such
20 program to the director. Upon submission of such program
21 the director has 90 days to approve, reject, or modify such
22 program. If the program is rejected, the director shall give
23 the operator a reasonable time to correct and resubmit such
24 program. An up-to-date copy of each program shall be
25 placed on file in the office and further copies shall be made
26 available to the miners of each mine and their
27 representatives. Each operator shall undertake all efforts
28 necessary to assure total compliance with the appropriate
29 safety program at each mine and shall fully implement all
30 portions of such program. Once approved, a comprehensive
31 mine safety program shall not be subject to annual review

32 by the director: *Provided*, That a program may be subject to
33 annual review by the director after a fatality or serious
34 accident involving bodily harm has occurred, or, if the
35 operator has shown a pattern of mine safety violations as
36 defined by §22A-1-15(2) of this code, such a finding shall
37 also warrant annual review by the director. The director
38 shall promulgate emergency rules in order to comply with
39 this subsection.

40 (c) Any person violating any provision of this section is
41 guilty of a misdemeanor, and, upon conviction thereof, shall
42 be fined not less than \$100 nor more than \$1,000, or
43 imprisoned in the county jail for not more than six months,
44 or both fined and imprisoned.

§22A-1-42. Surface ground control plan; automated external defibrillator.

1 (a) The MSHA-approved surface ground control plan
2 shall serve as the state-approved plan, and the operator,
3 upon approval by MSHA, shall provide a copy of the
4 MSHA-approved surface ground control plan to the
5 director.

6 (b) Automated external defibrillators (AEDs) shall be
7 required on all surface mining operations. The director shall
8 promulgate emergency rules in order to comply with this
9 section of code, giving special consideration to the climate
10 sensitive nature of AEDs.

ARTICLE 2. UNDERGROUND MINES.

VENTILATION

§22A-2-2. Submittal of detailed ventilation plan to director.

1 (a) A mine operator shall submit a detailed ventilation
2 plan and any addenda to the director for review and
3 comment. The mine operator shall review the plan with the
4 director and address concerns to the extent practicable. The
5 operator shall deliver to the miners' representative

6 employed by the operator at the mine, if any, a copy of the
7 operator's proposed annual ventilation plan at least 10 days
8 prior to the date of submission. The miners' representative,
9 if any, shall be afforded the opportunity to submit written
10 comments to the operator prior to such submission; in
11 addition, the miners' representative, if any, may submit
12 written comments to the director. The director shall submit
13 any concern that is not addressed to the United States
14 Department of Labor - Mine Safety and Health
15 Administration (MSHA) through comments to the plan. The
16 mine operator shall provide a copy of the plan to the director
17 10 days prior to the submittal of the plan to MSHA. The
18 MSHA-approved plan shall serve as the state-approved
19 plan: *Provided*, That the MSHA-approved plan shall
20 comply with all provisions of state mining law as set forth
21 in state code or code of state rules.

22 (b) The operator shall give the director a copy of the
23 MSHA-approved plan and any addenda as soon as the
24 operator receives the approval.

25 (c) In the event of an unforeseen situation requiring
26 immediate action on a plan revision, the operator shall
27 submit the proposed revision to the director and the miners'
28 representative, if any, employed by the operator at the mine
29 when the proposed revision is submitted to MSHA. The
30 director shall work with the operator to review and comment
31 on the proposed plan revision to MSHA as quickly as
32 possible.

33 (d) Upon approval by MSHA, the plan is enforceable by
34 the director. The approved plan and all revisions and
35 addenda thereto shall be posted on the mine bulletin board
36 and made available for inspection by the miners at that mine
37 for the period of time that they are in effect.

§22A-2-3. Fans.

1 (a) The ventilation of mines, the systems for which
2 extend for more than 200 feet underground, and which are

3 opened after the effective date of this article, shall be
4 produced by a mechanically operated fan or mechanically
5 operated fans. Ventilation by means of a furnace is
6 prohibited in any mine. The fan or fans shall be kept in
7 continuous operation, unless written permission to do
8 otherwise be granted by the director. In case of interruption
9 to a ventilating fan or its machinery whereby the ventilation
10 of the mine is interrupted, immediate action shall be taken
11 by the mine operator or the operator's management
12 personnel, in all mines, to cut off the power and withdraw
13 the men from the face regions or other areas of the mine
14 affected. If ventilation is restored in 15 minutes, the face
15 regions and other places in the affected areas where gas
16 (methane) is likely to accumulate, shall be reexamined by a
17 certified person; and if found free of explosive gas, power
18 may be restored and work resumed. If ventilation is not
19 restored in 15 minutes, all underground employees shall be
20 removed from the mine, all power shall be cut off in a timely
21 manner, and the underground employees shall not return
22 until ventilation is restored and the mine examined by
23 certified persons, mine examiners, or other persons holding
24 a certificate to make preshift examination. If ventilation is
25 restored to the mine before miners reach the surface, the
26 miners may return to underground working areas only after
27 an examination of the areas is made by a certified person
28 and the areas are determined to be safe.

29 (b) All main fans installed after the effective date of this
30 article shall be located on the surface in fireproof housings
31 offset not less than 15 feet from the nearest side of the mine
32 opening, equipped with fireproof air ducts, provided with
33 explosion doors or a weak wall, and operated from an
34 independent power circuit. In lieu of the requirements for
35 the location of fans and pressure-relief facilities, a fan may
36 be directly in front of, or over a mine opening: *Provided,*
37 That such opening is not in direct line with possible forces
38 coming out of the mine if an explosion occurs: *Provided,*
39 *however,* That there is another opening having a weak wall
40 stopping or explosion doors that would be in direct line with

41 forces coming out of the mine. All main fans shall be
42 provided with pressure-recording gauges or water gauges.
43 A daily inspection shall be made of all main fans and
44 machinery connected therewith by a certified electrician and
45 a record kept of the same in a book prescribed for this
46 purpose or by adequate facilities provided to permanently
47 record the performance of the main fans and to give warning
48 of an interruption to a fan.

49 (c) Auxiliary fans and tubing shall be permitted to be
50 used in lieu of or in conjunction with line brattice to provide
51 adequate ventilation to the working faces: *Provided*, That
52 auxiliary fans be so located and operated to avoid
53 recirculation of air at any time. Auxiliary fans shall be
54 approved and maintained as permissible.

55 (d) If the auxiliary fan is stopped or fails, the electrical
56 equipment in the place shall be stopped and the power
57 disconnected at the power source until ventilation in the
58 working place is restored. During such stoppage, the
59 ventilation shall be, by means of the primary air current
60 conducted into the place, in a manner to prevent
61 accumulation of methane.

62 (e) In places where auxiliary fans and tubing are used,
63 the ventilation between shifts, weekends, and idle shifts
64 shall be provided to face areas with line brattice or the
65 equivalent to prevent accumulation of methane.

66 (f) The director may require that when continuous mine
67 equipment is being used, all face ventilating systems using
68 auxiliary fans and tubing shall be provided with machine-
69 mounted diffuser fans, and such fans shall be continuously
70 operated during mining operations.

71 (g) In the event of a fire or explosion in any coal mine,
72 the ventilating fan or fans shall not intentionally be started,
73 stopped, speed increased or decreased or the direction of the
74 air current changed without the approval of the general mine
75 foreman, and, if he or she is not immediately available, a

76 representative of the Office of Miners' Health, Safety, and
77 Training. A duly authorized representative of the employees
78 should be consulted if practical under the circumstances.

79 (h) The MSHA-approved plan relating to fans shall
80 serve as the state-approved plan: *Provided*, That the MSHA-
81 approved plan shall comply with all provisions of state
82 mining law as set forth in state code or code of state rules.

§22A-2-4. Ventilation of mines in general.

1 (a) The operator or mine foreman of every coal mine,
2 whether worked by shaft, slope, or drift, shall provide and
3 hereafter maintain for every such mine adequate ventilation.
4 In all mines the quantity of air passing through the last open
5 crosscut between the intake and return in any pair or set of
6 entries shall be not less than 9,000 cubic feet of air per
7 minute and as much more as is necessary to dilute and
8 render harmless and carry away flammable and harmful
9 gases. All working faces in a working section between the
10 intake and return airway entries shall be ventilated with a
11 minimum quantity of 3,000 cubic feet of air per minute and
12 as much more as is necessary to dilute and render harmless
13 and carry away flammable and harmful gases. The quantity
14 of air reaching the last crosscut in pillar sections may be less
15 than 9,000 cubic feet of air per minute if at least 9,000 cubic
16 feet of air per minute is being delivered to the intake of the
17 pillar line. The air current shall under any conditions have a
18 sufficient volume and velocity to reduce and carry away
19 smoke from blasting and any flammable or harmful gases.
20 The operator shall provide to the safety committee access to
21 anonometers and smoke tubes while performing their
22 duties. All active underground working places in a mine
23 shall be ventilated by a current of air containing not less than
24 19 and five-tenths percent of oxygen, not more than five-
25 tenths percent of carbon dioxide, and no harmful quantities
26 of other noxious or poisonous gases.

27 (b) Airflow shall be maintained in all intake and return
28 air courses of a mine and, where multiple fans are used,

29 neutral areas created by pressure equalization between main
30 fans shall not be permitted. Production activities in working
31 faces shall cease while tubing, line brattice or other
32 ventilation devices are being installed in by the machine
33 operator.

34 (c) Properly installed and adequately maintained line
35 brattice or other approved devices shall be continuously
36 used from the last open crosscut of an entry or room of each
37 working section to provide adequate ventilation to the
38 working faces for the miners and to remove flammable,
39 explosive and noxious gases, dust, and explosive fumes.
40 When damaged by falls or otherwise, such line brattice or
41 other devices shall be repaired immediately.

42 (d) Brattice cloth used underground shall be of flame-
43 resistant material. The space between the line brattice or
44 other approved device and the rib shall be large enough to
45 permit the flow of a sufficient volume and velocity of air to
46 keep the working face clear of flammable, explosive and
47 noxious gases, dust, and explosive fumes.

48 (e) Each working unit newly developed in virgin coal
49 hereafter, shall be ventilated by a separate split of air:
50 *Provided*, That in areas already under development and in
51 areas where physical conditions prevent compliance with
52 this provision, the director may grant temporary relief from
53 compliance until such time as physical conditions make
54 compliance possible. The quantity of air reaching the last
55 crosscut shall not be less than 9,000 cubic feet of air per
56 minute and shall under any condition have sufficient
57 volume and velocity to reduce and carry away smoke and
58 flammable or harmful gases from each working face in the
59 section.

60 (f) As working places advance, crosscuts for air shall be
61 made not more than 105 feet apart. Where necessary to
62 render harmless and carry away noxious or flammable
63 gases, line brattice or other approved methods of ventilation
64 shall be used so as to properly ventilate the face. All

65 crosscuts between the main intake and return airways not
66 required for passage of air and equipment shall be closed
67 with stoppings substantially built with incombustible or
68 fire-resistant material so as to keep working places well
69 ventilated. In mines where it becomes necessary to provide
70 larger pillars for adequate roof support, working places shall
71 not be driven more than 200 feet without providing a
72 connection that will allow the free flow of air currents. In
73 such cases, a minimum of 12,000 cubic feet of air a minute
74 shall be delivered to the last open crosscut and as much
75 more as is necessary to dilute and render harmless and carry
76 away flammable and noxious gases.

77 (g) In special instances for the construction of
78 sidetracks, haulageways, airways, or openings in shaft
79 bottom or slope bottom layouts where the size and strength
80 of pillars is important, the director may issue a permit
81 approving greater distances. The permit shall specify the
82 conditions under which such places may be driven.

83 (h) In all mines a system of bleeder openings on air
84 courses, designed to provide positive movement of air
85 through and/or around abandoned or caved areas, sufficient
86 to prevent dangerous accumulation of gas in such areas, and
87 to minimize the effect of variations in atmospheric pressure
88 shall be made a part of pillar recovery plans projected after
89 July 1, 1971.

90 (i) If a bleeder return is closed as a result of roof falls or
91 water during pillar recovery operations, pillar operations
92 may continue without reopening the bleeder return if at least
93 20,000 cubic feet of air per minute is delivered to the intake
94 of the pillar line.

95 (j) No operator or mine foreman shall permit any person
96 to work where he or she is unable to maintain the quantity
97 and quality of the air current as heretofore required:
98 *Provided*, That such provisions shall not prohibit the
99 employment of men to make place of employment safe.

100 (k) The ventilation of any mine shall be so arranged by
101 means of air locks, overcasts or undercasts, that the use of
102 doors on passageways where men or equipment travel may
103 be kept to a minimum. Where doors are used in a mine, they
104 shall be erected in pairs so as to provide a ventilated air lock
105 unless the doors are operated mechanically.

106 (l) A crosscut shall be provided at or near the face of
107 each entry or room before such places are abandoned.

108 (m) Overcasts or undercasts shall be constructed of
109 incombustible material and maintained in good condition.

110 (n) After January 1, 1987, all run through check curtains
111 shall be substantially constructed of translucent material,
112 except that where belting material has to be used because of
113 high velocity, there shall be a window of translucent
114 material at least 30 inches square or one-half the height of
115 the coal seam, whichever is less.

116 (o) The MSHA-approved plan shall serve as the state-
117 approved plan: *Provided*, That the MSHA-approved plan
118 shall comply with all provisions of state mining law as set
119 forth in state code or code of state rules.

§22A-2-4a. Use of belt air.

1 (a) Definitions. — For purposes of this section, “belt
2 air” means the use of a belt conveyer entry as an intake air
3 course to ventilate the working sections of a mine or areas
4 where mechanized mining equipment is being installed or
5 removed.

6 (b) Upon the effective date of the enactment of this
7 section, belt air may not be used to ventilate the working
8 sections of a mine or areas where mechanized mining
9 equipment is being installed or removed: *Provided*, That if
10 an alternative method of ventilation will at all times
11 guarantee no less than the same measure of protection
12 afforded the miners of an underground mine by the
13 foregoing or if the application of the foregoing to an

14 underground mine will result in a diminution of safety to the
15 miners in the mine, the director may approve the interim use
16 of belt air pursuant to the following. The MSHA-approved
17 plan for use of belt air shall serve as the state-approved plan:
18 *Provided*, That the MSHA-approved plan shall contain all
19 provisions of state mining law as set forth in state code or
20 code of state rules.

§22A-2-5. Unused and abandoned parts of mine.

1 (a) In any mine, all workings which are abandoned after
2 July 1, 1971, shall be sealed or ventilated. If the workings
3 are sealed, the sealing shall be done with incombustible
4 material in a manner prescribed by the director and one or
5 more of the seals of every sealed area shall be fitted with a
6 pipe and cap or valve to permit the sampling of gases and
7 measuring of hydrostatic pressure behind the seals. For the
8 purpose of this section, working within a panel shall not be
9 considered to be abandoned until the panel is abandoned.

10 (b) Air that has passed through an abandoned area or an
11 area which is inaccessible or unsafe for inspection shall not
12 be used to ventilate any working place in any working mine,
13 unless permission is granted by the director with unanimous
14 agreement of the technical and mine safety review
15 committee. Air that has been used to ventilate seals shall not
16 be used to ventilate any working place in any working mine.
17 Air which has been used to ventilate an area from which the
18 pillars have been removed shall not be used to ventilate any
19 working place in a mine, except that the air, if it does not
20 contain 0.25 volume percent or more of methane, may be
21 used to ventilate enough advancing working places
22 immediately adjacent to the line of retreat to maintain an
23 orderly sequence of pillar recovery on a set of entries.
24 Before sealed areas, temporary or permanent, are reopened,
25 the director shall be notified.

26 (c) On or after the effective date of the amendment and
27 reenactment of this section during the 2007 regular session
28 of the Legislature, a professional engineer registered with

29 the Board of Registration for Professional Engineers
30 pursuant to §30-13-1 *et seq.* of this code shall certify the
31 design of all new seals as meeting the criteria established by
32 the director. Every seal design shall have the professional
33 engineer's certificate and signature, in addition to his or her
34 seal, in the following form:

35 "I the undersigned, do hereby certify that this seal
36 design is, to the best of my knowledge, in accordance with
37 all applicable requirements under state and federal law,
38 rules and regulations.

39 _____ P.E."

40 (d) On or after the effective date of the amendment and
41 reenactment of this section during the 2007 regular session
42 of the Legislature, the director shall approve the
43 construction of all new seals in accordance with rules
44 authorized in this section. The construction shall also be:

45 (1) Certified by the mine foreman-fire boss of the mine
46 as being in accordance with the design certified by a
47 professional engineer pursuant to §22A-2-5(c) of this code;
48 and

49 (2) (A) Constructed of solid concrete blocks and in
50 accordance with the other provisions of 30 CFR
51 75.335(a)(1); or

52 (B) Constructed in a manner that the director has
53 approved as having the capability to withstand pressure
54 equal to or greater than a seal constructed in accordance
55 with the provisions of 30 CFR 75.335(a)(1).

56 (e) On or after the effective date of the amendment and
57 reenactment of this section during the 2007 regular session
58 of the Legislature, the operator shall inspect the physical
59 condition of all seals and measure the atmosphere behind all
60 seals in accordance with protocols developed by the Board
61 of Coal Mine Health and Safety, pursuant to rules
62 authorized in this section and consistent with a mine-

63 specific atmospheric measurement plan submitted to and
64 approved by the director. The atmospheric measurements
65 shall include, but not be limited to, the methane and oxygen
66 concentrations and the barometric pressure. The
67 atmospheric measurements also shall be recorded with ink
68 or indelible pencil in a book kept for that purpose on the
69 surface at a location designated by the operator. The
70 protocols shall specify appropriate methods for inspecting
71 the physical condition of seals, measuring the mine
72 atmosphere in sealed workings, and inerting the mine
73 atmosphere behind the seals, where appropriate.

74 (f) (1) In all mines containing workings sealed using
75 seals constructed in accordance with the provisions of 30
76 CFR 75.335(a)(2) which are constructed: (A) Of
77 cementitious foam blocks; or (B) with methods or materials
78 that the Board of Coal Mine Health and Safety determines
79 do not provide an adequate level of protection to miners, the
80 operator shall, pursuant to a plan submitted to and approved
81 by the director, remediate the seals by either enhancing the
82 seals or constructing new seals in place of or immediately
83 outby the seals. After being remediated, all seals must have
84 the capability to withstand pressure equal to or greater than
85 a seal constructed in accordance with the provisions of 30
86 CFR 75.335(a)(1). The design, development, submission
87 and implementation of the remediation plan is the
88 responsibility of the operator of each mine. Pursuant to rules
89 authorized in this section, the Board of Coal Mine Health
90 and Safety shall specify appropriate methods of enhancing
91 the seals.

92 (2) Notwithstanding any provision of this code to the
93 contrary, if the director determines that any seal described
94 in §22A-2-5(f)(1) of this code is incapable of being
95 remediated in a safe and effective manner, the mine
96 foreman-fire boss shall, at least once every 24 hours, inspect
97 the physical condition of the seal and measure the
98 atmosphere behind the seal. The daily inspections and
99 measurements shall otherwise be performed in accordance

100 with the protocols and atmospheric measurement plan
101 established pursuant to §22A-2-5(e) of this code.

102 (g) Upon the effective date of the amendment and
103 reenactment of this section during the 2007 regular session
104 of the Legislature, second mining of lower coal on retreat,
105 also known as bottom mining, shall not be permitted in
106 workings that will be sealed unless an operator has first
107 submitted and received approval by the director of a
108 remediation plan that sets forth measures that will be taken
109 to mitigate the effects of remnant ramps and other
110 conditions created by bottom mining on retreat which can
111 increase the force of explosions originating in and
112 emanating out of workings that have been bottom mined.
113 The director shall require that certification in a manner
114 similar to that set forth in §22A-2-5(c) of this code shall be
115 obtained by the operator from a professional engineer and
116 the mine foreman-fire boss for the plan design and plan
117 implementation, respectively.

118 (h) No later than 60 days after the effective date of the
119 amendment and reenactment of this section during the 2007
120 regular session of the Legislature, the Board of Coal Mine
121 Health and Safety shall develop and promulgate rules
122 pursuant to the provisions of §22A-6-4 of this code to
123 implement and enforce the provisions of this section.

124 (i) Upon the issuance of mandatory health and safety
125 standards relating to the sealing of abandoned areas in
126 underground coal mines by the Secretary of the United
127 States Department of Labor pursuant to 30 U. S. C. §811, as
128 amended by section 10 of the federal Mine Improvement
129 and New Emergency Response Act of 2006, the director,
130 working in consultation with the Board of Coal Mine Health
131 and Safety, shall, within 30 days, provide the Governor with
132 his or her recommendations, if any, for the enactment,
133 repeal, or amendment of any statute or rules which would
134 enhance the safe sealing of abandoned mine workings and
135 the health and safety of miners.

136 (j) The MSHA-approved plan for seals shall serve as the
137 state-approved plan: *Provided*, That the MSHA-approved
138 plan shall comply with all provisions of state mining law as
139 set forth in this code or code of state rules.

ROOF – FACE – RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

1 (a) Each operator shall undertake to carry out on a
2 continuing basis a program to improve the roof control
3 system of each coal mine and the means and measures to
4 accomplish such system. The roof and ribs of all active
5 underground roadways, travelways, and working places
6 shall be supported or otherwise controlled adequately to
7 protect persons from falls of the roof or ribs. A roof control
8 plan and revisions thereof suitable to the roof conditions and
9 mining systems of each coal mine and approved by the
10 director shall be adopted and set out in printed form before
11 new operations. The safety committee of the miners of each
12 mine where such committee exists shall be afforded the
13 opportunity to review and submit comments and
14 recommendations to the director and operator concerning
15 the development, modification, or revision of such roof
16 control plans. The plan shall show the type of support and
17 spacing approved by the director. Such plan shall be
18 reviewed periodically, at least every six months by the
19 director, taking into consideration any falls of roof or rib or
20 inadequacy of support of roof or ribs. A copy of the plan
21 shall be furnished to the director or his or her authorized
22 representative and shall be available to the miners and their
23 representatives. The MSHA-approved roof control plan
24 shall serve as the state-approved plan: *Provided*, That the
25 MSHA-approved plan shall comply with all provisions of
26 state mining law as set forth in this code or code of state
27 rules.

28 (b) The operator, in accordance with the approved plan,
29 shall provide at or near each working face and at such other

30 locations in the coal mine, as the director may prescribe, an
31 ample supply of suitable materials of proper size with which
32 to secure the roof thereof of all working places in a safe
33 manner. Safety posts, jacks, or other approved devices shall
34 be used to protect the workmen when roof material is being
35 taken down, crossbars are being installed, roof bolt holes are
36 being drilled, roof bolts are being installed, and in such other
37 circumstances as may be appropriate. Loose roof and
38 overhanging or loose faces and ribs shall be taken down or
39 supported. When overhangs or brows occur along rib lines
40 they shall be promptly removed. All sections shall be
41 maintained as near as possible on center. Except in the case
42 of recovery work, supports knocked out shall be replaced
43 promptly. Apprentice miners shall not be permitted to set
44 temporary supports on a working section without the direct
45 immediate supervision of a certified miner.

46 (c) The operator of a mine has primary responsibility to
47 prevent injuries and deaths resulting from working under
48 unsupported roof. Every operator shall require that no
49 person may proceed beyond the last permanent support
50 unless adequate temporary support is provided or temporary
51 support is not required under an approved roof control plan
52 and absence of such support will not pose a hazard to the
53 miners.

54 (d) The immediate supervisor of any area in which
55 unsupported roof is located shall not direct or knowingly
56 permit any person to proceed beyond the last permanent
57 support unless adequate temporary support is provided or
58 temporary support is not required under an approved roof
59 control plan and absence of such support will not pose a
60 hazard to the miners.

61 (e) No miner shall proceed beyond the last permanent
62 support in violation of a direct or standing order of an
63 operator, a foreman or an assistant foreman, unless adequate
64 temporary support is provided or temporary support is not
65 required under an approved roof control plan and absence
66 of such support will not pose a hazard to the miner.

67 (f) The immediate supervisor of each miner who will be
68 engaged in any activity involving the securing of roof or rib
69 during a shift shall, at the onset of any such shift, orally
70 review those parts of the roof control plan relevant to the
71 type of mining and roof control to be pursued by such miner.

72 (g) Any action taken against a miner due, in whole or in
73 part, to his or her refusal to work under unsupported roof,
74 where such work would constitute a violation of this
75 section, is prohibited as an act of discrimination pursuant to
76 §22A-1-22 of this code. Upon a finding of discrimination
77 by the appeals board pursuant to §22A-1-22(b) of this code,
78 the miner shall be awarded by the appeals board all reliefs
79 available pursuant to §22A-1-22(b) and §22A-1-22(c) of
80 this code.

§22A-2-26. Roof support; specific requirements.

1 (a) *Generally.* — The method of mining followed in any
2 coal mine may not expose the miner to unusual dangers
3 from roof falls, and the MSHA-approved plan shall serve as
4 the state-approved plan: *Provided,* That the MSHA-
5 approved plan shall comply with all provisions of state
6 mining law as set forth in this code or code of state rules.

7 (b) *Roadways, intersections, and arches.* — The width
8 of roadways shall not exceed 16 feet unless additional
9 support is added cross sectional. During the development of
10 intersections, the roof between the tangents of the arches in
11 the entry or room shall be supported with artificial roof
12 supports prior to the development of such intersections. All
13 areas where the arch is broken shall be considered as having
14 unsupported roof and such roof should have artificial roof
15 supports installed prior to any other work being performed
16 in the area.

17 (c) *Examinations and corrections.* — Where miners are
18 exposed to danger from falls of roof, face and ribs, the
19 operator shall examine and test the roof, face and ribs before
20 any work or machine is started, and as frequently thereafter

21 as may be necessary to insure safety. When dangerous
22 conditions are found, they shall be corrected immediately.
23 A probe or probes for methane detectors shall be provided
24 on each working section other than longwall sections and
25 sections mined solely with continuous miners with integral
26 roof bolters.

27 (d) *Roof bolt recovery.* — Roof bolts shall not be
28 recovered where complete extraction of pillars is attempted,
29 where adjacent to clay veins or at the locations of other
30 irregularities, whether natural or otherwise, that induce
31 abnormal hazards. Where roof bolt recovery is permitted, it
32 shall be conducted only in accordance with methods
33 prescribed in the approved roof control plan, and shall be
34 conducted by experienced miners and only where adequate
35 temporary support is provided.

TRANSPORTATION

§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

1 (a) Use of haulage roads and equipment along with
2 signals and inspection shall meet standards established by
3 the U. S. Mine Safety and Health Administration. The
4 roadbed, rails, joints, switches, frogs, and other elements of
5 all haulage roads shall be constructed, installed, and
6 maintained in a manner consistent with speed and type of
7 haulage operations being conducted to ensure safe
8 operation. Where transportation of personnel is exclusively
9 by rail, track shall be maintained to within 1,500 feet of the
10 nearest working face, except that when any section is fully
11 developed and being prepared for retreating, then the track
12 shall be maintained to within 1,500 feet of that retreat
13 mining section if a rubber tired vehicle is readily available:
14 *Provided,* That in any case where such track is maintained
15 to within a distance of more than 500 feet and not more than
16 1,500 feet of the nearest working face, a self-propelled,
17 rubber-tired vehicle capable of transporting an injured
18 worker shall be readily available.

19 (b) Track switches, except room and entry development
20 switches, shall be provided with properly installed throws,
21 bridle bars and guard rails; switch throws and stands, where
22 possible, shall be placed on the clearance side.

23 (c) Haulage roads on entries shall have a continuous,
24 unobstructed clearance of at least 24 inches from the farthest
25 projection of any moving equipment on the clearance side.

26 (d) On haulage roads where trolley lines are used, the
27 clearance shall be on the side opposite the trolley lines.

28 (e) On the trolley wire or “tight” side, there shall be at
29 least 12 inches of clearance from the farthest projection of
30 any moving equipment.

31 (f) Warning lights or reflective signs or tapes shall be
32 installed along haulage roads at locations of abrupt or
33 sudden changes in the overhead clearance.

34 (g) The clearance space on all haulage roads shall be
35 kept free of loose rock, coal, supplies, or other material:
36 *Provided*, That not more than 24 inches need be kept free of
37 such obstructions.

38 (h) Ample clearance shall be provided at all points
39 where supplies are loaded or unloaded along haulage roads
40 or conveyors which in no event shall be less than 24 inches.

41 (i) Shelter holes shall be provided along haulage entries.
42 Such shelter holes shall be spaced not more than 105 feet
43 apart, except when variances are authorized by the director
44 with unanimous agreement of the Mine Safety and
45 Technical Review Committee. Shelter holes shall be on the
46 side of the entry opposite the trolley wire except that shelter
47 holes may be on the trolley wire and feeder wire side if the
48 trolley wire and feeder wire are guarded in a manner
49 approved by the director. The MSHA-approved plan shall
50 serve as the state-approved plan governing the use of
51 shelters: *Provided*, That the MSHA-approved plan shall

52 comply with all other provisions of state mining law as set
53 forth in state code or code of state rules.

54 (j) Shelter holes shall be at least five feet in depth, not
55 more than four feet in width and as high as the traveling
56 space, unless the director with unanimous agreement of the
57 Mine Safety and Technical Review Committee grants a
58 waiver. Room necks and crosscuts may be used as shelter
59 holes even though their width exceeds four feet.

60 (k) Shelter holes shall be kept clear of refuse and other
61 obstructions.

62 (l) Shelter holes shall be provided at switch throws and
63 manually operated permanent doors.

64 (m) No steam locomotive shall be used in mines where
65 miners are actually employed in the extraction of coal, but
66 this shall not prevent operation of a steam locomotive
67 through any tunnel haulway or part of a mine that is not in
68 actual operation and producing coal.

69 (n) Underground equipment powered by internal
70 combustion engines using petroleum products, alcohol, or
71 any other compound shall not be used in a coal mine, unless
72 the equipment is diesel-powered equipment approved,
73 operated and maintained as provided in §22A-2-1 *et seq.* of
74 this code.

75 (o) Locomotives, personnel carriers, mine cars, supply
76 cars, shuttle cars, and all other haulage equipment shall be
77 maintained in a safe operating condition. Each locomotive,
78 personnel carrier, barrier tractor, and other related
79 equipment shall be equipped with a suitable lifting jack and
80 handle. An audible warning device and headlights shall be
81 provided on each locomotive and each shuttle car. All other
82 mobile equipment, using the face areas of the mine, shall be
83 provided with a conspicuous light or other approved device
84 so as to reduce the possibility of collision.

85 (p) No persons other than those necessary to operate a
86 trip or car shall ride on any loaded car or on the outside of
87 any car. Where pusher locomotives are not used, the
88 locomotive operator shall have an assistant to assist him or
89 her in his or her duties.

90 (q) The pushing of trips, except for switching purposes,
91 is prohibited on main haulage roads: *Provided*, That nothing
92 herein shall prohibit the use of a pusher locomotive to assist
93 the locomotive pulling a trip. Motormen and trip riders shall
94 use care in handling locomotives and cars. It shall be their
95 duty to see that there is a conspicuous light on the front and
96 rear of each trip or train of cars when in motion: *Provided*,
97 *however*, That trip lights need not be used on cars being
98 shifted to and from loading machines, or on cars being
99 handled at loading heads during gathering operations at
100 working faces. No person, other than the motorman and
101 brakeman, should ride on a locomotive unless authorized by
102 the mine foreman, and then only when safe riding facilities
103 are provided. An empty car or cars shall be used to provide
104 a safe distance between the locomotive and the material car
105 when rail, pipe, or long timbers are being hauled. A safe
106 clearance shall be maintained between the end car or trips
107 placed on side tracks and moving traffic. On haulage roads
108 the clearance point shall be marked with an approved
109 device.

110 (r) No motorman, trip rider, or brakeman shall get on or
111 off cars, trips, or locomotives while they are in motion,
112 except that a trip rider or brakeman may get on or off the
113 rear end of a slowly moving trip or the stirrup of a slowly
114 moving locomotive to throw a switch, align a derail, or open
115 or close a door.

116 (s) Flying or running switches and riding on the front
117 bumper of a car or locomotive are prohibited. Back poling
118 shall be prohibited except with precaution to the nearest
119 turning point (not over 80 feet), or when going up extremely
120 steep grades and then only at slow speed. The operator of a
121 shuttle car shall face in the direction of travel except during

122 the loading operation when he or she shall face the loading
123 machine.

124 (t) (1) A system of signals, methods, or devices shall be
125 used to provide protection for trips, locomotives, and other
126 equipment coming out onto tracks used by other equipment.

127 (2) In any coal mine where more than 350 tons of coal
128 are produced on any shift in each 24-hour period, a
129 dispatcher shall be on duty when there are movements of
130 track equipment underground, including time when there is
131 no production of coal. Such traffic shall move only at the
132 direction of the dispatcher.

133 (3) The dispatcher's only duty shall be to direct traffic:
134 *Provided*, That the dispatcher's duties may also include
135 those of the responsible person required by §22A-2-42 of
136 this code: *Provided, however*, That the dispatcher may
137 perform other duties which do not interfere with his or her
138 dispatching responsibilities and do not require him or her to
139 leave the dispatcher's station except as approved by the
140 Mine Safety and Technical Review Committee.

141 (4) Any dispatcher's station shall be on the surface.

142 (5) All self-propelled track equipment shall be equipped
143 with two-way communications.

144 (u) Motormen shall inspect locomotives, and report any
145 mechanical defects found to the proper supervisor before a
146 locomotive is put in operation.

147 (v) A locomotive following another trip shall maintain
148 a distance of at least 300 feet from the rear end of the trip
149 ahead, unless such locomotive is coupled to the trip ahead.

150 (w) Positive stop blocks or derails shall be installed on
151 all tracks near the top and at landings of shafts, slopes, and
152 surface inclines. Positive-acting stop blocks or derails shall
153 be used where necessary to protect persons from danger of
154 runaway haulage equipment.

155 (x) Shuttle cars shall not be altered by the addition of
156 sideboards so as to inhibit the view of the operator:
157 *Provided*, That the addition of or use of sideboards on
158 shuttle cars shall be permitted if the shuttle car is equipped
159 with cameras: *Provided, however*, That shuttle cars with
160 sideboards as manufactured by an equipment manufacturer
161 shall be permitted to be used without the use of cameras if
162 permitted by the director.

163 (y) Mining equipment shall not be parked within 15 feet
164 of a check curtain or fly curtain.

165 (z) All self-propelled track haulage equipment shall be
166 equipped with an emergency stop switch, self-centering
167 valves, or other devices designed to de-energize the traction
168 motor circuit in the event of an emergency. All track-
169 mounted trolley equipment shall be equipped with trolley
170 pole swing limiters or other means approved by the Mine
171 Safety and Technical Review Committee to restrict
172 movement of the trolley pole when it is disengaged from the
173 trolley wire. Battery powered mobile equipment shall have
174 the operating controls clearly marked to distinguish the
175 forward and reverse positions.

§22A-2-55. Protective equipment and clothing.

1 (a) Welders and helpers shall use proper shields or
2 goggles to protect their eyes. All employees shall have
3 approved goggles or shields and use the same where there
4 is a hazard from flying particles or other eye hazards.

5 (b) Employees engaged in haulage operations and all
6 other persons employed around moving equipment on the
7 surface and underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which
9 may injure hands is handled, but gloves with gauntleted
10 cuffs shall not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by
12 all persons while in or around a mine: *Provided*, That

13 metatarsal guards are not required to be worn by persons
14 when working in those areas of underground mine workings
15 which average less than 48 inches in height as measured
16 from the floor to the roof of the underground mine
17 workings.

18 (e) Approved eye protection shall be worn by all persons
19 while being transported in open-type man trips.

20 (f) (1) A self-contained self-rescue device approved by
21 the director shall be worn by each person underground or
22 kept within his or her immediate reach and the device shall
23 be provided by the operator. The self-contained self-rescue
24 device shall be adequate to protect a miner for one hour or
25 longer. Each operator shall train each miner in the use of the
26 device and refresher training courses for all underground
27 employees shall be held once each quarter. Quarters shall be
28 based on a calendar year.

29 (2) In addition to the requirements of §22A-2-55(f)(1)
30 of this code, the operator shall also provide caches of
31 additional self-contained self-rescue devices throughout the
32 mine in accordance with a plan approved by the director.
33 Each additional self-contained self-rescue device shall be
34 adequate to protect a miner for one hour or longer. The total
35 number of additional self-contained self-rescue devices, the
36 total number of storage caches and the placement of each
37 cache throughout the mine shall be established by rule
38 pursuant to §22A-2-55(i) of this code. A luminescent sign
39 with the words "SELF-CONTAINED SELF-RESCUER"
40 or "SELF-CONTAINED SELF-RESCUERS" shall be
41 conspicuously posted at each cache and luminescent
42 direction signs shall be posted leading to each cache.
43 Lifeline cords or other similar device, with reflective
44 material at 25-foot intervals, shall be attached to each cache
45 from the last open crosscut to the surface. The operator shall
46 conduct weekly inspections of each cache and each lifeline
47 cord or other similar device to ensure operability.

48 (3) Any person who, without the authorization of the
49 operator or the director, knowingly removes or attempts to
50 remove any self-contained self-rescue device or lifeline
51 cord from the mine or mine site with the intent to
52 permanently deprive the operator of the device or lifeline
53 cord or knowingly tampers with or attempts to tamper with
54 the device or lifeline cord is guilty of a felony and, upon
55 conviction thereof, shall be imprisoned in a state
56 correctional facility for not less than one year nor more than
57 10 years, or fined not less than \$10,000 nor more than
58 \$100,000, or both imprisoned and fined.

59 (g) The MSHA-approved emergency response plan
60 (ERP) shall serve as the state-approved plan governing the
61 storage of self-contained self-rescuers (SCSR). At a
62 minimum, three one-hour SCSRs shall be available for
63 everyone reasonably likely to be on the working section at
64 any given time. The director may issue a special assessment
65 pursuant to §22A-1-21 of this code for failure to comply
66 with this subsection.

67 (h)(1) A wireless emergency communication device
68 approved by the director and provided by the operator shall
69 be worn by each person underground: *Provided*, That if a
70 miner's wireless emergency communications device shall
71 malfunction or cease to operate then such miner shall be
72 assigned to be in sight or sound of a certified miner until
73 such time an operating device shall be delivered. The
74 wireless emergency communication device shall, at a
75 minimum, be capable of receiving emergency
76 communications from the surface at any location throughout
77 the mine. Each operator shall train each miner in the use of
78 the device and provide refresher training courses for all
79 underground employees during each calendar year. The
80 operator shall install in or around the mine any and all
81 equipment necessary to transmit emergency
82 communications from the surface to each wireless
83 emergency communication device at any location
84 throughout the mine.

85 (2) Any person who, without the authorization of the
86 operator or the director, knowingly removes or attempts to
87 remove any wireless emergency communication device or
88 related equipment from the mine or mine site with the intent
89 to permanently deprive the operator of the device or
90 equipment or knowingly tampers with or attempts to tamper
91 with the device or equipment is guilty of a felony and, upon
92 conviction thereof, shall be imprisoned in a state
93 correctional facility for not less than one year nor more than
94 10 years, or fined not less than \$10,000 nor more than
95 \$100,000, or both imprisoned and fined.

96 (i)(1) A wireless tracking device approved by the
97 director and provided by the operator shall be worn by each
98 person underground. In the event of an accident or other
99 emergency, the tracking device shall, at a minimum, be
100 capable of providing real-time monitoring of the physical
101 location of each person underground: *Provided*, That no
102 person shall discharge or discriminate against any miner
103 based on information gathered by a wireless tracking device
104 during nonemergency monitoring. Each operator shall train
105 each miner in the use of the device and provide refresher
106 training courses for all underground employees during each
107 calendar year. The operator shall install in or around the
108 mine all equipment necessary to provide real-time
109 emergency monitoring of the physical location of each
110 person underground.

111 (2) The MSHA-approved ERP shall serve as the state-
112 approved plan: *Provided*, That the MSHA-approved plan
113 shall comply with all other provisions of state mining law
114 as set forth in state code or the code of state rules.

115 (3) Any person who, without the authorization of the
116 operator or the director, knowingly removes or attempts to
117 remove any wireless tracking device or related equipment,
118 approved by the director, from a mine or mine site with the
119 intent to permanently deprive the operator of the device or
120 equipment or knowingly tampers with or attempts to tamper
121 with the device or equipment is guilty of a felony and, upon

122 conviction thereof, shall be imprisoned in a state
123 correctional facility for not less than one year nor more than
124 10 years, or fined not less than \$10,000 nor more than
125 \$100,000, or both imprisoned and fined.

126 (j) The director shall promulgate emergency and
127 legislative rules to implement and enforce this section
128 pursuant to the provisions of §29A-3-1 *et seq.* of this code.

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

PART X. EXISTING RULES TO BE REVISED.

§22A-2A-1001. Existing state rules to be revised.

1 Unless otherwise revised, by August 31, 2018, the
2 director shall revise state rules promulgated pursuant to the
3 authority of this chapter as follows:

4 (1) To reflect the abolishment of the West Virginia
5 Diesel Equipment Commission and transfer of duties and
6 responsibilities to the director, pursuant to §22A-2A-301 of
7 this code;

8 (2) To reflect that a mine operator shall be permitted to
9 replace a filter or catalyst of the same make and model
10 without contacting the Office of Miners' Health, Safety, and
11 Training;

12 (3) To reflect that ASE certified diesel mechanics shall
13 make repairs and adjustments to diesel fuel injection
14 systems, engine timing, or exhaust emissions control and
15 conditioning systems;

16 (4) To permit a mine operator to dispose of used intake
17 air filters, exhaust diesel particulate matter filters, and
18 engine oil filters in their original containers or other suitable
19 enclosed containers and to remove them from the
20 underground mine to the surface no less than once in a 24-
21 hour period;

22 (5) To require that records of emissions tests, 200-hour
23 maintenance tests, and repairs shall be countersigned once
24 each week by the certified mine electrician or mine
25 foreman, that scheduled maintenance and an independent
26 analysis of engine oil occur at 200 hours of engine
27 operation, and that diagnostic testing of engine operation
28 occur at 200 hours;

29 (6) To remove the requirement that a portable carbon
30 monoxide (CO) sampling device be installed into the
31 untreated exhaust gas coupling provided in the operator's
32 cab;

33 (7) To modify the time and duration for which the CO
34 sampler must be started to measure and record CO levels
35 from every minute for five minutes to every 30 seconds for
36 90 seconds;

37 (8) To modify the alternative condition by which
38 equipment fails under 196 C. S. R. §1-21, to omit the
39 reference to the average CO reading for untreated exhaust
40 gas is greater than twice the baseline;

41 (9) To remove the requirement for eight hours of annual
42 diesel equipment operator refresher training separate from
43 that required by MSHA regulations; and

44 (10) To permit the use of diesel generators in
45 underground mines so long as the generator is vented
46 directly to the return and at least one person is present
47 within sight and sound of the generator: *Provided*, That
48 all current state rules and statutes relating to the use of
49 diesel-powered equipment and electricity generation
50 remain in force.

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CHAPTER 153

**(Com. Sub. for S. B. 589 - By Senators Rucker,
Arvon, Clements, Cline, Drennan, Gaunch, Maynard,
Smith, Sypolt and Plymale)**

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

AN ACT to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended, relating to the issuance of personalized license plates for antique motor vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles; definition, registration, and use of classic motor vehicles and classic motorcycles; customized antique plates.

1 (a) The annual registration fee for any antique motor
2 vehicle or motorcycle as defined in this section is \$2. As
3 used in this section:

4 “Antique motor vehicle” means any motor vehicle
5 which is more than 25 years old and is owned solely as a
6 collector’s item.

7 “Antique motorcycle” means any motorcycle which is
8 more than 25 years old and is owned solely as a collector’s
9 item.

10 “Classic motor vehicle” means a motor vehicle which is
11 more than 25 years old and is registered pursuant to §17A-
12 10-3 of this code and is used for general transportation.

13 “Classic motorcycle” means a motorcycle which is
14 more than 25 years old and is registered pursuant to §17A-
15 10-3 of this code and is used for general transportation.

16 (b) Except as otherwise provided in this section, antique
17 motor vehicles or motorcycles may not be used for general
18 transportation but may only be used for:

19 (1) Participation in club activities, exhibits, tours,
20 parades, and similar events;

21 (2) The purpose of testing their operation, obtaining
22 repairs or maintenance, and transportation to and from
23 events as described in §17A-10-3a(b)(1) of this code; and

24 (3) Recreational purposes over weekends, beginning on
25 Friday at 12:00 p. m., and ending on the following Monday
26 at 12:00 p. m., and on holidays: *Provided*, That a classic
27 motor vehicle or a classic motorcycle as defined in this
28 section may be registered under the applicable class at the
29 applicable registration fee set forth in §17A-10-3 of this
30 code and may be used for general transportation.

31 (c) A West Virginia motor vehicle or motorcycle
32 displaying license plates of the same year of issue as the
33 model year of the antique motor vehicle or motorcycle, as
34 authorized in this section, may be used for general
35 transportation purposes if the following conditions are met:

36 (1) The license plate’s physical condition has been
37 inspected and approved by the Division of Motor Vehicles;

38 (2) The license plate is registered to the specific motor
39 vehicle or motorcycle by the Division of Motor Vehicles;

40 (3) The owner of the motor vehicle or motorcycle
41 annually registers the motor vehicle or motorcycle and pays

42 an annual registration fee for the motor vehicle or
43 motorcycle equal to that charged to obtain regular state
44 license plates;

45 (4) The motor vehicle or motorcycle passes an annual
46 safety inspection; and

47 (5) The motor vehicle or motorcycle displays a sticker
48 attached to the license plate, issued by the division,
49 indicating that the motor vehicle or motorcycle may be used
50 for general transportation.

51 (d) If more than one request is made for license plates
52 having the same number, the division shall accept only the
53 first application.

54 (e) The commissioner may propose rules for legislative
55 approval in accordance with the provisions of §29A-3-1 *et*
56 *seq.* of this code as may be necessary or convenient for the
57 carrying out of the provisions of this section.

58 (f) Upon appropriate application, together with a
59 special annual fee of \$40, which is in addition to all other
60 fees required by this chapter, there shall be issued to the
61 owner of an antique motor vehicle a special registration
62 plate for an antique motor vehicle titled in the name of the
63 qualified applicant, bearing a combination of letters or
64 numbers requested by that applicant, subject to the
65 approval by the commissioner, and with the maximum
66 number of letters or numbers to be determined by the
67 commissioner.

●

CHAPTER 154

**(Com. Sub. for S. B. 590 - By Senators Jeffries,
Baldwin, Beach, Clements, Cline, Facemire, Ojeda,
Palumbo, Plymale, Prezioso, Romano, Smith,
Stollings, Swope, Sypolt, Trump, Unger, Weld and
Woelfel)**

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

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

AN ACT to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to providing a special license plate to support a cure for childhood cancer.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

6 (1) Every registration plate shall be of reflectorized
7 material and have displayed upon it the registration number
8 assigned to the vehicle for which it is issued; the name of

9 this state, which may be abbreviated; and the year number
10 for which it is issued or the date of expiration of the plate.

11 (2) Every registration plate and the required letters and
12 numerals on the plate shall be of sufficient size to be plainly
13 readable from a distance of 100 feet during daylight:
14 *Provided*, That the requirements of this subdivision shall not
15 apply to the year number for which the plate is issued or the
16 date of expiration.

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

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

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

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

26 (A) Upon appropriate application, the division shall
27 issue to the Secretary of State, State Superintendent of
28 Schools, Auditor, Treasurer, Commissioner of Agriculture,
29 and the Attorney General, the members of both houses of
30 the Legislature, including the elected officials of both
31 houses of the Legislature, the justices of the Supreme Court
32 of Appeals of West Virginia, the representatives and
33 Senators of the state in the Congress of the United States,
34 the judges of the West Virginia circuit courts, active and
35 retired on senior status, the judges of the United States
36 district courts for the State of West Virginia and the judges
37 of the United States Court of Appeals for the fourth circuit,
38 if any of the judges are residents of West Virginia, a special
39 registration plate for a Class A motor vehicle and a special
40 registration plate for a Class G motorcycle owned by the
41 official or his or her spouse: *Provided*, That the division
42 may issue a Class A special registration plate for each

43 vehicle titled to the official and a Class G special
44 registration plate for each motorcycle titled to the official.

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

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

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

57 (A) Upon receipt of an application on a form prescribed
58 by the division and receipt of written evidence from the
59 chief executive officer of the Army National Guard or Air
60 National Guard, as appropriate, or the commanding officer
61 of any United States Armed Forces Reserve unit that the
62 applicant is a member thereof, the division shall issue to any
63 member of the National Guard of this state or a member of
64 any Reserve unit of the United States armed forces a special
65 registration plate designed by the commissioner for any
66 number of Class A motor vehicles owned by the member.
67 Upon presentation of written evidence of retirement status,
68 retired members of this state's Army or Air National Guard,
69 or retired members of any Reserve unit of the United States
70 armed forces, are eligible to purchase the special
71 registration plate issued pursuant to this subdivision.

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

78 section and all fees collected by the division shall be
79 deposited in the State Road Fund.

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

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

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

94 (B) The commissioner shall propose rules for legislative
95 approval in accordance with the provisions of §29A-1-1 *et*
96 *seq.* of this code regarding the orderly distribution of the
97 plates: *Provided*, That for purposes of this subdivision, the
98 registration plates requested and issued shall include all
99 plates bearing the numbers two through two thousand.

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

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

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

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

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

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

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

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

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

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

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

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

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

162 (D) A recipient of the Purple Heart medal may obtain a
163 second Purple Heart medal license plate as described in this
164 section for use on a passenger vehicle titled in the name of
165 the qualified applicant. The division shall charge a one-time
166 fee of \$10 to be deposited into the State Road Fund, in
167 addition to all other fees required by this chapter, for the
168 second plate.

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

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

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

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

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

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

197 (A) Approved nonprofit charitable and educational
198 organizations previously authorized under the prior
199 enactment of this subdivision may accept and collect
200 applications for special registration plates from owners of
201 Class A motor vehicles together with a special annual fee of
202 \$15, which is in addition to all other fees required by this
203 chapter. The applications and fees shall be submitted to the
204 Division of Motor Vehicles with the request that the
205 division issue a registration plate bearing a combination of
206 letters or numbers with the organizations' logo or emblem,
207 with the maximum number of letters or numbers to be
208 determined by the commissioner.

209 (B) The commissioner shall propose rules for legislative
210 approval in accordance with the provisions of §29A-3-1 *et*
211 *seq.* of this code regarding the procedures for and approval
212 of special registration plates issued pursuant to this
213 subdivision.

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

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

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

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

246 (C) Each application submitted pursuant to this
247 subdivision shall be accompanied by payment of a special
248 initial application fee of \$10, which is in addition to any
249 other registration or license fee required by this chapter. All

250 special fees shall be collected by the division and deposited
251 into the State Road Fund.

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

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

266 (B) Each application submitted pursuant to this
267 subdivision shall be accompanied by an affidavit stating that
268 the applicant is justified in having a registration with the
269 requested insignia; proof of compliance with all laws of this
270 state regarding registration and licensure of motor vehicles;
271 and payment of all required fees. The firefighter
272 certification department, section or division of the West
273 Virginia University fire service extension shall notify the
274 commissioner in writing immediately when a firefighter
275 loses his or her certification. If a firefighter loses his or her
276 certification, the commissioner may not issue him or her a
277 license plate under this subsection.

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

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

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

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

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

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

303 (B) The division may charge a special one-time initial
304 application fee of \$10 in addition to all other fees required
305 by this chapter. This special fee is to compensate the
306 Division of Motor Vehicles for additional costs and services
307 required in the issuing of the special registration and shall
308 be collected by the division and deposited in the State Road
309 Fund: *Provided*, That nothing in this section may be
310 construed to exempt any veteran from any other provision
311 of this chapter.

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

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

318 (A) The division may issue a special registration plate
319 for the members of any military organization chartered by
320 the United States Congress upon receipt of a guarantee from
321 the organization of a minimum of 100 applicants. The
322 insignia on the plate shall be designed by the commissioner.

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

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

336 (D) A surviving spouse may continue to use his or her
337 deceased spouse's military organization registration plate
338 until the surviving spouse dies, remarries or does not renew
339 the special military organization registration plate.

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

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

349 (B) The division shall charge an annual fee of \$15 for
350 each special nongame wildlife registration plate and each
351 special wildlife registration plate in addition to all other fees

352 required by this chapter. All annual fees collected for
353 nongame wildlife registration plates and wildlife
354 registration plates shall be deposited in a special revenue
355 account designated the Nongame Wildlife Fund and
356 credited to the Division of Natural Resources.

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

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

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

368 (B) A qualified member of the Silver Haired Legislature
369 may obtain one registration plate described in this
370 subdivision for use on a passenger vehicle titled in the name
371 of the qualified applicant. The division shall charge an
372 annual fee of \$15, in addition to all other fees required by
373 this chapter, for the plate. All annual fees collected by the
374 division shall be deposited in the State Road Fund.

375 (17) Upon appropriate application, the commissioner
376 shall issue to a classic motor vehicle or classic motorcycle
377 as defined in §17A-10-3a of this code, a special registration
378 plate designed by the commissioner. An annual fee of \$15,
379 in addition to all other fees required by this chapter, shall be
380 charged for each classic registration plate.

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

384 (A) Upon appropriate application, there shall be issued
385 to any honorably discharged veteran of any branch of the

386 armed services of the United States a special registration
387 plate for any number of motorcycles subject to Class G
388 registration titled in the name of the qualified applicant with
389 an insignia designed by the Commissioner of the Division
390 of Motor Vehicles.

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

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

401 (19) Racing theme special registration plates:

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

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

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

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

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

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

438 (C) A surviving spouse may continue to use his or her
439 deceased spouse's Navy Cross, Distinguished Service
440 Cross, Distinguished Flying Cross, Air Force Cross, Silver
441 Star, Bronze Star, or Air Medal special registration plate
442 until the surviving spouse dies, remarries or does not renew
443 the special registration plate.

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

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

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

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

465 (22) The division may issue special volunteer firefighter
466 registration plates as follows:

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

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

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

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

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

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

505 (C) The provisions of §17A-3-14(d) of this code are not
506 applicable for the issuance of the license plates designated
507 by this subdivision.

508 (24) Special license plates bearing the American flag
509 and the logo “9/11/01”.

510 (A) Upon appropriate application, the division shall
511 issue special registration plates which shall display the
512 American flag and the logo “9/11/01”.

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

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

520 (25) The division may issue a special registration plate
521 celebrating the centennial of the 4-H youth development

522 movement and honoring the Future Farmers of America
523 organization as follows:

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

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

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

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

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

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

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

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

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

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

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

566 (D) Notwithstanding the provisions of §17A-3-14(d) of
567 this code, the time period for the Nemesis Shrine to comply
568 with the minimum 100 prepaid applications is hereby
569 extended to January 15, 2005.

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

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

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

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

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

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

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

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

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

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

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

614 (D) Notwithstanding the provisions of §17A-3-14(d) of
615 this code, the time period for the Knights of Columbus to
616 comply with the minimum 100 prepaid applications is
617 hereby extended to January 15, 2007.

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

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

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

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

634 (32) Democratic state or county executive committee
635 member special registration plates:

636 (A) The division shall design and issue special
637 registration plates for use by democratic state or county
638 executive committee members. The design of the plates
639 shall include an insignia of a donkey and shall differentiate
640 by wording on the plate between state and county executive
641 committee members.

642 (B) An annual fee of \$25 shall be charged for each
643 democratic state or county executive committee member
644 registration plate in addition to all other fees required by this
645 chapter. All annual fees collected for each special plate
646 issued under this subdivision shall be deposited into the
647 State Road Fund.

648 (C) A special application fee of \$10 shall be charged at
649 the time of initial application as well as upon application for
650 any duplicate or replacement registration plate, in addition

651 to all other fees required by this chapter. All application fees
652 shall be deposited into the State Road Fund.

653 (D) The division shall not begin production of a plate
654 authorized under the provisions of this subdivision until the
655 division receives at least 100 completed applications from
656 the state or county executive committee members, including
657 all fees required pursuant to this subdivision.

658 (E) Notwithstanding the provisions of §17A-3-14(d) of
659 this code, the time period for the democratic executive
660 committee to comply with the minimum 100 prepaid
661 applications is hereby extended to January 15, 2005.

662 (33) The division may issue honorably discharged
663 female veterans' special registration plates as follows:

664 (A) Upon appropriate application, there shall be issued
665 to any female honorably discharged veteran, of any branch
666 of the armed services of the United States, a special
667 registration plate for any number of vehicles titled in the
668 name of the qualified applicant with an insignia designed by
669 the Commissioner of the Division of Motor Vehicles to
670 designate the recipient as a woman veteran.

671 (B) A special initial application fee of \$10 shall be
672 charged in addition to all other fees required by law. This
673 special fee shall be collected by the division and deposited
674 in the State Road Fund: *Provided*, That nothing in this
675 section may be construed to exempt any veteran from any
676 other provision of this chapter.

677 (C) A surviving spouse may continue to use his
678 deceased spouse's honorably discharged veterans license
679 plate until the surviving spouse dies, remarries or does not
680 renew the license plate.

681 (34) The division may issue special registration plates
682 bearing the logo, symbol, insignia, letters or words
683 demonstrating association with West Liberty State College
684 to any resident owner of a motor vehicle. Resident owners

685 may apply for the special license plate for any number of
686 Class A vehicles titled in the name of the applicant. The
687 special registration plates shall be designed by the
688 commissioner. Each application submitted pursuant to this
689 subdivision shall be accompanied by payment of a special
690 initial application fee of \$15, which is in addition to any
691 other registration or license fee required by this chapter. The
692 division shall charge an annual fee of \$15 for each special
693 registration plate in addition to all other fees required by this
694 chapter. All special fees shall be collected by the division
695 and deposited into the State Road Fund.

696 (35) The division may issue special registration plates
697 to members of the Harley Owners Group as follows:

698 (A) Upon appropriate application, the division may
699 issue a special registration plate designed by the
700 commissioner for any number of vehicles titled in the name
701 of the qualified applicant. Persons desiring the special
702 registration plate shall offer sufficient proof of membership
703 in the Harley Owners Group.

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

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

710 (36) The division may issue special registration plates
711 for persons retired from any branch of the armed services of
712 the United States as follows:

713 (A) Upon appropriate application, there shall be issued
714 to any person who has retired after service in any branch of
715 the armed services of the United States, a special
716 registration plate for any number of vehicles titled in the
717 name of the qualified applicant with an insignia designed by
718 the Commissioner of the Division of Motor Vehicles to

719 designate the recipient as retired from the armed services of
720 the United States.

721 (B) A special initial application fee of \$10 shall be
722 charged in addition to all other fees required by law. This
723 special fee shall be collected by the division and deposited
724 in the State Road Fund: *Provided*, That nothing in this
725 section may be construed to exempt any registrants from
726 any other provision of this chapter.

727 (C) A surviving spouse may continue to use his or her
728 deceased spouse's retired military license plate until the
729 surviving spouse dies, remarries or does not renew the
730 license plate.

731 (37) The division may issue special registration plates
732 bearing the logo, symbol, insignia, letters or words
733 demonstrating association with or support for Fairmont
734 State College as follows:

735 (A) Upon appropriate application, the division may
736 issue a special registration plate designed by the
737 commissioner for any number of vehicles titled in the name
738 of the qualified applicant.

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

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

745 (38) The division may issue special registration plates
746 honoring the farmers of West Virginia as follows:

747 (A) Any owner of a motor vehicle who is a resident of
748 West Virginia may apply for a special license plate
749 depicting a farming scene or other apt reference to farming,
750 whether in pictures or words, at the discretion of the
751 commissioner.

752 (B) The division shall charge a special initial application
753 fee of \$10. This special fee shall be collected by the division
754 and deposited in the State Road Fund.

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

757 (39) The division shall issue special registration plates
758 promoting education as follows:

759 (A) Upon appropriate application, the division shall
760 issue a special registration plate displaying a children's
761 education-related theme as prescribed and designated by the
762 commissioner and the State Superintendent of Schools.

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

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

769 (40) The division may issue members of the 82nd
770 Airborne Division Association special registration plates as
771 follows:

772 (A) The division may issue a special registration plate
773 for members of the 82nd Airborne Division Association
774 upon receipt of a guarantee from the organization of a
775 minimum of 100 applicants. The insignia on the plate shall
776 be designed by the commissioner.

777 (B) Upon appropriate application, the division may
778 issue members of the 82nd Airborne Division Association
779 in good standing, as determined by the governing body of
780 the organization, a special registration plate for any number
781 of vehicles titled in the name of the qualified applicant.

782 (C) The division shall charge a special one-time initial
783 application fee of \$10 for each special license plate in

784 addition to all other fees required by this chapter. All initial
785 application fees collected by the division shall be deposited
786 into the State Road Fund: *Provided*, That nothing in this
787 section may be construed to exempt the applicant from any
788 other provision of this chapter.

789 (D) A surviving spouse may continue to use his or her
790 deceased spouse's special 82nd Airborne Division
791 Association registration plate until the surviving spouse
792 dies, remarries or does not renew the special registration
793 plate.

794 (41) The division may issue special registration plates
795 to survivors of wounds received in the line of duty as a
796 member with a West Virginia law-enforcement agency.

797 (A) Upon appropriate application, the division shall
798 issue to any member of a municipal police department,
799 sheriff's department, the State Police, or the law-
800 enforcement division of the Division of Natural Resources
801 who has been wounded in the line of duty and awarded a
802 Purple Heart in recognition thereof by the West Virginia
803 Chiefs of Police Association, the West Virginia Sheriffs'
804 Association, the West Virginia Troopers Association, or the
805 Division of Natural Resources a special registration plate
806 for one vehicle titled in the name of the qualified applicant
807 with an insignia appropriately designed by the
808 commissioner.

809 (B) Registration plates issued pursuant to this
810 subdivision are exempt from the registration fees otherwise
811 required by the provisions of this chapter.

812 (C) A surviving spouse may continue to use his or her
813 deceased spouse's special registration plate until the
814 surviving spouse dies, remarries or does not renew the plate.

815 (D) Survivors of wounds received in the line of duty as
816 a member with a West Virginia law-enforcement agency
817 may obtain a license plate as described in this section for

818 use on a passenger vehicle titled in the name of the qualified
819 applicant. The division shall charge a one-time fee of \$10 to
820 be deposited into the State Road Fund, in addition to all
821 other fees required by this chapter, for the second plate.

822 (42) The division may issue a special registration plate
823 for persons who are Native-Americans and residents of this
824 state.

825 (A) Upon appropriate application, the division shall
826 issue to an applicant who is a Native-American resident of
827 West Virginia a registration plate for a vehicle titled in the
828 name of the applicant with an insignia designed by the
829 Commissioner of the Division of Motor Vehicles to
830 designate the recipient as a Native American.

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

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

837 (43) The division may issue special registration plates
838 commemorating the centennial anniversary of the creation
839 of Davis and Elkins College as follows:

840 (A) Upon appropriate application, the division may
841 issue a special registration plate designed by the
842 commissioner to commemorate the centennial anniversary
843 of Davis and Elkins College for any number of vehicles
844 titled in the name of the applicant.

845 (B) The division shall charge a special initial application
846 fee of \$10. This special fee shall be collected by the division
847 and deposited in the State Road Fund.

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

850 (44) The division may issue special registration plates
851 recognizing and honoring breast cancer survivors. The
852 division may also issue special registration plates to support
853 a cure for childhood cancer.

854 (A) Upon appropriate application, the division may
855 issue a special registration plate designed by the
856 commissioner to recognize and honor breast cancer
857 survivors, such plate to incorporate somewhere in the design
858 the “pink ribbon emblem”, for any number of vehicles titled
859 in the name of the applicant. Upon appropriate application,
860 the division may also issue a special registration plate
861 designed by the commissioner to support a cure for
862 childhood cancer, such plate to incorporate somewhere in
863 the design the gold ribbon emblem with “WV Kids Cancer
864 Crusaders” below or next to the emblem and “Cure
865 Childhood Cancer” at the bottom of the plate, for any
866 number of vehicles titled in the name of the applicant.

867 (B) The division shall charge a special initial application
868 fee of \$10. This special fee shall be deposited in the State
869 Road Fund.

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

872 (45) The division may issue special registration plates
873 to members of the Knights of Pythias or Pythian Sisters as
874 follows:

875 (A) Upon appropriate application, the division may
876 issue a special registration plate designed by the
877 commissioner for any number of vehicles titled in the name
878 of the qualified applicant. Persons desiring the special
879 registration plate shall offer sufficient proof of membership
880 in the Knights of Pythias or Pythian Sisters.

881 (B) The division shall charge a special initial application
882 fee of \$10 in addition to all other fees required by law. This

883 special fee shall be collected by the division and deposited
884 in the State Road Fund.

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

887 (46) The commissioner may issue special registration
888 plates for whitewater rafting enthusiasts as follows:

889 (A) Upon appropriate application, the division may
890 issue a special registration plate designed by the
891 commissioner for any number of vehicles titled in the name
892 of the qualified applicant.

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

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

900 (47) The division may issue special registration plates
901 to members of Lions International as follows:

902 (A) Upon appropriate application, the division may
903 issue a special registration plate designed by the
904 commissioner in consultation with Lions International for
905 any number of vehicles titled in the name of the qualified
906 applicant. Persons desiring the special registration plate
907 shall offer sufficient proof of membership in Lions
908 International.

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

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

915 (48) The division may issue special registration plates
916 supporting organ donation as follows:

917 (A) Upon appropriate application, the division may
918 issue a special registration plate designed by the
919 commissioner which recognizes, supports and honors organ
920 and tissue donors and includes the words "Donate Life".

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

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

927 (49) The division may issue special registration plates
928 to members of the West Virginia Bar Association as
929 follows:

930 (A) Upon appropriate application, the division may
931 issue a special registration plate designed by the
932 commissioner in consultation with the West Virginia Bar
933 Association for any number of vehicles titled in the name of
934 the qualified applicant. Persons desiring the special
935 registration plate shall offer sufficient proof of membership
936 in the West Virginia Bar Association.

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

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

943 (50) The division may issue special registration plates
944 bearing an appropriate logo, symbol or insignia combined
945 with the words "SHARE THE ROAD" designed to promote
946 bicycling in the state as follows:

947 (A) Upon appropriate application, the division may
948 issue a special registration plate designed by the
949 commissioner for any number of vehicles titled in the name
950 of the applicant.

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

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

957 (51) The division may issue special registration plates
958 honoring coal miners and the coal industry as follows:

959 (A) Upon appropriate application, the division shall
960 issue a special registration plate depicting and displaying
961 coal miners in mining activities as prescribed and
962 designated by the commissioner and the board of the
963 National Coal Heritage Area Authority. The division may
964 also issue registration plates with the words "Friends of
965 Coal".

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

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

972 (D) The provisions of §17A-3-14(d) of this code are not
973 applicable for the issuance of the license plates designated
974 by this subdivision.

975 (52) The division may issue special registration plates
976 to present and former Boy Scouts as follows:

977 (A) Upon appropriate application, the division may
978 issue a special registration plate designed by the

979 commissioner for any number of vehicles titled in the name
980 of the qualified applicant. Persons desiring the special
981 registration plate shall offer sufficient proof of present or
982 past membership in the Boy Scouts as either a member or a
983 leader.

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

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

990 (53) The division may issue special registration plates
991 to present and former Boy Scouts who have achieved Eagle
992 Scout status as follows:

993 (A) Upon appropriate application, the division may
994 issue a special registration plate designed by the
995 commissioner for any number of vehicles titled in the name
996 of the qualified applicant. Persons desiring the special
997 registration plate shall offer sufficient proof of achievement
998 of Eagle Scout status.

999 (B) The division shall charge a special initial application
1000 fee of \$10 in addition to all other fees required by law. This
1001 special fee shall be deposited in the State Road Fund.

1002 (C) An annual fee of \$15 shall be charged for each plate
1003 in addition to all other fees required by this chapter.

1004 (54) The division may issue special registration plates
1005 recognizing and memorializing victims of domestic
1006 violence.

1007 (A) Upon appropriate application, the division may
1008 issue a special registration plate designed by the
1009 commissioner to recognize and memorialize victims of
1010 domestic violence, such plate to incorporate somewhere in

1011 the design the “purple ribbon emblem”, for any number of
1012 vehicles titled in the name of the applicant.

1013 (B) The division shall charge a special initial application
1014 fee of \$10. This special fee shall be deposited in the State
1015 Road Fund.

1016 (C) An annual fee of \$15 shall be charged for each plate
1017 in addition to all other fees required by this chapter.

1018 (55) The division may issue special registration plates
1019 bearing the logo, symbol, insignia, letters or words
1020 demonstrating association with or support for the University
1021 of Charleston as follows:

1022 (A) Upon appropriate application, the division may
1023 issue a special registration plate designed by the
1024 commissioner for any number of vehicles titled in the name
1025 of the qualified applicant.

1026 (B) The division shall charge a special initial application
1027 fee of \$10 in addition to all other fees required by law. This
1028 special fee shall be collected by the division and deposited
1029 in the State Road Fund.

1030 (C) An annual fee of \$15 shall be charged for each plate
1031 in addition to all other fees required by this chapter.

1032 (56) The division may issue special registration plates
1033 to members of the Sons of the American Revolution as
1034 follows:

1035 (A) Upon appropriate application, the division may
1036 issue a special registration plate designed by the
1037 commissioner in consultation with the Sons of the American
1038 Revolution for any number of vehicles titled in the name of
1039 the qualified applicant. Persons desiring the special
1040 registration plate shall offer sufficient proof of membership
1041 in the Sons of the American Revolution.

1042 (B) The division shall charge a special initial application
1043 fee of \$10 in addition to all other fees required by law. This
1044 special fee shall be collected by the division and deposited
1045 in the State Road Fund.

1046 (C) An annual fee of \$15 shall be charged for each plate
1047 in addition to all other fees required by this chapter.

1048 (57) The commissioner may issue special registration
1049 plates for horse enthusiasts as follows:

1050 (A) Upon appropriate application, the division may
1051 issue a special registration plate designed by the
1052 commissioner for any number of vehicles titled in the name
1053 of the qualified applicant.

1054 (B) The division shall charge a special initial application
1055 fee of \$10 in addition to all other fees required by law. This
1056 special fee shall be collected by the division and deposited
1057 in the State Road Fund.

1058 (C) The division shall charge an annual fee of \$15 for
1059 each special registration plate in addition to all other fees
1060 required by this chapter.

1061 (58) The commissioner may issue special registration
1062 plates to the next of kin of a member of any branch of the
1063 armed services of the United States killed in combat as
1064 follows:

1065 (A) Upon appropriate application, the division shall
1066 issue a special registration plate for any number of vehicles
1067 titled in the name of a qualified applicant depicting the Gold
1068 Star awarded by the United States Department of Defense
1069 as prescribed and designated by the commissioner.

1070 (B) The next of kin shall provide sufficient proof of
1071 receiving a Gold Star lapel button from the United States
1072 Department of Defense in accordance with Public Law 534,
1073 89th Congress, and criteria established by the United States

1074 Department of Defense, including criteria to determine next
1075 of kin.

1076 (C) The division shall charge a special initial application
1077 fee of \$10 in addition to all other fees required by law. This
1078 special fee shall be collected by the division and deposited
1079 in the State Road Fund.

1080 (D) The provisions of §17A-3-14(d) of this code are not
1081 applicable for the issuance of the special license plates
1082 designated by this subdivision.

1083 (59) The commissioner may issue special registration
1084 plates for retired or former Justices of the Supreme Court of
1085 Appeals of West Virginia as follows:

1086 (A) Upon appropriate application, the division may
1087 issue a special registration plate designed by the
1088 commissioner for any number of vehicles titled in the name
1089 of the qualified applicant.

1090 (B) The division shall charge a special initial application
1091 fee of \$10 in addition to all other fees required by law. This
1092 special fee shall be collected by the division and deposited
1093 in the State Road Fund.

1094 (C) The division shall charge an annual fee of \$15 for
1095 each special registration plate in addition to all other fees
1096 required by this chapter.

1097 (D) The provisions of §17A-3-14(d) of this code are not
1098 applicable for the issuance of the special license plates
1099 designated by this subdivision.

1100 (60) Upon approval by the commissioner of an
1101 appropriate application, and upon all requirements of this
1102 subdivision being satisfied, the division may issue special
1103 registration plates for Class A and Class G motor vehicles
1104 to members of an organization for which a special
1105 registration plate has not been issued pursuant to any other

1106 subdivision in this subsection prior to January 1, 2010, in
1107 accordance with the provisions of this subdivision.

1108 (A) An organization desiring to create a special
1109 registration plate must comply with the following
1110 requirements to be eligible to apply for the creation and
1111 issuance of a special registration plate:

1112 (i) The organization must be a nonprofit organization
1113 organized and existing under Section 501(c)(3) of Title 26
1114 of the Internal Revenue Code and based, headquartered or
1115 have a chapter in West Virginia;

1116 (ii) The organization may be organized for, but may not
1117 be restricted to, social, civic, higher education or
1118 entertainment purposes;

1119 (iii) The organization may not be a political party and
1120 may not have been created or exist primarily to promote a
1121 specific political or social belief, as determined by the
1122 commissioner in his or her sole discretion;

1123 (iv) The organization may not have as its primary
1124 purpose the promotion of any specific faith, religion,
1125 religious belief or antireligion;

1126 (v) The name of the organization may not be the name
1127 of a special product or brand name, and may not be
1128 construed, as determined by the commissioner, as
1129 promoting a product or brand name; and

1130 (vi) The organization's lettering, logo, image or
1131 message to be placed on the registration plate, if created,
1132 may not be obscene, offensive or objectionable as
1133 determined by the commissioner in his or her sole
1134 discretion.

1135 (B) Beginning July 1, 2010, an organization requesting
1136 the creation and issuance of a special registration plate may
1137 make application with the division. The application shall
1138 include sufficient information, as determined by the

1139 commissioner, to determine whether the special registration
1140 plate requested and the organization making the application
1141 meet all of the requirements set forth in this subdivision.
1142 The application shall also include a proposed design,
1143 including lettering, logo, image or message to be placed on
1144 the registration plate. The commissioner shall notify the
1145 organization of the commissioner's approval or disapproval
1146 of the application.

1147 (C)(i) The commissioner may not begin the design or
1148 production of any license plates authorized and approved
1149 pursuant to this subdivision until the organization which
1150 applied for the special registration plate has collected and
1151 submitted collectively to the division applications
1152 completed by at least 250 persons and collectively deposited
1153 with the division all fees necessary to cover the first year's
1154 basic registration, one-time design and manufacturing costs
1155 and to cover the first year additional annual fee for all of the
1156 applications submitted.

1157 (ii) If the organization fails to submit the required
1158 number of applications and fees within six months of the
1159 effective date of the approval of the application for the plate
1160 by the commissioner, the plate will not be produced until a
1161 new application is submitted and is approved by the
1162 commissioner: *Provided*, That an organization that is
1163 unsuccessful in obtaining the minimum number of
1164 applications may not make a new application for a special
1165 plate until at least two years have passed since the approval
1166 of the previous application of the organization.

1167 (D) The division shall charge a special initial
1168 application fee of \$25 for each special license plate in
1169 addition to all other fees required by law. This special fee
1170 shall be collected by the division and deposited in the State
1171 Road Fund.

1172 (E) The division shall charge an annual fee of \$15 for
1173 each special registration plate in addition to all other fees
1174 required by this chapter.

1175 (F) Upon appropriate application, the division may issue
1176 a special registration plate designed by the commissioner in
1177 consultation with the organization for any number of
1178 vehicles titled in the name of a qualified registration plate
1179 applicant. Persons desiring the special registration plate
1180 shall offer sufficient proof of membership in the
1181 organization.

1182 (G) The commissioner shall discontinue the issuance or
1183 renewal of the registration of any special plate issued
1184 pursuant to this subdivision if:

1185 (i) The number of valid registrations for the specialty
1186 plate falls below 250 plates for at least 12 consecutive
1187 months; or

1188 (ii) The organization no longer exists or no longer meets
1189 the requirements of this subdivision.

1190 (d) The minimum number of applications required prior
1191 to design and production of a special license plate shall be
1192 as follows:

1193 (1) The commissioner may not begin the design or
1194 production of any license plates for which eligibility is
1195 based on membership or affiliation with a particular private
1196 organization until at least 100 persons complete an
1197 application and deposit with the organization a check to
1198 cover the first year's basic registration, one-time design and
1199 manufacturing costs and to cover the first year additional
1200 annual fee. If the organization fails to submit the required
1201 number of applications with attached checks within six
1202 months of the effective date of the original authorizing
1203 legislation, the plate will not be produced and will require
1204 legislative reauthorization: *Provided*, That an organization
1205 or group that is unsuccessful in obtaining the minimum
1206 number of applications may not request reconsideration of
1207 a special plate until at least two years have passed since the
1208 effective date of the original authorization: *Provided*,
1209 *however*, That the provisions of this subdivision are not

1210 applicable to the issuance of plates authorized pursuant to
1211 §17A-3-14(c)(60) of this code.

1212 (2) The commissioner may not begin the design or
1213 production of any license plates authorized by this section
1214 for which membership or affiliation with a particular
1215 organization is not required until at least 250 registrants
1216 complete an application and deposit a fee with the division
1217 to cover the first year's basic registration fee, one-time
1218 design and manufacturing fee and additional annual fee if
1219 applicable. If the commissioner fails to receive the required
1220 number of applications within six months of the effective
1221 date of the original authorizing legislation, the plate will not
1222 be produced and will require legislative reauthorization:
1223 *Provided*, That if the minimum number of applications is
1224 not satisfied within the six months of the effective date of
1225 the original authorizing legislation, a person may not
1226 request reconsideration of a special plate until at least two
1227 years have passed since the effective date of the original
1228 authorization.

1229 (e)(1) Nothing in this section requires a charge for a free
1230 prisoner of war license plate or a free recipient of the
1231 Congressional Medal of Honor license plate for a vehicle
1232 titled in the name of the qualified applicant as authorized by
1233 other provisions of this code.

1234 (2) A surviving spouse may continue to use his or her
1235 deceased spouse's prisoner of war license plate or
1236 Congressional Medal of Honor license plate until the
1237 surviving spouse dies, remarries or does not renew the
1238 license plate.

1239 (3) Qualified former prisoners of war and recipients of
1240 the Congressional Medal of Honor may obtain a second
1241 special registration plate for use on a passenger vehicle
1242 titled in the name of the qualified applicant. The division
1243 shall charge a one-time fee of \$10 to be deposited into the
1244 State Road Fund, in addition to all other fees required by
1245 this chapter, for the second special plate.

1246 (f) The division may issue special 10-year registration
1247 plates as follows:

1248 (1) The commissioner may issue or renew for a period
1249 of no more than 10 years any registration plate exempted
1250 from registration fees pursuant to any provision of this code
1251 or any restricted use antique motor vehicle license plate
1252 authorized by §17A-10-3a of this code: *Provided*, That the
1253 provisions of this subsection do not apply to any person who
1254 has had a special registration suspended for failure to
1255 maintain motor vehicle liability insurance as required by
1256 §17D-2A-3 of this code or failure to pay personal property
1257 taxes as required by §17A-3-3a of this code.

1258 (2) An initial nonrefundable fee shall be charged for
1259 each special registration plate issued pursuant to this
1260 subsection, which is the total amount of fees required by
1261 §17A-10-15, §17A-3-3, or §17A-10-3a of this code for the
1262 period requested.

1263 (g) The provisions of this section may not be construed
1264 to exempt any registrant from maintaining motor vehicle
1265 liability insurance as required by §17D-2A-3 of this code or
1266 from paying personal property taxes on any motor vehicle
1267 as required by §17A-3-3a of this code.

1268 (h) The commissioner may, in his or her discretion,
1269 issue a registration plate of reflectorized material suitable
1270 for permanent use on motor vehicles, trailers and
1271 semitrailers, together with appropriate devices to be
1272 attached to the registration to indicate the year for which the
1273 vehicles have been properly registered or the date of
1274 expiration of the registration. The design and expiration of
1275 the plates shall be determined by the commissioner. The
1276 commissioner shall, whenever possible and cost effective,
1277 implement the latest technology in the design, production
1278 and issuance of registration plates, indices of registration
1279 renewal and vehicle ownership documents, including, but
1280 not limited to, offering Internet renewal of vehicle
1281 registration and the use of bar codes for instant

1282 identification of vehicles by scanning equipment to promote
1283 the efficient and effective coordination and communication
1284 of data for improving highway safety, aiding law
1285 enforcement and enhancing revenue collection.

1286 (i) Any license plate issued or renewed pursuant to this
1287 chapter which is paid for by a check that is returned for
1288 nonsufficient funds is void without further notice to the
1289 applicant. The applicant may not reinstate the registration
1290 until the returned check is paid by the applicant in cash,
1291 money order or certified check and all applicable fees
1292 assessed as a result thereof have been paid.

CHAPTER 155

**(Com. Sub. for H. B. 2008 - By Delegates Gearheart
and Hamrick)**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §17A-6-2a of the Code of West Virginia, 1931, as amended, relating generally to the Dealer Recovery Fund; specifying that the Dealer Recovery Fund Control Board has discretionary jurisdiction to hear claims; and providing the types of claims for damages that may be awarded from the Dealer Recovery Fund.

Be it enacted by the Legislature of West Virginia:

That §17A-6-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS
OR DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS.**

§17A-6-2a. Dealer recovery fund created.

1 (a) There is hereby created a special fund in the State
2 Treasury which is to be designated the “Dealer Recovery
3 Fund.” The fund consists of certain moneys received from
4 persons engaged in the business of selling new or used
5 motor vehicles, new or used motorcycles, trailers,
6 multitrailers or recreational vehicles and from grants, gifts,
7 bequests or awards arising out of the settlement or
8 adjudication of a claim. The fund is not to be treated by the
9 Auditor and Treasurer as part of the general revenue of the
10 state. The fund is to be a special revolving fund paid out
11 upon order of the Commissioner of Motor Vehicles based
12 on the recommendation of the Dealer Recovery Fund
13 control board created in this section, solely for the purposes
14 specified in this section. The commissioner may use up to
15 one percent of funds from the Dealer Recovery Fund for the
16 administrative expenses of operating the Dealer Recovery
17 Fund program.

18 (b) The Dealer Recovery Fund control board consists of
19 the Commissioner of Motor Vehicles or his or her designee,
20 the Attorney General’s designee representing the Office of
21 Consumer Protection and one representative selected by the
22 Motor Vehicle Dealer’s Advisory Board. The Commissioner
23 of Motor Vehicles or his or her designee serves as chair and
24 the board shall meet at least once a year during the month of
25 July, and as required by the commissioner. The board may
26 hear claims consistent only with the purposes specified in this
27 section. The board may recommend rejection or acceptance of
28 a claim, in full or in part. The recommendation of the board
29 requires a majority vote of the board. The commissioner may
30 propose rules for promulgation in accordance with §29A-3-1
31 *et seq.* of this code that are necessary to effectuate the
32 provisions of this section. The commissioner may employ the
33 necessary staff needed to operate the program. The board may
34 prorate the amount paid on claims when the aggregate amount
35 of valid claims submitted would exceed 33 percent of the fund.
36 However, claims presented by the Division of Motor Vehicles
37 for taxes and fees shall be paid in full. The board may purchase

38 insurance at a cost not to exceed one percent of the fund to
39 cover extraordinary or excess claims from the fund.

40 (c) Every applicant for either an original dealer license
41 or renewal of an existing dealer license of the type
42 enumerated in subsection (a) of this section shall pay, in
43 addition to any other license fee, an annual Dealer Recovery
44 Fund fee of \$150. All dealers shall continue to maintain a
45 surety bond as required by this article and the Dealer
46 Recovery Fund payment unless exempt by one of the
47 following requirements:

48 (1) Any dealer who, for the three years immediately
49 preceding assessment of the fees, has not had a claim paid
50 against their bond or against the Dealer Recovery Fund,
51 whose license has not been suspended or revoked and who
52 has not been assessed any civil penalties is not required to
53 continue to keep the bond required by this article. However,
54 no dealer can submit a claim against the fund unless it has
55 contributed to the fund for at least three years.

56 (2) If the Dealer Recovery Fund reaches or exceeds the
57 amount of \$3,000,000 as of July 1, of any year, a dealer who
58 meets the requirements of subdivision (1) of this subsection, is
59 exempt from payment of the annual Dealer Recovery Fund
60 fee. However, if the fund should, as of April 1 of any year,
61 drop below \$3,000,000, all dealers, regardless of any previous
62 exemption shall pay the annual dealer recovery fee of \$150.
63 The exemption prescribed in subdivision (1) of this subsection
64 remains in effect regardless of the status of the fund.

65 (d) The Dealer Recovery Fund control board may
66 consider payment only after any dealer surety bond required
67 pursuant to the provisions of section four of this article has
68 been exhausted.

69 (e) When the fund reaches \$250,000, the board shall
70 consider claims for payment.

71 (f) Claims against the fund are not to be made for any
72 act or omission which occurred prior to July 1, 2002.

73 (g) Claims for payment shall be submitted within six
74 months of the date of sale or the date the division is made
75 aware of the claim.

76 (h) The board shall pay claims in the following order:

77 (1) Claims submitted by the Division of Motor Vehicles
78 for unpaid taxes and fees;

79 (2) Claims submitted by a retail purchaser of a vehicle
80 from a dealer covered by the fund with an undisclosed lien
81 or a retail purchaser of a vehicle from a dealer covered by
82 the fund who finds that the lien on the vehicle traded in has
83 not been satisfied by the selling dealer if the lien satisfaction
84 was a condition of the purchase agreement;

85 (3) Claims submitted by a motor vehicle dealer
86 contributing to the fund, which has purchased a vehicle or
87 vehicles from another dealer covered by the fund with an
88 undisclosed lien;

89 (4) Claims submitted by a retail purchaser of third party
90 goods or services from a dealer covered by the fund for the
91 unpaid charges when the dealer fails to pay the third party
92 for the goods or services; or

93 (5) Claims submitted by the Division of Motor Vehicles,
94 a retail purchaser or a motor vehicle dealer contributing to
95 the fund, not authorized by subdivisions (1) through (4) of
96 this subsection, but otherwise payable under the bond
97 described in section four of this article, may be considered
98 for payment by the board up to the amount of \$50,000 for
99 each licensing year the West Virginia dealer that is the
100 subject of the complaint did not maintain the bond:
101 *Provided*, That the board may not consider claims submitted
102 by or on behalf of a financial institution for money owed by
103 a dealer upon a loan to a dealer or credit extended to a dealer

104 that is secured by a lien upon the inventory of the dealer,
105 commonly referred to as a floor planner.

106 (i) Payments under this section may not include
107 payment for claims of punitive or exemplary damages,
108 compensation for property damage other than to the vehicle,
109 recompense for any personal injury or inconvenience,
110 reimbursement for alternate transportation or payment for
111 attorney fees, legal expenses, court costs or accrued interest.

112 (j) The maximum claim against the fund for any unpaid
113 lien of a used vehicle is the unpaid balance of the lien up to
114 the loan value of the vehicle as of the date of the sale or
115 other transaction as shown by a generally accepted motor
116 vehicle value guide. The maximum claim against the fund
117 for any new or unused vehicle is the amount of the invoice
118 less any amounts rebated or to be rebated to the dealer from
119 the manufacturer. Payment is only to be made to a secured
120 party who agrees to accept payment from the Dealer
121 Recovery Fund and who accepts the payment in full
122 settlement of any claims, and who releases the lien and the
123 title, if applicable, prior to receiving payment. Any dealer
124 who agrees to accept payment from the Dealer Recovery
125 Fund shall release the title prior to receiving payment.

126 (k) On payment by the board to a claimant from the
127 fund, the board shall immediately notify the licensee against
128 whom a claim was paid and request full reimbursement
129 within thirty days of notification. If a dealer fails to fully
130 reimburse the board within the specified period of time, the
131 commissioner shall immediately and without prior hearing
132 revoke the dealer license of dealer against whom the claim
133 was paid. No applicant with an unpaid claim is eligible for
134 renewal or relicensure until the full amount of the
135 reimbursement plus interest as determined by the board is
136 paid to the fund. This section does not limit the authority of
137 the commissioner to suspend, revoke or levy civil penalties
138 against a dealer, nor does full repayment of the amount
139 owed to the fund necessarily nullify or modify the effect of
140 any action by the commissioner.

141 (l) This section does not limit the right of any person to
142 seek relief through civil action against any other person.

143 (m) The provisions of this section do not apply to those
144 class DTR dealers in the business of selling manufactured
145 housing and covered by the state manufactured housing
146 recovery fund established by the Division of Labor pursuant
147 to a legislative rule.

CHAPTER 156

**(Com. Sub. for H. B. 2831 - By Delegates Gearheart
and Frich)
(By Request of the Division of Motor Vehicles)**

[Passed February 20, 2018; in effect ninety days from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT to amend and reenact §17B-2-7a of the Code of West Virginia, 1931, as amended, relating to the Driver's Licensing Advisory Board; requiring one member of the advisory board to be a board certified neurologist licensed to practice medicine in this state; reducing number of physicians or surgeons serving on advisory board from four to three; permitting current appointees to advisory board to continue to serve until successors have been appointed; authorizing Commissioner of Motor Vehicles to request opinion of advisory board; requiring the board to respond to requests of the commissioner for opinions; providing reimbursement for advisory board members for actual and necessary expenses; requiring reimbursement to be consistent with guidelines of Travel Management Office; and eliminating sunset provision for advisory board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7a. Driver's Licensing Advisory Board.

1 (a) The Driver's Licensing Advisory Board is hereby
2 continued. The board shall consist of five members to be
3 appointed by the Governor, by and with the advice and consent
4 of the Senate, for terms of three years, commencing July 1,
5 2018: *Provided*, That as to the members first appointed, two
6 shall be appointed for a term of three years, two shall be
7 appointed for a term of two years and one shall be appointed
8 for a term of one year: *Provided, however*, That members who
9 last served as members of the board prior to the reenactment
10 of this section by the Legislature in the 2018 Regular Session
11 shall continue to serve until their successors have been
12 appointed. A member shall continue to serve until his or her
13 successor has been appointed. All vacancies occurring on the
14 board shall be filled by the Governor, by and with the advice
15 and consent of the Senate. One member of the board shall be
16 an optometrist duly registered to practice optometry in this
17 state, one member shall be a board certified neurologist who is
18 licensed to practice medicine in this state, and the other three
19 members of the board shall be physicians or surgeons duly
20 licensed to practice medicine or surgery in this state. The
21 Governor shall appoint persons qualified to serve on the board
22 who, in his or her opinion, will best serve the work and
23 function of the board.

24 (b) The board shall advise the Commissioner of Motor
25 Vehicles as to vision standards and all other medical criteria
26 of whatever kind or nature relevant to the licensing of
27 persons to operate motor vehicles under the provisions of
28 this chapter. The commissioner may, in her or his discretion,
29 request the opinion of the board. The board shall, upon
30 request, advise the Commissioner of Motor Vehicles as to
31 the mental or physical fitness of an applicant for, or the
32 holder of, a license to operate a motor vehicle. The board
33 shall furnish the commissioner with all such medical
34 standards, statistics, data, professional information and
35 advice as he or she may reasonably request.

36 (c) The members of the board shall receive the same
37 compensation as is paid to members of the Legislature for
38 their interim duties as recommended by the Citizens
39 Legislative Compensation Commission and authorized by
40 law, for each day or substantial portion thereof engaged in
41 the performance of official duties. Each member of the
42 board shall be reimbursed for his or her actual and necessary
43 expenses for each day or portion thereof engaged in the
44 discharge of official duties in a manner consistent with
45 guidelines of the Travel Management Office of the
46 Department of Administration.

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CHAPTER 157

(S. B. 425 - By Senators Ferns, Cline 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 §8-22-25a of the Code of West Virginia, 1931, as amended, relating to removing sunset dates upon which members of the policemen's or firemen's pension and relief fund are eligible for and elect to commence participation in a deferred retirement option plan.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

**§8-22-25a. Deferred retirement option plans; authorization;
requirements; limitations.**

1 (a) A deferred retirement option plan (DROP) is a method
2 to encourage retention of a worker beyond normal retirement
3 age by permitting the worker to freeze retirement benefits at a
4 certain time prior to ceasing work, to continue to work for a
5 specified period, and to have retirement benefits which accrue
6 while the employee continues working set aside in an account
7 which the worker will then receive in a lump sum upon finally
8 discontinuing work. The Legislature acknowledges that a
9 DROP may be a useful and economical tool for retaining
10 experienced and trained employees and for planning for
11 turnovers in the workforce. Experience, however, dictates that
12 a DROP may place a heavy financial burden on the employer
13 and the affected retirement system, negating any positive
14 benefit offered by the DROP if the DROP is not carefully
15 planned to be economically favorable to the employer and
16 revenue neutral for the affected retirement system while
17 remaining attractive to the targeted employee.

18 (b) (1) The governing bodies of municipalities
19 participating in policemen's and firemen's pension and relief
20 funds pursuant to §8-22-16 through §8-22-28 of this code, are
21 authorized to voluntarily offer DROPs. A participating
22 municipality may design and establish a DROP to best meet
23 the municipality's needs so long as the DROP complies with
24 federal law, the requirements set forth in this section and
25 approved by the Municipal Pensions Oversight Board.

26 (2) Prior to approval by the Municipal Pensions
27 Oversight Board, a municipality shall submit a proposed
28 DROP to the board for analysis by the qualified actuary
29 retained or employed by the board. The actuary shall
30 examine the plan and, in light of the elements of the DROP
31 and the actuarial projections of the impact of the DROP on
32 the affected pension and relief fund, advise the board of the
33 anticipated impact on the Municipal Pension and Relief
34 Fund. The board shall seek to approve only those DROPs
35 which, in the best judgment of the actuary, are designed to
36 have no negative impact on the member's pension and relief
37 fund. The submitting municipality shall reimburse the board
38 for actuarial costs of analyzing the plan.

39 (c) To be eligible to enter a DROP, the member of the
40 policemen's or firemen's pension and relief fund must be in
41 active employment and an active member of his or her
42 pension and relief fund for at least six months beyond
43 attaining eligibility for regular retirement as provided in §8-
44 22-25 of this code and have received a satisfactory
45 performance evaluation within the prior 12 months. The
46 member may defer retirement for a period of not less than
47 one nor more than five years but must complete the period
48 by age 65. The member may elect to commence
49 participation after July 1, 2011.

50 (d)(1) During the DROP participation period, the
51 member shall continue with full-time employment in a
52 covered position subject to the municipality's requirements.
53 A member's retirement benefits are calculated as of the
54 DROP participation date and a member may not accumulate
55 additional retirement benefits during the DROP
56 participation period. Upon beginning participation, the
57 member is treated as retired and receiving benefits for
58 purposes of the retirement system and for purposes of
59 distributing premium tax proceeds through the Municipal
60 Pensions Security Fund. During the participation period, the
61 employer shall continue to make regular contributions to the
62 employee's pension and relief fund.

63 (2) Benefit payments are accumulated for the member
64 in the pension and relief fund in an accumulation account
65 during the DROP participation period. At the end of the
66 participation period, the amount in the accumulation
67 account owing to the member, plus interest not to exceed
68 three and one-half percent, shall be paid to the member in a
69 lump sum. Monthly retirement payments shall be paid
70 directly to the member starting in the month following the
71 end of the DROP participation period.

72 (3) A member may voluntarily terminate DROP
73 participation early with 60 days' advance notice. Deferred
74 accumulated benefits will be paid with no interest for the
75 DROP period and benefits payments will commence

76 following the early termination date. Covered employment
77 must terminate before benefit distributions may be made.
78 Should the employer wish to terminate the employment
79 during the participation period, the member may terminate
80 participation with 30 days' notice and the deferred
81 accumulation balance shall be paid with interest according
82 to the DROP design: *Provided*, That if the employee is
83 terminated for cause during the participation period, the
84 member may terminate participation with 30 days' notice
85 and the deferred accumulation balance shall be paid without
86 interest according to the DROP design.

87 (4) A member who is unable to continue working because
88 of disability shall cease participation the first day of the month
89 following notice of disability to the employer and the pension
90 and relief fund. The accumulation account balance shall be
91 paid to the member with no interest. No additional benefits are
92 due the member on account of the disability.

93 (5) In the event of death of a member during DROP
94 participation, the accumulation account of the member through
95 the member's date of death is payable to the member's
96 beneficiary or beneficiaries, with interest according to DROP
97 design.

98 (6) A member entering the DROP is contractually
99 obligated to terminate employment at the end of the DROP
100 participation period. Failure to terminate voluntarily results in
101 termination of employment for cause, except that a member
102 who continues to work with the consent of the employer past
103 the DROP participation period shall have all benefits frozen
104 during the extension period and no additional benefit
105 accumulates. During the period of time the member continues
106 to work beyond the end of the DROP participation period with
107 the consent of the employer, the employer shall continue to
108 make regular contributions to the employee's pension and
109 relief fund. Regular retirement benefits will commence the
110 month following eventual employment termination or death.
111 The member's accumulation account balance is frozen in value
112 following the end of the DROP participation period.

113 (e) Pursuant to §4-1-23 of this code, the oversight board
 114 shall annually report to the Legislature's Joint Committee
 115 on Pensions and Retirement on DROPs submitted to the
 116 board for approval and the status of any DROP that has been
 117 approved, including any experienced impact on an affected
 118 pension and relief fund.

CHAPTER 158

(S. B. 612 - By Senators Boley, Boso and Maynard)

[Passed March 9, 2018; in effect ninety days from passage.]
 [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §8-12-18 of the Code of West Virginia, 1931, as amended, relating to the sale of municipal property; allowing municipalities to sell real or personal property by using an Internet-based public auction service; and requiring notice of sale include notice of the time, terms, manner, and place of sale or the Internet-based public auction service to be used.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART VI. SALE, LEASE, OR DISPOSITION OF

OTHER MUNICIPAL PROPERTY.

§8-12-18. Sale, lease, or disposition of other municipal property.

1 (a) Every municipality, municipal building commission
 2 created pursuant to §8-33-1 *et seq.* of this code, and

3 municipal development authority created pursuant to §7-12-
4 1 *et seq.* of this code is authorized to sell, lease as lessor, or
5 dispose of any of its real or personal property or any interest
6 therein or any part thereof (other than a public utility which
7 shall be sold or leased in accordance with the provisions of
8 §8-12-17 of this code), as authorized in §1-5-1 *et seq.* of this
9 code, or to the United States of America or any agency or
10 instrumentality thereof, or to the state or any agency or
11 instrumentality thereof, for a public purpose for an adequate
12 consideration, without considering alone the present
13 commercial or market value of such property.

14 (b) In all other cases involving a sale, any municipality
15 is hereby empowered and authorized to sell any of its real
16 or personal property or any interest therein or any part
17 thereof for a fair and adequate consideration, the property to
18 be sold at public auction at a place designated by the
19 governing body, or by using an Internet-based public
20 auction service, but before making any sale, notice of the
21 time, terms, and place of sale, together with a brief
22 description of the property to be sold, shall be published as
23 a Class II legal advertisement in compliance with the
24 provisions of §59-3-1 *et seq.* of this code and the publication
25 area for the publication shall be the municipality. The
26 requirements of notice and public auction shall not apply to
27 the sale of any one item or piece of property of less value
28 than \$1,000 and under no circumstances shall the provisions
29 of this section be construed as being applicable to any
30 transaction involving the trading in of municipally owned
31 property on the purchase of new or other property for the
32 municipality and every municipality shall have plenary
33 power and authority to enter into and consummate any
34 trade-in transaction.

35 (c) In all other cases involving a lease, any municipality
36 is hereby empowered and authorized to lease as lessor any
37 of its real or personal property or any interest therein or any
38 part thereof for a fair and adequate consideration and for a
39 term not exceeding 50 years. Every lease shall be authorized
40 by resolution of the governing body of the municipality,

41 which resolution may specify terms and conditions which
 42 must be contained in such lease: *Provided*, That before any
 43 proposed lease is authorized by resolution of the governing
 44 body, a public hearing on the proposed lease shall be held
 45 by the governing body after notice of the date, time, place
 46 and purpose of the public hearing has been published as a
 47 Class I legal advertisement in compliance with the
 48 provisions of §59-3-1 *et seq.* of this code and the publication
 49 area for the publication shall be the municipality. The power
 50 and authority granted in this subsection shall be in addition
 51 to, and not in derogation of, any power and authority vested
 52 in any municipality under any constitutional or other
 53 statutory provision now or hereafter in effect.

CHAPTER 159

**(Com. Sub. for H. B. 4289 - By Delegates Walters,
 Pethtel, Anderson, Hamilton, Hollen and E. Evans)
 (By Request of the West Virginia Municipal Pension
 Oversight Board)**

[Passed March 3, 2018; in effect ninety days from passage.]
 [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §8-22-24 of the Code of West Virginia, 1931, as amended, relating to disability pensions of municipal employees; removing provision relating to limitation of nonduty disability retirement; increasing amount of income that may be earned before an offset of benefits is required; and increasing that limit automatically when the minimum wage increases.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
 POLICEMEN'S PENSION AND RELIEF FUND;
 FIREMEN'S PENSION AND RELIEF FUND; PENSION
 PLANS FOR EMPLOYEES OF WATERWORKS**

**SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-24. Disability pensions.

1 (a) The monthly sum to be paid to each member eligible
2 for disability received as a proximate result of service
3 rendered in the performance of his or her duties under the
4 provisions of §8-22-23(a) of this code is equal to 60 percent
5 of the monthly salary being received by the member, at the
6 time he or she is so disabled, or the sum of \$500 per month,
7 whichever is greater: *Provided*, That the limitation provided
8 in subsection (b) of this section is not exceeded.

9 (b) Effective for any member who becomes eligible for
10 disability benefits on or after July 1, 1981, under the provisions
11 of §8-22-23a of this code, as a proximate result of service
12 rendered in the performance of the member's duties within
13 such departments, the member's monthly disability payment
14 as provided in subsection (a) of this section may not, when
15 aggregated with the monthly amount of state workers'
16 compensation, result in the disabled member receiving a total
17 monthly income from the sources in excess of one hundred
18 percent of the basic compensation which is paid to members
19 holding the same position which the member held within the
20 department at the time of the member's disability. Lump sum
21 payments of state workers' compensation benefits are not
22 considered for purposes of this subsection unless the lump sum
23 payments represent commuted values of monthly state
24 workers' compensation benefits.

25 (c) Any member who has served on active duty with the
26 armed forces of the United States as described in §8-22-27
27 of this code, whether prior or subsequent to becoming a
28 member of a paid police or fire department covered by the
29 provisions of this article, and who, on July 1, 1986, is
30 receiving or thereafter receives a disability pension, shall
31 receive in addition to the 60 percent or minimum \$500
32 authorized in subsection (a) of this section, one additional
33 percent for each year served in active military duty, up to a
34 maximum of four additional percent.

35 (d) Beginning on and after April 1, 1991, the monthly
36 sum to be paid to a member who becomes eligible for total
37 disability incurred not in the line of duty is the monthly
38 benefit provided in subsection (a) of this section: *Provided*,
39 That for any person receiving benefits under this subsection
40 who is self-employed or employed by another, there shall
41 be offset against the benefits the amount of \$1 for each \$3
42 of income derived from self-employment or employment by
43 another: *Provided, however*, That a person receiving
44 disability benefits must file a certified copy of his or her tax
45 return on or before April 15 of each year to demonstrate
46 either unemployment or income earned from self-
47 employment or employment by another: *Provided further*,
48 That there is no offset of benefit for any income derived
49 from self-employment or employment by another when the
50 annual total amount of the income is \$18,200 or less.

51 (e) The \$18,200 limit in subsection (d) of this section
52 shall be automatically increased when the minimum wage,
53 as provided in §21-5C-2 of this code, increases, by the same
54 percentage of the increase in the minimum wage.



CHAPTER 160

**(H. B. 4324 - By Delegates Howell, Statler, Hill,
Martin, Butler, Shott, Moore, Criss, Paynter, Foster
and Pack)**

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

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

AN ACT to amend and reenact §8-15-17 and §8-15-20 of the Code of West Virginia, 1931, as amended, all relating to the employment of individuals by municipal paid fire departments under civil service; providing that an applicant need not be a resident of the municipality or the county in

which he or she seeks to become a member of the paid fire department; and that if there are not enough eligible applicants to certify a list of three, then the appointing officer may appoint a qualified individual to fill the position.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-17. Form of application; age and residency requirements; exceptions.

1 (a) The Firemen's Civil Service Commission in each
2 municipality shall require individuals applying for
3 admission to any competitive examination provided for
4 under the civil service provisions of this article or under the
5 rules of the commission to file in its office, within a
6 reasonable time prior to the proposed examination, a formal
7 application in which the applicant shall state under oath or
8 affirmation:

9 (1) His or her full name, residence, and post-office
10 address;

11 (2) His or her United States citizenship, age, and the
12 place and date of his or her birth;

13 (3) His or her state of health, and his or her physical
14 capacity for the public service;

15 (4) His or her business and employments and residences
16 for at least three previous years; and

17 (5) Any other information reasonably required,
18 touching upon the applicant's qualifications and fitness for
19 the public service.

20 (b) Blank forms for the applications shall be furnished
21 by the commission, without charge, to all individuals
22 requesting the same.

23 (c) The commission may require, in connection with the
24 application, certificates of citizens, physicians, and others,
25 having pertinent knowledge concerning the applicant, as the
26 good of the service requires.

27 (d) Except as provided in subsections (e) and (f) of this
28 section, the commission may not accept an application for
29 original appointment if the individual applying is less than
30 18 years of age or more than 35 years of age at the date of
31 his or her application.

32 (e) If any applicant formerly served upon the paid fire
33 department of the municipality to which he or she makes
34 application for a period of more than one year, and resigned
35 from the department at a time when there were no charges
36 of misconduct or other misfeasance pending against the
37 applicant within a period of two years next preceding the
38 date of his or her application, and at the time of his or her
39 application resides within the corporate limits of the
40 municipality in which the paid fire department to which he
41 or she seeks appointment by reinstatement is located, then
42 the individual is eligible for appointment by reinstatement
43 in the discretion of the Firemen's Civil Service
44 Commission, even though the applicant is over the age of
45 35 years, and the applicant, providing his or her former term
46 of service so justifies, may be appointed by reinstatement to
47 the paid fire department without a competitive examination.
48 The applicant shall undergo a medical examination; and if
49 the individual is so appointed by reinstatement to the paid
50 fire department, he or she shall be the lowest in rank in the
51 department next above the probationers of the department
52 and may not be entitled to seniority considerations.

53 (f) If an individual is presently employed by one paid
54 fire department and is over the age of 35, he or she may
55 make an application to another paid fire department if:

56 (1) The paid fire department to which he or she is applying
57 is serving a municipality that has elected to participate in the
58 West Virginia Municipal Police Officers and Firefighters

59 Retirement System created in §8-22A-1 *et seq.* of this code:
60 *Provided*, That any individual applying pursuant to this
61 subdivision is to be classified as a new employee for retirement
62 purposes and prior employment service may not be transferred
63 to the West Virginia Municipal Police Officers and
64 Firefighters Retirement System; or

65 (2) The paid fire department to which he or she is
66 applying is serving a municipality that has elected to
67 participate in the West Virginia Public Employees
68 Retirement System created in §5-10-1 *et seq.* of this code:
69 *Provided*, That any individual applying pursuant to this
70 subdivision is to be classified as a new employee for
71 retirement purposes and prior employment service may not
72 be transferred to the West Virginia Public Employees
73 Retirement System, except for individuals and their prior
74 employment service already credited to them in the West
75 Virginia Public Employees Retirement System pursuant to
76 §5-10-1 *et seq.* of this code.

77 (g) Individuals who are authorized to apply to a paid fire
78 department pursuant to subsection (f) of this section shall be
79 in the lowest rank of the department and are not entitled to
80 seniority considerations.

81 (h) Notwithstanding charter provisions to the contrary,
82 any applicant for original appointment need not be a
83 resident of the municipality or the county in which he or she
84 seeks to become a member of the paid fire department.

**§8-15-20. Appointments from list of eligible applicants;
special examinations for electricians or mechanics.**

1 (a) Every position, unless filled by promotion,
2 reinstatement, or reduction, shall be filled only in the manner
3 specified in this section. The appointing officer shall notify the
4 Firemen's Civil Service Commission of any vacancy in a
5 position which he or she desires to fill, and shall request the
6 certification of eligible applicants. The commission shall
7 immediately certify, from the eligible list, the names of the

8 three individuals on the eligible list who received the highest
9 averages at preceding competitive examinations held under the
10 civil service provisions of this article within a period of three
11 years next preceding the date of the prospective appointment.
12 The appointing officer shall, with sole reference to the relative
13 merit and fitness of the candidates, make an appointment from
14 the three certified names: *Provided*, That if the appointing
15 officer objects, to the commission, to one or more of these
16 individuals, for any of the reasons stated in §8-15-19 of this
17 code, and the objection is sustained by the commission, after a
18 public hearing along the lines of the hearing provided for in
19 §8-15-19 of this code, if a hearing is requested, the commission
20 shall strike the name of the individual from the eligible list, and
21 certify the next highest name for each individual stricken. As
22 each subsequent vacancy occurs, in the same or another
23 position, precisely the same procedure shall be followed:
24 *Provided, however*, That after any name has been rejected
25 three times for the same or another position in favor of a name
26 or names below it on the same list, the name shall be stricken
27 from the list. When there are a number of positions of the same
28 kind to be filled at the same time, each appointment shall,
29 nevertheless, be made separately and in accordance with the
30 provisions of this section. When an appointment is made under
31 the provisions of this section it shall be, in the first instance, for
32 the probationary period of six months, as provided in §8-15-
33 16 of this code: *Provided further*, That in the event any
34 position as an electrician or mechanic is to be filled in any paid
35 fire department, then the examinations to be given to
36 applicants for either position shall be drawn to test only the
37 qualifications of the applicants in regard to their ability as
38 electricians or mechanics, the examinations to be special
39 examinations.

40 (b) If there are not enough eligible applicants to certify
41 a list of three, then the appointing officer may appoint a
42 qualified individual to fill the position.

●

CHAPTER 161

(H. B. 4529 - By Delegate Rohrbach)

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

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

AN ACT to amend and reenact §8-13-25 of the Code of West Virginia, 1931, as amended, relating to oath by municipal official certifying list of delinquent business and occupation taxes; and providing that official is not subject to penalties for disclosure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. TAXATION AND FINANCE.

§8-13-25. Delinquent list preparation.

1 (a) Notwithstanding the prohibition on disclosure set
2 forth in §11-10-5d(a) of this code, the official designated to
3 conduct publication of delinquent business and occupation
4 taxes provided for by §8-13-24 of this code shall prepare the
5 delinquent list in a manner set forth in the ordinance, so long
6 as it is consistent with the requirements and limitations set
7 forth herein. The ordinance shall require the designated
8 code official adopt policies and procedures designed to
9 verify each delinquency prior to publication.

10 (b) The delinquent list may include the name of the
11 delinquent taxpayer and the year or years in which the
12 delinquency arises.

13 (c) For each delinquent list published by the
14 municipality, and prior to the publication, the official
15 designated in the ordinance to oversee or conduct the
16 publication shall take an oath, to be included in or attached

17 to the delinquent list, certified by the city clerk or some
 18 other person duly authorized to administer oaths, in form
 19 and effect as follows:

20 “I, _____ (municipal official title)
 21 of _____, do swear, to the best of my
 22 knowledge and belief, that the foregoing list of delinquent
 23 business and occupation taxes to be published on
 24 _____, is complete and accurate, and, as of
 25 _____ (date of certification), that I have not
 26 received payment from any of the entities listed for the
 27 delinquent amounts included in the list.”

28 (d) Nothing in this section shall be construed to subject
 29 the official designated to conduct publication of delinquent
 30 Business and Occupation Taxes under this section, or his or
 31 her representative or designee, to the penalties set forth in
 32 §11-10-5d(c) or any other penalty set forth in §11-10-5d *et*
 33 *seq.* of this code.

CHAPTER 162

(H. B. 4627 - By Delegate Moore)

[Passed March 10, 2018; in effect ninety days from passage.]
 [Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §8-21-8 of the Code of West Virginia, 1931, as amended, relating to providing a limitation on the eminent domain authority of a municipal park board by requiring the approval of the governing body of that municipality in instances where it is sought to be exercised.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. BOARD OF PARK AND RECREATION COMMISSION.

§8-21-8. Purchase, lease or condemnation of real property.

1 The board is hereby granted the power and authority to
2 acquire in its name or in the name of the city by purchase,
3 lease, or by exercise of the power of eminent domain, or
4 otherwise, such land or lands as it shall determine to be
5 necessary, appropriate, convenient or incidental to the
6 establishment, construction, improvement, extension,
7 development, maintenance or operation of a system of
8 public parks, parkways, playgrounds, athletic fields,
9 stadiums, swimming pools, skating rinks or arenas and other
10 public park and recreational facilities for the city, whether
11 of a like or different nature: *Provided*, That any such
12 acquisition by the board made by exercise of the power of
13 eminent domain must be approved by a majority vote of the
14 governing body of that municipality. Approval by the
15 governing body must be granted as to each specific parcel
16 or tract of land to be acquired by power of eminent domain.



CHAPTER 163

(S. B. 143 - By Senator Sypolt)

[Passed March 5, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §20-2-19 of the Code of West Virginia, 1931, as amended, relating to marking traps with a Division of Natural Resources identification number.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-19. Marking of traps.

1 All traps used for taking game or fur-bearing animals
2 shall be marked with a durable plate or tag, attached to the
3 snare, trap, or trap chain, bearing either the name and
4 address of the owner of the trap or the Division of Natural
5 Resources identification number of the owner of the trap.

CHAPTER 164

(S. B. 346 - By Senators Maynard and Cline)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §20-2B-7 of the Code of West Virginia, 1931, as amended, relating to permitting full-time, nonresident students attending an in-state college or university to purchase lifetime resident statewide hunting, trapping, trout fishing, and fishing licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing, and trapping licenses created.

1 (a) Pursuant to §20-2B-3 of this code, the director may
2 issue the following lifetime hunting, fishing, and trapping
3 licenses and for the lifetime of the licensee, the lifetime
4 licenses serve in lieu of the equivalent annual license:
5 Lifetime resident statewide hunting and trapping license;
6 lifetime resident combination statewide hunting, fishing,
7 and trapping license; lifetime statewide fishing license; and
8 lifetime resident trout fishing license.

9 (b) The director shall propose a rule for legislative
10 approval in accordance with §29A-3-1 *et seq.* of this code,

11 setting the fees for the lifetime licenses. The rule shall
12 provide that the fee for any resident who has not reached his
13 or her second birthday shall be one half of the adult fee set
14 under the rule. The fees for lifetime licenses shall be 23
15 times the fee for the equivalent annual licenses or stamps.

CHAPTER 165

(Com. Sub. for S. B. 347 - By Senator Maynard)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §20-7-11, §20-7-12, §20-7-13, §20-7-14, §20-7-18, §20-7-18d, and §20-7-19 of the Code of West Virginia, 1931, as amended, all relating to the operation of motorboats; defining the term “state of principal operation”; establishing a fee schedule for motorboat registration; establishing motorboat numbering, lighting, fire extinguishers, engine bilges, and flotation device requirements; increasing the financial amount of property damage before certain accidents need to be reported; clarifying the requirements for the operation of personal watercrafts; limiting the hours during the day water skiing and surfing are permitted; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-11. Motorboats and other terms defined.

1 As used in this section and subsequent sections of this
2 article, unless the context clearly requires a different
3 meaning:

4 (1) "Vessel" means every description of watercraft,
5 other than a seaplane on the water, used or capable of being
6 used as a means of transportation on water;

7 (2) "Motorboat" means any vessel propelled by an
8 electrical, steam, gas, diesel, or other fuel propelled or
9 driven motor, whether or not the motor is the principal
10 source of propulsion, but does not include a vessel which
11 has a valid marine document issued by the Bureau of
12 Customs of the United States government or any federal
13 agency successor thereto;

14 (3) "Owner" means a person, other than a lienholder,
15 having the property in or title to a motorboat. The term
16 includes a person entitled to the use or possession of a
17 motorboat subject to an interest in another person, reserved
18 or created by agreement and securing payment or
19 performance of an obligation, but the term excludes a lessee
20 under a lease not intended as security;

21 (4) "Commissioner" means the Commissioner of the
22 Division of Motor Vehicles;

23 (5) "Director" means the Director of the Division of
24 Natural Resources;

25 (6) "Personal watercraft" means a small vessel of less
26 than 16 feet in length which uses an inboard motor powering
27 a water jet pump as its primary source of motive power and
28 which is designed to be operated by a person sitting,
29 standing, or kneeling on the vessel, rather than the
30 conventional manner of sitting or standing inside the vessel.
31 For purposes of this article, the term "personal watercraft"
32 also includes "specialty prop-crafts" which are vessels
33 similar in appearance and operation to a personal watercraft
34 but which are powered by an outboard motor or propeller
35 driven motor; and

36 (7) "State of principal operation" means the state in
37 whose waters a vessel is or will be used, operated,

38 navigated, or employed more than on the waters of any other
39 state during a calendar year.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

1 Every motorboat, as defined in this section, operating
2 upon public waters whose principal operation is within the
3 territorial limits of this state shall be numbered as provided
4 in this section:

5 (a) The owner of each motorboat requiring numbering
6 by this state shall file an application for a number with the
7 commissioner on forms approved by the Division of Motor
8 Vehicles. The application shall be signed by the owner of
9 the motorboat and shall be accompanied by the appropriate
10 fee for a three-year registration period if the motorboat is
11 propelled by a motor of three or more horsepower or 70 or
12 more pounds of thrust. There is no fee for motorboats
13 propelled by motors of less than three horsepower or less
14 than 70 pounds of thrust. The fee schedule for a three-year
15 registration period is as follows, and may be prorated by the
16 commissioner for periods of less than three years:

17 (1) Class A motorboats less than 16 feet in length, \$30;

18 (2) Class 1 motorboats 16 feet or over and less than 26
19 feet in length, \$45;

20 (3) Class 2 motorboats 26 feet or over and less than 40
21 feet in length, \$60; and

22 (4) Class 3 motorboats 40 feet in length or over, \$75.

23 All fees, including those received under §20-7-12(b) of
24 this code, shall be deposited in the State Treasury. All

25 moneys deposited pursuant to this section and credited to
26 the Division of Motor Vehicles and 50 percent of all fees
27 collected thereafter shall be credited to the State Road Fund.
28 The remaining 50 percent shall be credited to the Division
29 of Natural Resources and shall be used and paid out upon
30 order of the director solely for the enforcement and safety
31 education of the state boating system.

32 Upon receipt of the application in approved form, the
33 commissioner shall enter the application upon the records
34 of the division and issue to the applicant a number awarded
35 to the motorboat and the name and address of the owner.
36 The owner shall paint on or attach to each side of the bow
37 of the motorboat the identification number in the manner
38 prescribed by rules of the commissioner in order that it is
39 clearly visible. The owner shall maintain the number in
40 legible condition. The certificate of number shall be pocket
41 size and shall be available at all times for inspection on the
42 motorboat for which it is issued, whenever the motorboat is
43 in operation.

44 (b) To permit a motorboat sold to a purchaser by a dealer
45 to be operated pending receipt of the certificate of number
46 from the commissioner, the commissioner may deliver to
47 dealers temporary certificates of number to in turn be issued
48 to purchasers of motorboats, upon application by the dealer
49 and payment of \$1 for each temporary certificate. Every
50 person who is issued a temporary certificate by a dealer
51 shall, under the provisions of §20-7-12(a) of this code, apply
52 for a certificate of number no later than 10 days from the
53 date of issuance of the temporary certificate. A temporary
54 certificate expires upon receipt of the certificate, upon
55 rescission of the contract to buy the motorboat in question,
56 or upon the expiration of 40 days from the date of issuance,
57 whichever occurs first. It is unlawful for any dealer to issue
58 any temporary certificate knowingly containing any
59 misstatement of fact or knowingly to insert any false
60 information on the face of the temporary certificate. The
61 commissioner may by rule prescribe additional

62 requirements upon the dealers and purchasers that are
63 consistent with the effective administration of this section.

64 (c) The owner of any motorboat already covered by a
65 number in full force and effect which has been awarded to
66 it pursuant to then operative federal law or a federally
67 approved numbering system of another state shall record the
68 number prior to operating the motorboat on the waters of
69 this state in excess of the 60-day reciprocity period provided
70 for in 33 C.F.R. § 173.17 *et seq.* once its state of principal
71 operation changes to the State of West Virginia. The
72 recordation shall be in the manner and pursuant to procedure
73 required for the award of a number under §20-7-12(a) of this
74 code, except that the commissioner shall not issue an
75 additional or substitute number.

76 (d) If the ownership of a motorboat changes, the new
77 owner shall file a new application form with the required fee
78 with the commissioner who shall award a new certificate of
79 number in the same manner as provided for in an original
80 award of number.

81 (e) If an agency of the United States government has in
82 force an overall system of identification numbering for
83 motorboats within the United States, the numbering system
84 employed pursuant to this article by the Division of Motor
85 Vehicles shall be in conformity with the federal system.

86 (f) The license is valid for a maximum period of three
87 years. If at the expiration of that period ownership has
88 remained unchanged, the commissioner shall, upon
89 application and payment of the proper fee, grant the owner
90 a renewal of the certificate of number for an additional
91 three-year period.

92 (g) The owner shall furnish the commissioner notice of
93 the transfer of any part of an interest, other than the creation
94 of a security interest, in a motorboat numbered in this state
95 pursuant to §20-7-12(a) and §20-7-12(b) of this code or of
96 the destruction or abandonment of the motorboat within 15

97 days of the transfer of interest, destruction, or abandonment.
98 The transfer, destruction, or abandonment shall terminate
99 the certificate of number for the motorboat, except that in
100 the case of a transfer of a part interest which does not affect
101 the owner's right to operate the motorboat, the transfer shall
102 not terminate the certificate of number.

103 (h) Any holder of a certificate of number shall notify the
104 commissioner within 15 days if his or her address no longer
105 conforms to the address appearing on the certificate and
106 shall, as a part of the notification, furnish the commissioner
107 with his or her new address. The commissioner may provide
108 by rule for the surrender of the certificate bearing the former
109 address and its replacement with a certificate bearing the
110 new address or for the alteration of an outstanding
111 certificate to show the new address of the holder.

112 (i) An owner shall not paint, attach or otherwise display
113 a number other than the number awarded to a motorboat or
114 granted reciprocity pursuant to this article on either side of
115 the bow of the motorboat.

116 (j) The commissioner shall on or before August 30 of
117 each year forward to the assessor of each county a list of the
118 names and addresses of all persons, firms, and corporations
119 owning vessels and operating the vessels or other boats
120 registered with the commissioner under the provisions of
121 this article. In furnishing this information to each county
122 assessor, the commissioner shall include information on the
123 make and model of the vessels and other equipment required
124 to be registered for use by the owner or operator of the boats
125 under the provisions of this article: *Provided*, That the
126 commissioner is not required to furnish the information to
127 the assessor if the true and actual value of the vessel does
128 not exceed \$500 or the cost of the motor does not exceed
129 \$250.

130 (k) No person may operate an unlicensed motorboat
131 upon any waters of this state without first acquiring a
132 certificate of number or license as required by law.

§20-7-13. Motorboat classification; required lights and equipment; rules and regulations; pilot rules.

1 (a) Motorboats subject to the provisions of this article
2 shall be divided into four classes.

3 (1) Class A includes motorboats less than 16 feet in
4 length;

5 (2) Class 1 includes motorboats 16 feet or over and less
6 than 26 feet in length;

7 (3) Class 2 includes motorboats 26 feet or over and less
8 than 40 feet in length;

9 (4) Class 3 includes motorboats 40 feet or over.

10 (b) Except as provided in §20-7-18d of this code, Class
11 A, Class 1, Class 2, and Class 3 motorboats in all weathers
12 from sunset to sunrise shall carry and exhibit the following
13 lights when under way, no other lights which may be
14 mistaken for those prescribed shall be exhibited.

15 (1) Every motorboat of Class A and Class 1 shall carry
16 the following lights:

17 (A) A bright white light aft to show all around the
18 horizon;

19 (B) A combined lantern in the fore part of the vessel and
20 lower than the white light aft, showing green to starboard
21 and red to port, so fixed as to throw the light from right
22 ahead to two points abaft the beam on their respective sides.

23 (2) Every motorboat of Class 2 and Class 3 shall carry
24 the following lights:

25 (A) A bright white light in the fore part of the vessel as
26 near the stem as practicable, so constructed as to show an
27 unbroken light over an arc of the horizon of 20 points of the
28 compass, so fixed as to throw the light 10 points on each

29 side of the vessel; namely, from right ahead to two points
30 abaft the beam on either side;

31 (B) A bright white light aft to show all around the
32 horizon and higher than the white light forward;

33 (C) On the starboard side a green light so constructed as
34 to show an unbroken light over an arc of the horizon of 10
35 points of the compass, so fixed as to throw the light from
36 right ahead to two points abaft the beam on the starboard
37 side. On the port side a red light so constructed as to show
38 an unbroken light over an arc of the horizon of 10 points of
39 the compass, so fixed as to throw the light from right ahead
40 to two points abaft the beam on the port side. The said side
41 lights shall be fitted with inboard screens of sufficient height
42 so set as to prevent these lights from being seen across the
43 bow.

44 (3) When propelled by sail alone, motorboats of Class
45 A and Class 1 shall exhibit the combined lantern but not the
46 white light aft. When propelled by sail alone, motorboats
47 of Class 2 and Class 3 shall exhibit the colored side lights,
48 suitably screened, but not the white lights. Motorboats of
49 all classes when propelled by sail alone, or manually
50 propelled vessels, shall carry, ready at hand, a lantern or
51 flashlight showing a white light which shall be exhibited in
52 sufficient time to avert collision.

53 (4) Every white light prescribed by this section shall be
54 of such character as to be visible at a distance of at least two
55 miles. Every colored light prescribed by this section shall be
56 of such character as to be visible at a distance of at least one
57 mile. The word "visible" in this subdivision, when applied
58 to lights, shall mean visible on a dark night with clear
59 atmosphere.

60 (5) When propelled by sail and machinery any
61 motorboat shall carry the lights required by this section for
62 a motorboat propelled by machinery only.

63 (c) Any vessel may carry and exhibit the lights as
64 contained in the federal navigation laws and rules
65 promulgated by the United States Coast Guard pursuant to
66 33 C.F.R. Chapter I. as authorized by 46 U.S.C. §4302, in
67 lieu of the lights required by §20-7-13(b) of this code.

68 (d) Every motorboat of Class A, Class 1, Class 2, or
69 Class 3 shall be provided with an efficient whistle or other
70 sound-producing mechanical appliance.

71 (e) Every motorboat of Class 2 or Class 3 shall be
72 provided with an efficient bell.

73 (f) Every vessel shall have on board the following
74 personal flotation devices as defined and approved by the
75 United States Coast Guard pursuant to 33 C.F.R. §175.13
76 2014 *et seq.* as authorized by 46 U.S.C. §4302: (1) At least
77 one immediately accessible throwable personal flotation
78 device, except motorboats or vessels less than 16 feet and
79 except as provided in 33 C.F.R §175.17 2017 as authorized
80 by 46 U.S.C §4302; (2) At least one readily accessible
81 wearable personal flotation device per person on board; and
82 (3) Except, that every motorboat carrying passengers for
83 hire shall have on board readily accessible wearable
84 personal flotation devices according to rules that may be
85 promulgated by the director in accordance with the
86 provisions of §29A-3-1 *et seq.* of this code.

87 (g) Every motorboat shall be equipped with the number,
88 size, and type of fire extinguishers capable of promptly and
89 effectually extinguishing burning gasoline, according to
90 rules that may be promulgated by the director in accordance
91 with the provisions of §29A-3-1 *et seq.* of this code. The fire
92 extinguishers shall be readily accessible and in condition for
93 immediate and effective use.

94 (h) The provisions of §20-7-13(d), §20-7-13(e), §20-7-
95 13(g) and §20-7-13(f)(1) of this code shall not apply to
96 motorboats while competing in any race conducted pursuant
97 to §20-7-20 of this code or, if such boats be designed and

98 intended solely for racing while engaged in such navigation
99 as is incidental to the tuning up of the boats and engines for
100 the race.

101 (i) Every motorboat shall have the carburetor or
102 carburetors of every engine therein (except outboard motors)
103 using gasoline as fuel, equipped with such efficient flame
104 arrester, backfire trap, or other similar device according to
105 rules that may be promulgated by the director in accordance
106 with the provisions of §29A-3-1 *et seq.* of this code.

107 (j) Every motorboat and every vessel shall be equipped
108 with the means to properly and efficiently ventilate the
109 bilges of the engine and fuel tank compartments, except
110 open boats, according to rules that may be promulgated by
111 the director in accordance with the provisions of §29A-3-1
112 *et seq.* of this code.

113 (k) The director may promulgate rules in accordance
114 with the provisions of §29A-3-1 *et seq.* of this code
115 modifying the equipment requirements contained in this
116 section to the extent necessary to keep these requirements in
117 conformity with the provisions of the federal navigation
118 laws or with the navigation rules promulgated by the United
119 States Coast Guard.

120 (l) The director may promulgate rules in accordance
121 with the provisions of §29A-3-1 *et seq.* of this code, pilot
122 rules in conformity with the pilot rules contained in the
123 federal navigation laws, or the navigation rules promulgated
124 by the United States Coast Guard for the operation of
125 vessels on the waters of this state.

126 (m) No person shall operate or give permission for the
127 operation of a vessel which is not equipped as required by
128 this section or modification thereof.

§20-7-14. Motorboats exempt from numbering.

1 A motorboat shall not be required to be numbered under
2 this article if it is:

3 (1) Already covered by a number in full force and effect
4 which has been awarded to it pursuant to federal law or a
5 federally approved numbering system of another state:
6 *Provided*, That the boat shall be registered in the state of
7 principal operation;

8 (2) A motorboat from a country other than the United
9 States temporarily using the waters of this state; or

10 (3) A motorboat used exclusively for racing while
11 participating in races, and the preparation therefor, which
12 have been authorized pursuant to the provisions of §20-7-
13 20 of this code.

**§20-7-18. Care in handling watercraft; duty to render aid
after a collision, accident, or casualty; accident reports.**

1 (a) No person shall operate a motorboat, jet ski, or other
2 motorized vessel or manipulate any water skis, surfboard,
3 or similar device in a reckless or negligent manner so as to
4 endanger the life, limb, or property of any person.

5 (b) No person shall operate any motorboat, jet ski, or other
6 motorized vessel, or manipulate any water skis, surfboard, or
7 similar device while under the influence of alcohol or a
8 controlled substance or drug, under the combined influence of
9 alcohol and any controlled substance or any other drug, or
10 while having an alcohol concentration in his or her blood of
11 eight hundredths of one percent or more, by weight.

12 (c) The operator of a vessel involved in a collision,
13 accident, or other casualty, so far as he or she can do so
14 without serious danger to his or her own vessel, crew, and
15 any passengers, to render to other persons affected by the
16 collision, accident, or other casualty such assistance as may
17 be practicable and as may be necessary in order to save them
18 from or minimize any danger caused by the collision,
19 accident, or other casualty. The operator shall also give his or
20 her name, address, and identification of his or her vessel in
21 writing to any person injured and to the owner of any
22 property damaged in the collision, accident, or other casualty.

23 (d) The operator of a vessel involved in a collision,
24 accident, or other casualty shall file an accident report with
25 the director if the incident results in a loss of life, in a
26 personal injury that requires medical treatment beyond first
27 aid or in excess of \$2,000 damage to a vessel or other
28 property. The report shall be made on such forms and
29 contain information as prescribed by the director. Upon a
30 request duly made by an authorized official or agency of the
31 United States, any information compiled or otherwise
32 available to the director pursuant to this subsection shall be
33 transmitted to the official or agency.

§20-7-18d. Operation of personal watercrafts.

1 (a) No person under the age of 15 may operate a
2 personal watercraft on the waters of this state: *Provided*,
3 That a person that has attained the age of 12 may operate a
4 personal watercraft if a person 18 years of age or older is
5 aboard the personal watercraft.

6 (b) A person may not operate a personal watercraft
7 unless each person on board or being towed behind is
8 wearing a personal flotation device defined and approved by
9 the United States Coast Guard pursuant to 33 C.F.R.
10 §175.13 2014 *et seq.* as authorized by 46 U.S.C. §4302.
11 Inflatable personal flotation devices do not meet the
12 requirements of this section.

13 (c) A person operating a personal watercraft equipped
14 by the manufacturer with a lanyard-type engine cutoff
15 switch must attach the lanyard to his or her person, clothing,
16 or personal flotation device as appropriate for the specific
17 vessel.

18 (d) A person may not operate a personal watercraft at
19 any time between the hours of sunset and sunrise. However,
20 an agent or employee of a fire rescue, emergency rescue
21 unit, or law-enforcement division is exempt from this
22 subsection while performing his or her official duties.

23 (e) A personal watercraft must at all times be operated
24 in a reasonable and prudent manner. Maneuvers which
25 unreasonably or unnecessarily endanger life, limb, or
26 property constitute reckless operation of a vessel and
27 include, but are not limited to:

28 (1) Weaving through congested traffic;

29 (2) Jumping the wake of another vessel unreasonably or
30 unnecessarily close to the other vessel or when visibility
31 around the other vessel is obstructed or restricted;

32 (3) Becoming airborne or completely leaving the water
33 while crossing the wake of another vessel within 100 feet of
34 the vessel creating the wake;

35 (4) Operating at a greater than slow or no-wake speed
36 within 100 feet of an anchored or moored vessel, shoreline,
37 dock, pier, swim float, marked swim areas, swimmers,
38 surfers, persons engaged in angling, or any manually
39 powered vessel;

40 (5) Operating contrary to navigation rules including
41 following too closely to another vessel, including another
42 personal watercraft. For the purpose of this subdivision,
43 "following too closely" is construed as a proceeding in the
44 same direction and operating at a speed in excess of 10 miles
45 per hour within 100 feet to the rear or 50 feet to the side of
46 another vessel which is underway, unless said vessels are
47 operating in a narrow channel, in which case the personal
48 watercraft may operate at the speed and flow of the other
49 vessel traffic within the channel.

§20-7-19. Water skiing and surfboarding.

1 (a) No person shall operate a vessel on any waters of
2 this state towing a person or persons on water skis,
3 surfboard, or similar device, nor shall any person engage in
4 water skiing, surfboarding, or similar activity between
5 sunset and sunrise.

6 (b) The provisions of §20-7-19(a) of this code do not
7 apply to a performer engaged in a professional exhibition or
8 a person or persons engaged in an activity authorized under
9 §20-7-20 of this code.

10 (c) No person shall operate or manipulate any vessel,
11 tow rope, or other device by which the direction or location
12 of water skis, surfboard, or similar device may be affected
13 or controlled in such a way as to cause water skis, surfboard,
14 or similar device, or any person thereon, to collide with or
15 strike against any object or person.



CHAPTER 166

(Com. Sub. for S. B. 348 - By Senator Maynard)

[Passed March 2, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §20-7-1d and §20-7-1f of the Code of West Virginia, 1931, as amended, all relating to awarding service weapons to natural resources police officers and special natural resources police officers upon retirement; modifying terms to reference weapons rather than revolvers; modifying provisions relating to the disposal of service weapons when they are replaced due to routine wear; exempting weapons replaced due to routine wear from surplus property provisions; authorizing the sale of service weapons that are being replaced due to routine wear to special natural resources police officers at fair market value; and providing that the provisions of these sections do not apply to weapons obtained through the federal donation program operated by the West Virginia State Agency for Surplus Property.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING,
LITTER.****§20-7-1d. Awarding service weapon upon retirement;
disposal of service weapon when replaced due to routine
wear; and furnishing uniform for burial.**

1 (a) Upon the retirement of any full-time salaried natural
2 resources police officer, the chief natural resources police
3 officer shall award to the retiring natural resources police
4 officer his or her service weapon, without charge, upon
5 determining:

6 (1) That the natural resources police officer is retiring
7 honorably with at least 25 years of recognized law-
8 enforcement service as determined by the chief natural
9 resources police officer; or

10 (2) That the natural resources police officer is retiring
11 with less than 25 years of service based upon a
12 determination that he or she is totally physically disabled as
13 a result of service with the division.

14 (b) Notwithstanding the provisions of §20-7-1d(a) of
15 this code, the chief natural resources police officer may not
16 award a service weapon to any natural resources police
17 officer who has been declared mentally incompetent by a
18 licensed physician or any court of law, or who, in the
19 opinion of the chief natural resources police officer,
20 constitutes a danger to any person or the community.

21 (c) The disposal of law-enforcement service weapons,
22 when replaced due to routine wear, does not fall under the
23 jurisdiction of the agency for surplus property, within the
24 Purchasing Division of the Department of Administration.
25 The chief natural resources police officer may offer these
26 surplus weapons for sale to any active or retired Division of
27 Natural Resources law-enforcement officer, at fair market
28 value, with the proceeds from any sales used to offset the
29 cost of the new weapons.

30 (d) Upon the death of any current or honorably retired
31 natural resources police officer, the chief natural resources
32 police officer shall, upon request of the deceased officer's
33 family, furnish a full uniform for burial of the deceased
34 officer.

35 (e) Notwithstanding the foregoing, this section does not
36 apply to weapons obtained through the federal donation
37 program operated by the West Virginia State Agency for
38 Surplus Property.

**§20-7-1f. Awarding service weapon to special natural
resources police officers upon retirement; disposal of
service weapon when replaced due to routine wear;
furnishing uniform for burial.**

1 (a) Upon the retirement of any special natural resources
2 police officer selected and appointed pursuant to §20-7-1 of
3 this code, the chief of the officer's section shall award to the
4 retiring special natural resources police officer his or her
5 service weapon, without charge, upon determining:

6 (1) That the special natural resources police officer is
7 retiring honorably with at least 25 years of recognized
8 special law enforcement service as determined by the chief
9 natural resources police officer; or

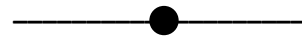
10 (2) That the special natural resources police officer is
11 retiring with less than 25 years of service based upon a
12 determination that he or she is totally physically disabled as
13 a result of service with the division.

14 (b) Notwithstanding the provisions of §20-7-1f(a) of
15 this code, the section chief may not award a service weapon
16 to any special natural resources police officer who has been
17 declared mentally incompetent by a licensed physician or
18 any court of law, or who, in the opinion of the chief natural
19 resources police officer constitutes a danger to any person
20 or the community.

21 (c) Upon the death of any current or honorably retired
22 special natural resources police officer, the respective chief
23 shall, upon request of the deceased officer's family, furnish
24 a full uniform for burial of the deceased officer.

25 (d) The disposal of special natural resources police
26 officer service weapons, when replaced due to routine wear,
27 does not fall under the jurisdiction of the agency for surplus
28 property, within the Division of Purchasing of the
29 Department of Administration. The chief of the section of
30 Parks and Recreation and the chief of the Wildlife
31 Resources Section of the Division of Natural Resources
32 may offer these surplus weapons for sale to any active or
33 retired special natural resources police officer, at fair market
34 value, with the proceeds from any sales used to offset the
35 cost of the new weapon.

36 (e) Notwithstanding the foregoing, this section does not
37 apply to weapons obtained through the federal donation
38 program operated by the West Virginia State Agency for
39 Surplus Property.



CHAPTER 167

**(Com. Sub. for S. B. 438 - By Senators Maynard,
Prezioso, Beach, Plymale and Jeffries)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §29-22-18e of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §31-15-16d, all relating to authorizing additional bonds for state park projects; requiring certain deposits from the State Excess Lottery Revenue Fund; providing for allocation of certain funds not needed for debt

service to state park improvements; authorizing the Economic Development Authority to issue certain revenue bonds; providing limitations on bond issuance; creating a special revenue account; and providing for allocation of bond proceeds.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18e. Increase in allocation to State Park Improvement Fund from State Excess Lottery Revenue Fund to permit the issuance of bonds for improvements to Cacapon Resort State Park and Beech Fork State Park.

1 Notwithstanding any provision of §29-22-18a(d) of this
2 code to the contrary, the deposit of \$5 million into the State
3 Park Improvement Fund is for the fiscal year beginning July 1,
4 2012, only. For the fiscal year beginning July 1, 2013, and each
5 fiscal year through the fiscal year ending June 30, 2018, in lieu
6 of the deposits required under §29-22-18a(d)(7) of this code,
7 the commission shall first deposit an amount equal to the
8 certified debt service requirement, not to exceed \$3 million in
9 any one fiscal year, into the Cacapon and Beech Fork State
10 Park Lottery Revenue Debt Service Fund created in §31-15-
11 16b of this code, to be used in accordance with the provisions
12 of §31-15-16b of this code, and second, deposit \$5 million into
13 the State Park Improvement Fund, established in §29-22-
14 18a(d) of this code, to be used in accordance with the
15 provisions of §29-22-18a(d) of this code. For the fiscal year
16 beginning July 1, 2018, and each fiscal year thereafter, in lieu
17 of the deposits required under §29-22-18a(d)(7) of this code,
18 the commission shall first: (1) Deposit an amount equal to the
19 certified debt service requirement, not to exceed \$2.1 million
20 in any one fiscal year, into the Cacapon and Beech Fork State
21 Park Lottery Revenue Debt Service Fund created in §31-15-
22 16b of this code, to be used in accordance with the provisions
23 of §31-15-16b of this code; and (2) deposit an amount equal to

24 the certified debt service requirement, not to exceed \$5.9
25 million in any one fiscal year, into the State Parks Lottery
26 Revenue Debt Service Fund created in §31-15-16d of this code
27 and if the certified debt service requirement is less than \$5.9
28 million, deposit an amount equal to the difference between the
29 certified debt service requirement and \$5.9 million into the
30 State Park Improvement Fund, established in §29-22-18a(d) of
31 this code, to be used in accordance with the provisions of §29-
32 22-18a(d) of this code: *Provided*, That the amounts deposited
33 into the State Park Improvement Fund shall not exceed \$5
34 million in aggregate in any one fiscal year.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-16d. Lottery revenue bonds for state park projects.

1 (a)(1) The Economic Development Authority shall, in
2 accordance with the provisions of this article, issue revenue
3 bonds, in one or more series, from time to time, to pay for all
4 or a portion of the cost of constructing, equipping, improving,
5 or maintaining capital improvement projects under this section
6 or to refund the bonds issued for such purposes, at the
7 discretion of the authority. The principal amount of the bonds
8 issued under this section shall not exceed, in the aggregate
9 principal amount, \$80 million. Any revenue bonds issued on
10 or after the effective date of this section which are secured by
11 lottery proceeds shall mature at a time or times not exceeding
12 30 years from their issuance dates. The principal of, and the
13 interest and redemption premium if any on, the bonds shall be
14 payable solely from the State Parks Lottery Revenue Debt
15 Service Fund established in this section.

16 (2) There is hereby created in the State Treasury a
17 special revenue fund named the State Parks Lottery
18 Revenue Debt Service Fund into which shall be deposited
19 those amounts specified in §29-22-18e of this code. All
20 amounts deposited in the fund shall be pledged to the
21 repayment of the principal, interest, and redemption

22 premium, if any, on any revenue bonds or refunding revenue
23 bonds authorized by this section. The authority may further
24 provide in the trust agreement for priorities on the revenues
25 paid into the State Parks Lottery Revenue Debt Service
26 Fund as may be necessary for the protection of the prior
27 rights of the holders of bonds issued at different times under
28 the provisions of this section. The State Parks Lottery
29 Revenue Debt Service Fund shall be pledged solely for the
30 repayment of bonds issued pursuant to this section. On or
31 prior to May 1 of each year, commencing upon issuance of
32 the bonds, the authority shall certify to the State Lottery
33 director the principal and interest and coverage ratio
34 requirements for the following fiscal year on any revenue
35 bonds or refunding revenue bonds issued pursuant to this
36 section, and for which moneys deposited in the State Parks
37 Lottery Revenue Debt Service Fund have been pledged, or
38 will be pledged, for repayment pursuant to this section.

39 (3) After the authority has issued bonds authorized by
40 this section, and after the requirements of all funds have
41 been satisfied, including coverage and reserve funds
42 established in connection with the bonds issued pursuant to
43 this section, any balance remaining in the State Parks
44 Lottery Revenue Debt Service Fund may be used for the
45 redemption of any of the outstanding bonds issued under
46 this section which, by their terms, are then redeemable or
47 for the purchase of the outstanding bonds at the market
48 price, but not to exceed the price, if any, at which
49 redeemable, and all bonds redeemed or purchased shall be
50 immediately canceled and shall not again be issued.

51 (b) The authority shall expend the bond proceeds, net of
52 issuance costs, reserve funds, and refunding costs, for
53 certified capital improvement projects at any state park. The
54 Division of Natural Resources shall submit a proposed list
55 of capital improvement projects to the Governor.
56 Thereafter, the Governor shall certify to the authority at any
57 time prior to the issuance of bonds under this section, a list
58 of those capital improvement projects at state parks that will

59 receive funds from the proceeds of bonds issued pursuant to
60 this section. At any time prior to the issuance of bonds under
61 this section, the Governor may certify to the authority a
62 revised list of capital improvement projects at state parks
63 that will receive funds from the proceeds of bonds issued
64 pursuant to this section. The Governor shall consult with the
65 Division of Natural Resources prior to certifying a revised
66 list of capital improvement projects to the authority.

67 (c) Except as may otherwise be expressly provided by
68 the authority, every issue of its notes or bonds shall be
69 special obligations of the authority, payable solely from the
70 property, revenues, or other sources of, or available to, the
71 authority pledged therefor.

72 (d) The bonds and the notes shall be authorized by the
73 authority pursuant to this section, and shall be secured, be in
74 such denominations, may bear interest at such rate or rates,
75 taxable or tax-exempt, be in such form, either coupon or
76 registered, carry such registration privileges, be payable in
77 such medium of payment and at such place or places and such
78 time or times, and be subject to such terms of redemption as
79 the authority may authorize. The bonds and notes of the
80 authority may be sold by the authority, at public or private
81 sale, at or not less than the price the authority determines. The
82 bonds and notes shall be executed by manual or facsimile
83 signature by the chairman of the board, and the official seal
84 of the authority or a facsimile thereof shall be affixed to or
85 printed on each bond and note and attested, manually or by
86 facsimile signature, by the secretary of the board. In case any
87 officer whose signature, or a facsimile of whose signature,
88 appears on any bonds, notes, or coupons ceases to be such
89 officer before delivery of such bonds or notes, such signature
90 or facsimile is nevertheless sufficient for all purposes the
91 same as if he or she had remained in office until such
92 delivery; and, in case the seal of the authority has been
93 changed after a facsimile has been imprinted on such bonds
94 or notes, such facsimile seal will continue to be sufficient for
95 all purposes.



CHAPTER 168

**(Com. Sub. for S. B. 451 - By Senators Maynard,
Clements, Ferns, Gaunch, Maroney, Rucker, Smith,
Swope, Weld and Cline)**

[Passed March 6, 2018; in effect ninety days from passage.]

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

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-7-9 of said code, all relating generally to hunting and fishing; authorizing the use of certain technologies for hunting coyote, fox, racoon, opossum, and skunk; regulating firearm use and possession in certain places; prohibiting the use of a drone or unmanned aircraft to wound, harass, or transport wildlife; allowing certain persons to carry firearms, including handguns, rifles, or shotguns, for self-defense with certain exceptions; creating a misdemeanor and providing penalties for catching, taking, killing or attempting to catch, take, or kill any fish by any means within 200 feet of agency personnel stocking fish into public waters; removing a limitation on the starting time for Sunday hunting on private lands with the landowner's permission; requiring crossbows and bows be cased when in a motor vehicle during certain times; prohibiting nocked bows from being transported in a motor vehicle; providing that the misdemeanor offenses of hunting, trapping, or fishing on the lands of another person, entering posted lands, hunting on private land on Sunday without written permission, and destroying posted land signs will all carry penalties equivalent to the penalty for the offense of criminal trespass; providing increased penalties upon conviction of second and subsequent violations of certain natural resources laws; permitting Sunday hunting on public

lands; permitting noodling, or fishing for catfish using one's bare hands; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.

1 (a) Except as authorized by the director or by law, it is
2 unlawful at any time for any person to:

3 (1) Shoot at any wild bird or wild animal unless it is
4 plainly visible;

5 (2) Dig out, cut out, smoke out, or in any manner take
6 or attempt to take any live wild animal or wild bird out of
7 its den or place of refuge;

8 (3) Use or attempt to use any artificial light or any night
9 vision technology, including image intensification, thermal
10 imaging, or active illumination while hunting, locating,
11 attracting, taking, trapping, or killing any wild bird or wild
12 animal: *Provided*, That it is lawful to hunt or take coyote,
13 fox, raccoon, opossum, or skunk by the use of artificial light
14 or night vision technology, including image intensification,
15 thermal imaging, or active illumination. Any person
16 violating this subdivision is guilty of a misdemeanor and,
17 upon conviction thereof, shall for each offense be fined not
18 less than \$100 nor more than \$500, and shall be confined in
19 jail for not less than 10 days nor more than 100 days;

20 (4) Hunt, take, kill, wound, harass, or shoot at wild animals
21 or wild birds from an airplane or other airborne conveyance, a
22 drone or other unmanned aircraft, an automobile, or other land
23 conveyance, or from a motor-driven water conveyance;

24 (5) Use a drone or other unmanned aircraft to hunt, take,
25 wound, harass, transport, or kill a wild bird or wild animal,
26 or to use a drone or other unmanned aircraft to drive or herd

27 any wild bird or wild animal for the purposes of hunting,
28 trapping, or killing;

29 (6) Take any beaver or muskrat by any means other than
30 a trap;

31 (7) Catch, capture, take, hunt, or kill by seine, net, bait,
32 trap, or snare or like device a wild turkey, ruffed grouse,
33 pheasant, or quail;

34 (8) Intentionally destroy or attempt to destroy the nest
35 or eggs of any wild bird or have in his or her possession the
36 nest or eggs;

37 (9) Carry an uncased or loaded firearm in the woods of
38 this state or in state parks, state forests, state wildlife
39 management areas, or state rail trails with the following
40 permissible exceptions:

41 (A) A person in possession of a valid license or permit
42 during open firearms hunting season for wild animals and
43 nonmigratory wild birds where hunting is lawful;

44 (B) A person hunting or taking unprotected species of
45 wild animals, wild birds, and migratory wild birds during
46 the open season, in the open fields, open water, and open
47 marshes of the state where hunting is lawful;

48 (C) A person carrying a firearm pursuant to §20-2-6 of
49 this code;

50 (D) A person carrying a firearm for self-defense who is
51 not prohibited from possessing firearms under state or
52 federal law; or

53 (E) A person carrying a rifle or shotgun for self-defense
54 who is not prohibited from possessing firearms under state
55 or federal law: *Provided*, That this exception does not apply
56 to an uncased rifle or shotgun carried specifically in state
57 park or state forest recreational facilities and marked trails
58 within state park or state forest borders.

59 (10) Possess a loaded rifle or shotgun, a bow with a
60 nocked arrow, or crossbow with a nocked bolt, in or on any
61 vehicle or conveyance, or its attachments. A rifle or shotgun
62 with cartridges that have not been removed or a magazine
63 that has not been detached is considered loaded. For the
64 purposes of this section, a rifle or shotgun whose magazine
65 readily detaches is considered unloaded if the magazine is
66 detached and no cartridges remain in the rifle or shotgun
67 itself;

68 (11) Carry any unloaded firearm, bow, or crossbow in
69 or on any vehicle or conveyance, or its attachments, that is
70 not in a case or taken apart and securely wrapped between
71 30 minutes after sunset until 30 minutes before sunrise:
72 *Provided*, That the time periods for carrying unloaded and
73 uncased firearms or crossbows are extended for one hour
74 after sunset as established in this subdivision, if a person is
75 transporting or transferring the firearms or crossbows to or
76 from a hunting site, campsite, home, or other abode;

77 (12) Hunt, catch, take, kill, injure, or pursue a wild
78 animal or wild bird with the use of a ferret;

79 (13) Buy raw furs, pelts, or skins of fur-bearing animals
80 unless licensed to do so;

81 (14) Catch, take, kill, or attempt to catch, take, or kill
82 any fish by any means other than by rod, line, and hooks
83 with natural or artificial lures, unless otherwise authorized
84 by the director: *Provided*, That snaring of any species of
85 sucker, carp, fallfish, and creek chub and catching catfish
86 by hand are lawful if done by a holder of a valid license
87 issued pursuant to §20-2-1 *et seq.* of this code or is
88 exempted from licensure pursuant to §20-2-27 or §20-2-28
89 of this code;

90 (15) Employ, hire, induce, or persuade, with money,
91 things of value, or by any means, any person to hunt, take,
92 catch, or kill any wild animal or wild bird except those
93 species in which there is no closed season; or to fish for,

94 catch, take, or kill any fish, amphibian, or aquatic life that is
95 protected by rule, or the sale of which is otherwise
96 prohibited;

97 (16) Hunt, catch, take, kill, capture, pursue, transport,
98 possess, or use any migratory game or nongame birds
99 except as permitted by the Migratory Bird Treaty Act, 16
100 U.S.C. §703, *et seq.*, and its regulations;

101 (17) Kill, take, catch, sell, transport, or have in his or her
102 possession, living or dead, any wild bird other than a game
103 bird, including the plumage, skin, or body of any protected
104 bird, irrespective of whether the bird was captured in or out
105 of this state, except the English or European sparrow (*Passer*
106 *domesticus*), starling (*Sturnus vulgaris*), and cowbird
107 (*Molothrus ater*), which may be killed at any time;

108 (18) Use dynamite, explosives, or any poison in any
109 waters of the state for the purpose of killing or taking fish.
110 Any person violating this subdivision is guilty of a felony,
111 and upon conviction thereof, shall be fined not more than
112 \$500 or confined for not less than six months nor more than
113 three years, or both fined and confined;

114 (19) Have a bow and gun, or have a gun and any arrow,
115 in the fields or woods at the same time;

116 (20) Have a crossbow in the woods or fields, or use a
117 crossbow to hunt for, take, or attempt to take any wildlife
118 except as otherwise provided in §20-2-5g and §20-2-42w of
119 this code;

120 (21) Take or attempt to take turkey, bear, elk, or deer
121 with any arrow unless the arrow is equipped with a point
122 having at least two sharp cutting edges measuring in excess
123 of three fourths of an inch wide;

124 (22) Take or attempt to take any wildlife with an arrow
125 having an explosive head or shaft, a poisoned arrow, or an
126 arrow which would affect wildlife by any chemical action;

127 (23) Shoot an arrow across any public highway;

128 (24) Permit any dog owned or under his or her control
129 to chase, pursue, or follow the tracks of any wild animal or
130 wild bird, day or night, between May 1 and August 15:
131 *Provided*, That dogs may be trained on wild animals and
132 wild birds, except deer and wild turkeys, and field trials may
133 be held or conducted on the grounds or lands of the owner,
134 or by his or her bona fide tenant, or upon the grounds or
135 lands of another person with his or her written permission,
136 or on public lands at any time. Nonresidents may not train
137 dogs in this state at any time except during the legal small
138 game hunting season. A person training dogs may not have
139 firearms or other implements for taking wildlife in his or her
140 possession during the closed season on wild animals and
141 wild birds, except a person carrying a firearm for self-
142 defense who is not prohibited from possessing firearms
143 under state or federal law;

144 (25) Conduct or participate in a trial, including a field
145 trial, shoot-to-retrieve field trial, water race, or wild hunt:
146 *Provided*, That any person, group of persons, club, or
147 organization may hold a trial upon obtaining a permit
148 pursuant to §20-2-56 of this code. The person responsible
149 for obtaining the permit shall prepare and keep an accurate
150 record of the names and addresses of all persons
151 participating in the trial and make the records readily
152 available for inspection by any natural resources police
153 officer upon request;

154 (26) Hunt, catch, take, kill, or attempt to hunt, catch,
155 take, or kill any wild animal, wild bird, or wild fowl except
156 during open seasons;

157 (27) Hunt or conduct hunts for a fee when the person is
158 not physically present in the same location as the wildlife
159 being hunted within West Virginia; and

160 (28) Catch, take, kill, or attempt to catch, take, or kill
161 any fish by any means within 200 feet of division personnel
162 engaged in stocking fish in public waters.

163 (b) Notwithstanding any ballot measure relating to
164 Sunday hunting, it is lawful to hunt throughout the State
165 of West Virginia on private lands on Sundays with the
166 written consent of the private landowner pursuant to §20-
167 2-7 of this code, and it is lawful to hunt throughout the
168 State of West Virginia on federal land where hunting is
169 permitted, in state forests, on land owned or leased by the
170 state for wildlife purposes, and on land managed by the
171 state for wildlife purposes pursuant to a cooperative
172 agreement.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-9. Violations of chapter generally; penalties.

1 Any person violating any of the provisions of this
2 chapter or rules promulgated under the provisions of this
3 chapter, the punishment for which is not prescribed, shall
4 be guilty of a misdemeanor and, upon conviction thereof,
5 shall for each offense be fined not less than \$20 nor more
6 than \$300, or confined in jail not less than 10 or more
7 than 100 days, or be both fined and confined within the
8 limitations aforesaid and, in the case of a violation by a
9 corporation, every officer or agent thereof directing or
10 engaging in such violation shall be guilty of a
11 misdemeanor and, upon conviction thereof, shall be
12 subject to the same penalties and punishment as herein
13 provided: *Provided*, That any person violating §20-2-
14 5(b), §20-2-7, §20-2-8, or §20-2-10 of this code shall be
15 guilty of a misdemeanor and, upon conviction of a first
16 offense thereof, shall be fined not less than \$100 nor more
17 than \$500, or shall be confined for not less than 10 days
18 nor more than 100 days, or both fined and confined. A
19 person who is convicted of a second offense of violation
20 of §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code

21 is guilty of a misdemeanor and shall be fined not less than
22 \$500 nor more than \$1,000 or shall be confined for not
23 less than 10 days nor more than 100 days, or both fined
24 and confined. A person who is convicted of a third and
25 subsequent offense of violation of §20-2-5(b), §20-2-7,
26 §20-2-8, or §20-2-10 of this code is guilty of a
27 misdemeanor, and shall be fined not less than \$1,000 nor
28 more than \$1,500, or shall be confined for not less than
29 10 days nor more than 100 days, or both fined and
30 confined: *Provided, however,* That any person who is in
31 violation of §20-2-27 of this code as a result of their
32 failure to have a valid Class E nonresident hunting and
33 trapping license, as defined by §20-2-42d of this code, or
34 a valid Class EE nonresident bear hunting license, as
35 defined by §20-2-42e of this code, shall be guilty of a
36 misdemeanor and, upon conviction thereof, shall be fined
37 not less than \$250 nor more than \$500, or confined in jail
38 not less than 10 nor more than 100 days, or both fined and
39 confined: *Provided further,* That any person who is in
40 violation of §20-2-27 of this code as a result of their
41 failure to have a Class F nonresident fishing license, as
42 defined by §20-2-42f of this code, shall be guilty of a
43 misdemeanor and, upon conviction thereof, fined not less
44 than \$100 nor more than \$300 or confined in jail not less
45 than 10 nor more than 100 days, or both fined and
46 confined: *And provided further,* That any person violating
47 any parking or speeding regulations as promulgated by
48 the director on any state parks, state forests, public
49 hunting and fishing areas, and all other lands and waters
50 owned, leased, or under the control of the Division of
51 Natural Resources shall be guilty of a misdemeanor and,
52 upon conviction thereof, shall be fined not less than \$2
53 nor more than \$100 or confined in jail not more than 10
54 days, or both fined and confined.

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CHAPTER 169

(S. B. 498 - By Senators Maynard, Stollings and Plymale)

[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 §20-3-3a, relating to Cabwaylingo State Forest; creating a pilot project permitting all-terrain or off-highway recreational vehicles on designated roads and trails in Cabwaylingo State Forest; permitting the Director of the Division of Natural Resources to designate roads, trails, and campgrounds and to close certain areas, or parts thereof, to public use in consultation with the Director of the Division of Forestry; permitting the Director of the Division of Natural Resources to establish special season and permit in consultation with the Director of the Division of Forestry; making it unlawful to operate an all-terrain or off-highway vehicle on any road or trail in Cabwaylingo State Forest without such special permit, should one be created; applying the ATV, UTV, and Motorcycle Responsibility Act to the project; providing the Director of the Division of Natural Resources emergency and regular legislative rule-making authority; and requiring Legislative Auditor to review project and file report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-3a. Cabwaylingo Pilot Project.

1 (a) The director in consultation with the forestry director
2 shall establish a two-year pilot project permitting all-terrain
3 vehicles (ATVs) and off-highway recreational vehicles
4 (ORVs) to drive on roads and trails in Cabwaylingo State
5 Forest, as designated and approved by the director. The
6 director may establish special seasons and designate certain
7 campgrounds and tent sites for ATV and ORV users in the
8 forest.

9 (b) The director in consultation with the forestry
10 director may establish a special permit for purchase by the
11 ATV and ORV users for road and trail access, and may close
12 any areas, or parts thereof, to public use. Should the director
13 establish such a special permit, it shall be unlawful, at any
14 time, to operate an ATV or ORV on any roads and trails in
15 Cabwaylingo State Forest without the special permit.

16 (c) The provisions of §20-15-1 *et seq.* of this code
17 apply to the division, participants, outfitters, and licensees
18 of the Cabwaylingo Pilot Project, though ORVs may be
19 permitted.

20 (d) At the conclusion of the two-year pilot project, the
21 Legislative Auditor shall review the pilot project and file a
22 report with the Joint Committee on Government and
23 Finance.

24 (e) The Director of the Division of Natural Resources
25 shall have authority to promulgate emergency legislative
26 rules and legislative rules necessary to effectuate the
27 provisions of this section.

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CHAPTER 170

**(Com. Sub. for H. B. 2693 - By Delegates Hamilton,
A. Evans, Paynter, Ambler, Butler, R. Romine,
Rodighiero, Eldridge and Hornbuckle)**

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §20-2-3 of the Code of West Virginia, 1931, as amended, relating to state ownership of wildlife.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-3. State ownership of wildlife.

1 The ownership of and title to all wildlife in the State of
2 West Virginia is hereby declared to be in the state, as trustee
3 for the people. A person shall not take or hunt wildlife in
4 any manner, or at any time, unless the person taking or
5 hunting the wildlife consents that the title to the wildlife is
6 and remains in the State of West Virginia for the purpose of
7 regulating the taking, hunting, using, and disposing of the
8 wildlife. The taking or hunting of wildlife at any time or in
9 any manner by any person is considered consent: *Provided,*
10 That, all fish, frogs, and other aquatic life in privately-
11 owned ponds are, and remain, the private property of the
12 owner or owners of the privately-owned ponds, and that the
13 fish, frogs, and other aquatic life in the privately-owned
14 ponds may be caught, taken or killed by the owner or owners
15 at any time.

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CHAPTER 171

**(Com. Sub. for H. B. 2696 - By Delegates Hamilton,
R. Romine, A. Evans, Eldridge, Wagner, Rowan,
Wilson, Love and Frich)**

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §20-2-42a, §20-2-42q, §20-2-42s and §20-2-42v of the Code of West Virginia, 1931, as amended, all relating to crossbow hunting; clarifying that the use of crossbows with Class A hunting and trapping license during big game seasons requires additional licenses, stamps or permits (with exception of buck firearms seasons); permitting crossbow hunting with Class RB and Class RRB licenses; permitting crossbow hunting with Class UU licenses; and permitting crossbow hunting with Class BG stamp.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-42a. Class A resident hunting and trapping license.

1 A Class A license is a resident hunting and trapping
2 license and entitles the licensee to hunt and trap all legal
3 species of wild animals and wild birds in all counties of the
4 state, except, big game as provided in §20-2-42v of this
5 code, and except as prohibited by rules of the director or
6 Natural Resources Commission and when additional
7 licenses, stamps, or permits are required. It shall be issued
8 only to residents or aliens lawfully residing in the United
9 States who have been domiciled residents of West Virginia
10 for a period of 30 consecutive days or more immediately
11 prior to the date of their application for a license. The fee
12 for the license is \$18. This is a base license and does not

13 require the purchase of a prerequisite license to participate
14 in the activities specified in this section, except as noted.

§20-2-42q. Class RB resident and Class RRB nonresident archery deer hunting stamp for an additional deer.

1 The director may issue a Class RB resident and a Class
2 RRB nonresident archery deer hunting stamp when
3 considered essential for the proper management of the
4 wildlife resources. This stamp allows the licensee to hunt
5 and take an additional deer during the deer archery or
6 crossbow seasons as designated by the director. The fee for
7 a Class RB stamp is \$20 and the fee for a Class RRB stamp
8 is \$35. The director may propose rules for promulgation in
9 accordance with §29A-3-1 *et seq.* of this code governing the
10 issuance and use of these stamps. These stamps require that
11 the licensee purchase the appropriate base license before
12 participating in the activities specified in this section.

§20-2-42s. Class UU nonresident archery deer hunting stamp.

1 A Class UU stamp is a nonresident archery deer hunting
2 stamp and entitles the licensee to hunt and take deer with a
3 bow during the archery deer season or with a crossbow in
4 the crossbow deer season in all counties of the state, except
5 as prohibited by the rules of the director or Natural
6 Resources Commission. The fee for a Class UU stamp is
7 \$30. The stamp, issued in a form prescribed by the director,
8 is in addition to a Class E license. This stamp requires that
9 the licensee purchase the appropriate base license before
10 participating in the activities specified in this section.

§20-2-42v. Class BG resident big game stamp.

1 A Class BG stamp is a resident big game stamp and
2 entitles the Class A licensee to hunt deer during the deer
3 archery, crossbow, and muzzleloader seasons, and bear,
4 wild turkey, and wild boar during the respective seasons,
5 except as prohibited by rules of the director or Natural
6 Resources Commission: *Provided*, That the licensee
7 possesses all other required permits and stamps. The fee for

8 the stamp is \$10. The stamp, issued in a form prescribed by
9 the director, shall be in addition to a Class A license. This
10 stamp requires that the licensee purchase the appropriate
11 base license before participating in the activities specified
12 in this section.

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CHAPTER 172

**(Com. Sub. for H. B. 4180 - By Delegates Hamilton,
A. Evans, R. Romine, Love, Eldridge, Jennings,
Lynch, Hollen and Wagner)**

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended, relating to wildlife resources; and authorizing the Director of the Division of Natural Resources to establish procedures and a fee schedule for individuals applying for limited permit hunts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and
2 responsibilities granted and assigned to the director in this
3 chapter and elsewhere by law, the director may:

4 (1) With the advice of the commission, prepare and
5 administer, through the various divisions created by this
6 chapter, a long-range comprehensive program for the
7 conservation of the natural resources of the state which best
8 effectuates the purpose of this chapter and which makes

9 adequate provisions for the natural resources laws of the
10 state;

11 (2) Sign and execute in the name of the state by the
12 Division of Natural Resources any contract or agreement
13 with the federal government or its departments or agencies,
14 subdivisions of the state, corporations, associations,
15 partnerships or individuals: *Provided*, That
16 intergovernmental cooperative agreements and agreements
17 with nongovernmental organizations in furtherance of
18 providing a comprehensive program for the exploration,
19 conservation, development, protection, enjoyment and use
20 of the natural resources of the state are exempt from the
21 provisions of §5A-3-1 *et seq.* of this code: *Provided*,
22 *however*, That repair and related construction contracts
23 necessary to protect public health or safety or to provide
24 uninterrupted enjoyment and public use of state parks, state
25 forests, wildlife management areas and state natural areas
26 under the jurisdiction of the Division of Natural Resources
27 are exempt from the provisions of §5A-3-1 *et seq.* of this
28 code. Nothing in this section authorizes the construction or
29 replacement of capital improvements without complying
30 with the provisions of §5A-3-1 *et seq.* of this code.

31 (3) Conduct research in improved conservation methods
32 and disseminate information matters to the residents of the
33 state;

34 (4) Conduct a continuous study and investigation of the
35 habits of wildlife and, for purposes of control and
36 protection, to classify by regulation the various species into
37 such categories as may be established as necessary;

38 (5) Prescribe the locality in which the manner and
39 method by which the various species of wildlife may be
40 taken, or chased, unless otherwise specified by this chapter;

41 (6) Hold at least six meetings each year at such time and
42 at such points within the state, as in the discretion of the
43 Natural Resources Commission may appear to be necessary

44 and proper for the purpose of giving interested persons in
45 the various sections of the state an opportunity to be heard
46 concerning open season for their respective areas, and report
47 the results of the meetings to the Natural Resources
48 Commission before the season and bag limits are fixed by
49 it;

50 (7) Suspend open hunting season upon any or all
51 wildlife in any or all counties of the state with the prior
52 approval of the Governor in case of an emergency such as a
53 drought, forest fire hazard or epizootic disease among
54 wildlife. The suspension shall continue during the existence
55 of the emergency and until rescinded by the director.
56 Suspension, or reopening after such suspension, of open
57 seasons may be made upon twenty-four hours' notice by
58 delivery of a copy of the order of suspension or reopening
59 to the wire press agencies at the state capitol;

60 (8) Supervise the fiscal affairs and responsibilities of the
61 division;

62 (9) Designate such localities as he or she shall determine
63 to be necessary and desirable for the perpetuation of any
64 species of wildlife;

65 (10) Enter private lands to make surveys or inspections
66 for conservation purposes, to investigate for violations of
67 provisions of this chapter, to serve and execute warrants and
68 processes, to make arrests and to otherwise effectively
69 enforce the provisions of this chapter;

70 (11) Acquire for the state in the name of the Division of
71 Natural Resources by purchase, condemnation, lease or
72 agreement, or accept or reject for the state, in the name of
73 the Division of Natural Resources, gifts, donations,
74 contributions, bequests or devises of money, security or
75 property, both real and personal, and any interest in such
76 property, including lands and waters, which he or she deems
77 suitable for the following purposes:

78 (a) For state forests for the purpose of growing timber,
79 demonstrating forestry, furnishing or protecting watersheds
80 or providing public recreation;

81 (b) For state parks or recreation areas for the purpose of
82 preserving scenic, aesthetic, scientific, cultural,
83 archaeological or historical values or natural wonders, or
84 providing public recreation;

85 (c) For public hunting, trapping or fishing grounds or
86 waters for the purpose of providing areas in which the public
87 may hunt, trap or fish, as permitted by the provisions of this
88 chapter and the rules issued hereunder;

89 (d) For fish hatcheries, game farms, wildlife research
90 areas and feeding stations;

91 (e) For the extension and consolidation of lands or
92 waters suitable for the above purposes by exchange of other
93 lands or waters under his or her supervision;

94 (f) For such other purposes as may be necessary to carry
95 out the provisions of this chapter;

96 (12) Capture, propagate, transport, sell or exchange any
97 species of wildlife as may be necessary to carry out the
98 provisions of this chapter;

99 (13) Sell timber for not less than the value thereof, as
100 appraised by a qualified appraiser appointed by the director,
101 from all lands under the jurisdiction and control of the
102 director, except those lands that are designated as state parks
103 and those in the Kanawha State Forest. The appraisal shall
104 be made within a reasonable time prior to any sale, reduced
105 to writing, filed in the office of the director and shall be
106 available for public inspection. The director must obtain the
107 written permission of the Governor to sell timber when the
108 appraised value is more than \$5,000. The director shall
109 receive sealed bids therefor, after notice by publication as a
110 Class II legal advertisement in compliance with the
111 provisions of §59-3-1 *et seq.* of this code and the publication
112 area for the publication shall be each county in which the

113 timber is located. The timber so advertised shall be sold at
114 not less than the appraised value to the highest responsible
115 bidder, who shall give bond for the proper performance of
116 the sales contract as the director shall designate; but the
117 director may reject any and all bids and readvertise for bids.
118 If the foregoing provisions of this section have been
119 complied with and no bid equal to or in excess of the
120 appraised value of the timber is received, the director may,
121 at any time, during a period of six months after the opening
122 of the bids, sell the timber in such manner as he or she deems
123 appropriate, but the sale price may not be less than the
124 appraised value of the timber advertised. No contract for
125 sale of timber made pursuant to this section may extend for
126 a period of more than ten years. And all contracts heretofore
127 entered into by the state for the sale of timber may not be
128 validated by this section if a contract is otherwise invalid.
129 The proceeds arising from the sale of the timber so sold shall
130 be paid to the Treasurer of the State of West Virginia and
131 shall be credited to the division and used exclusively for the
132 purposes of this chapter: *Provided*, That nothing contained
133 herein may prohibit the sale of timber which otherwise
134 would be removed from right-of-way's necessary for and
135 strictly incidental to the extraction of minerals;

136 (14) Sell or lease, with the approval in writing of the
137 Governor, coal, oil, gas, sand, gravel and any other minerals
138 that may be found in the lands under the jurisdiction and
139 control of the director, except those lands that are
140 designated as state parks. The director, before making sale
141 or lease thereof, shall receive sealed bids therefor, after
142 notice by publication as a Class II legal advertisement in
143 compliance with the provisions of §59-3-1 *et seq.* of this
144 code, and the publication area for such publication shall be
145 each county in which such lands are located. The minerals
146 so advertised shall be sold or leased to the highest
147 responsible bidder, who shall give bond for the proper
148 performance of the sales contract or lease as the director
149 shall designate; but the director may reject any and all bids
150 and readvertise for bids. The proceeds arising from any such
151 sale or lease shall be paid to the Treasurer of the State of

152 West Virginia and shall be credited to the division and used
153 exclusively for the purposes of this chapter;

154 (15) Exercise the powers granted by this chapter for the
155 protection of forests and regulate fires and smoking in the
156 woods or in their proximity at such times and in such
157 localities as may be necessary to reduce the danger of forest
158 fires;

159 (16) Cooperate with departments and agencies of state,
160 local and federal governments in the conservation of natural
161 resources and the beautification of the state;

162 (17) Report to the Governor each year all information
163 relative to the operation and functions of the division and the
164 director shall make such other reports and recommendations
165 as may be required by the Governor, including an annual
166 financial report covering all receipts and disbursements of the
167 division for each fiscal year, and he or she shall deliver the
168 report to the Governor on or before December 1, next after
169 the end of the fiscal year so covered. A copy of the report
170 shall be delivered to each house of the Legislature when
171 convened in January next following;

172 (18) Keep a complete and accurate record of all
173 proceedings, record and file all bonds and contracts taken or
174 entered into and assume responsibility for the custody and
175 preservation of all papers and documents pertaining to his
176 or her office, except as otherwise provided by law;

177 (19) Offer and pay, in his or her discretion, rewards for
178 information respecting the violation, or for the apprehension
179 and conviction of any violators, of any of the provisions of
180 this chapter;

181 (20) Require such reports as he or she may determine to
182 be necessary from any person issued a license or permit
183 under the provisions of this chapter, but no person may be
184 required to disclose secret processes or confidential data of
185 competitive significance;

186 (21) Purchase as provided by law all equipment
187 necessary for the conduct of the division;

188 (22) Conduct and encourage research designed to
189 further new and more extensive uses of the natural resources
190 of this state and to publicize the findings of the research;

191 (23) Encourage and cooperate with other public and
192 private organizations or groups in their efforts to publicize
193 the attractions of the state;

194 (24) Accept and expend, without the necessity of
195 appropriation by the Legislature, any gift or grant of money
196 made to the division for all purposes specified in this chapter
197 and he or she shall account for and report on all such receipts
198 and expenditures to the Governor;

199 (25) Cooperate with the state historian and other
200 appropriate state agencies in conducting research with
201 reference to the establishment of state parks and monuments
202 of historic, scenic and recreational value and to take such
203 steps as may be necessary in establishing the monuments or
204 parks as he or she deems advisable;

205 (26) Maintain in his or her office at all times, properly
206 indexed by subject matter and also in chronological
207 sequence, all rules made or issued under the authority of this
208 chapter. The records shall be available for public inspection
209 on all business days during the business hours of working
210 days;

211 (27) Delegate the powers and duties of his or her office,
212 except the power to execute contracts not related to land and
213 stream management, to appointees and employees of the
214 division, who shall act under the direction and supervision
215 of the director and for whose acts he or she shall be
216 responsible;

217 (28) Conduct schools, institutions and other educational
218 programs, apart from or in cooperation with other
219 governmental agencies, for instruction and training in all
220 phases of the natural resources programs of the state;

221 (29) Authorize the payment of all or any part of the
222 reasonable expenses incurred by an employee of the division
223 in moving his or her household furniture and effects as a
224 result of a reassignment of the employee: *Provided*, That no
225 part of the moving expenses of any one such employee may
226 be paid more frequently than once in twelve months;

227 (30) Establishing procedures and fee schedule for
228 individuals applying for limited permit hunts; and

229 (31) Promulgate rules, in accordance with the provisions
230 of §29A-1-1 *et seq.* of this code, to implement and make
231 effective the powers and duties vested in him or her by the
232 provisions of this chapter and take such other steps as may be
233 necessary in his or her discretion for the proper and effective
234 enforcement of the provisions of this chapter.

CHAPTER 173

**(Com. Sub. for H. B. 4394 - By Delegates A. Evans,
Hartman, Hamilton and R. Romine)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §20-3-5 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §20-3-5a, all relating to forest fires; requiring all flammable material must be removed from the area immediately surrounding material to be burned for a distance which ensures the fire will at all times be contained; requiring that a safety strip shall in no event be less than ten feet wide; establishing a crime for any person or employee who sets or causes to be set any fire which escapes the safety strip and causes damage to the lands of another; setting forth criminal penalties; creating a prescribed fire program; defining terms; requiring Director of the Division of

Natural Resources to develop a certification process and prescribed burn course; setting forth requirements for certification as a certified prescribed fire manager; prescribing manner in which prescribed burn must be performed; setting forth violations which may result in revocation of certification; and authorizing rule-making.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-5. Forest fire seasons; prohibited and permissible fires; burning permits and fees; fire control measures; criminal and civil penalties.

1 (a) *Forest fire seasons.* — March 1 through May 31, and
2 October 1 through December 31 are designated as forest fire
3 seasons. During any fire season, a person may set on fire or
4 cause to be set on fire any forest land, or any grass, grain,
5 stubble, slash, debris, or other inflammable materials only
6 between 5 p.m. and 7 a.m., at which time the fire must be
7 extinguished.

8 (b) *Permissible fires during forest fire seasons.* — The
9 following attended fires are permitted during forest fire
10 season as set forth in subsection (a) of this section without
11 a burning permit unless there is a burning ban in effect:

12 (1) Small fires set for the purpose of food preparation,
13 or providing light or warmth around which all grass, brush,
14 stubble, or other debris has been removed for a distance of
15 10 feet from the fire; and

16 (2) Burning conducted at any time when the ground
17 surrounding the burning site is covered by one inch or more
18 of snow.

19 (c) *Burning permits.* — The director or his or her
20 designee may issue burning permits authorizing fires during
21 forest fire seasons as set forth in subsection (a) of this
22 section that are otherwise prohibited by this section. The

23 permits shall state the requisite conditions and time frame
24 to prevent danger from the fire to life or property: *Provided,*
25 That the director or his or her designee shall take final action
26 upon all completed permit applications within 30 days of
27 receipt if the application is uncontested, or within 90 days if
28 the application is contested.

29 (1) *Permit fees.* — Entities required to pay a permit fee
30 are those engaged in commercial, manufacturing, public
31 utility, mining, and like activities. Agricultural activities are
32 exempt from paying the permit fee. The permit fee is \$125
33 per site and shall be deposited into the Division of Forestry
34 Fund (3081) to be used to administer the provisions of this
35 section. The permit fee covers the fire season during which
36 it is issued.

37 (2) Noncompliance with any condition of the permit is
38 a violation of this section. Any permit which was obtained
39 through willful misrepresentation is invalid and violates this
40 section.

41 (3) Permit holders shall take all necessary and adequate
42 precautions to confine and control fires authorized by the
43 permit. Failure to take action is a violation of this section
44 and is justification for the director to revoke the permit.

45 (d) *Fire control.* —

46 (1) With approval of the Governor, the director may
47 prohibit the starting of and require the extinguishment of
48 fire in any designated area, including fires permitted by this
49 section.

50 (2) With approval of the Governor, the director may
51 designate any forest area as a danger area, prohibit entry,
52 and declare conditional uses and prohibited areas of the
53 forest by proclamation at any time of the year. The
54 proclamation shall be furnished to newspapers, radio
55 stations, and television stations that serve the designated
56 area and becomes effective after 24 hours. The proclamation

57 remains in effect until the director, with the approval of the
58 Governor, terminates it. The order shall designate the time
59 of termination, and notice of the order shall be furnished to
60 each newspaper, radio station, and television station that
61 received a copy of the proclamation.

62 (3) A person shall remove all flammable material from
63 the area immediately surrounding the material to be burned
64 for a distance which ensures the fire will at all times be
65 contained; this safety strip shall in no event be less than 10
66 feet wide. Any person or his or her agent or employee who
67 sets or causes to be set any fire which escapes the safety
68 strip and causes damage to the lands of another is guilty of
69 a misdemeanor.

70 (e) *Criminal and civil penalties.* — A person or entity
71 that violates this section is guilty of a misdemeanor and,
72 upon conviction, shall be fined not less than \$100 and not
73 more than \$1,000 for each violation. In addition to fines and
74 costs, a person or entity convicted of a violation of this
75 section shall pay a \$200 civil penalty to the division within
76 60 days. The civil penalty shall be collected by the court in
77 which the person is convicted and forwarded to the division
78 and deposited in the Division of Forestry Fund (3081) to be
79 used to administer the provisions of this section.

§20-3-5a. Prescribed Fire Program.

1 (a) As used in this section:

2 (1) “Certified prescribed fire manager” means an
3 employee of the Division of Forestry, the Division of
4 Natural Resources, or any federal employee who has
5 successfully completed a certification process established
6 by the director.

7 (2) “Prescribed fire” means the controlled application of
8 fire or wildland fuels in wildlife management areas, state
9 forests or federal lands in either the natural or modified
10 state, under specified environmental conditions, which
11 allows the fire to be confined to a predetermined area and

12 produces the fire behavior and fire characteristics necessary
13 to attain planned fire treatment and ecological, silvicultural,
14 and wildlife management objectives.

15 (3) "Prescription" means a written statement defining
16 the objectives to be attained by a prescribed fire and the
17 conditions of temperature, humidity, wind direction and
18 speed, fuel moisture, and soil moisture under which a fire
19 will be allowed to burn. A prescription is generally
20 expressed as an acceptable range of the prescription
21 elements.

22 (b) *Director certification process.* — The director shall
23 develop and administer a certification process and
24 prescribed burn course for any individual who desires to
25 become a certified prescribed fire manager. The prescribed
26 fire course shall include the following subjects: the legal
27 aspects of prescribed fire, fire behavior, prescribed fire
28 tactics, smoke management, environmental effects, plan
29 preparation, and safety. The director shall give a final
30 examination on these subjects to all attendees. The director
31 may charge a reasonable fee to cover the costs of the
32 prescribed fire course and the examination.

33 (c) To be certified as a certified prescribed fire manager,
34 a person shall:

35 (1) Successfully complete all components of the
36 prescribed fire course developed by the director and pass the
37 examination developed for the course;

38 (2) Successfully complete a prescribed fire course
39 comparable to that developed by the director and pass the
40 examination developed for the course; or

41 (3) Demonstrate relevant past experience, complete a
42 review course and pass the examination developed for the
43 prescribed fire course.

44 (d) Prescribed burning shall be performed in the
45 following manner:

46 (1) A certified prescribed fire manager shall prepare a
47 prescription for the prescribed fire prior to the burn. The
48 prescription shall include: (A) The landowner's name,
49 address, and telephone number, and the telephone number
50 of the certified prescribed fire manager who prepared the
51 plan; (B) a description of the area to be burned, a map of the
52 area to be burned, the objectives of the prescribed fire, and
53 the desired weather conditions or parameters; (C) a
54 summary of the methods to be used to start, control, and
55 extinguish the prescribed fire; and (D) a smoke management
56 plan. The smoke management plan shall conform to the
57 Department of Environmental Protection's rule, Control of
58 Air Pollution from Combustion of Refuse, 45 CSR 6. A
59 copy of the prescription shall be retained at the site
60 throughout the period of the burning;

61 (2) A certified prescribed fire manager shall directly
62 supervise a prescribed fire and ensure that the prescribed
63 fire is in accordance with the prescription; and

64 (3) The certified prescribed fire manager shall notify the
65 nearest regional office of the division 24 hours prior to the
66 prescribed fire.

67 (e) If the actions of any certified prescribed fire manager
68 or the prescriptions prepared by him or her violate any
69 provision of this article, state air pollution control laws, the
70 Division of Forestry rules, the Department of
71 Environmental Protection rules or laws, or threaten public
72 health and safety, the director may revoke his or her
73 certification.

74 (f) The director shall propose rules for promulgation in
75 accordance with the provisions of §29A-3-1 *et seq.* of this
76 code for establishing the procedures for the development of
77 a certification program for prescribed fire managers.

●

CHAPTER 174

(H. B. 4488 - By Delegates Hanshaw, Boggs and Shott)

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

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

AN ACT to amend and reenact §20-14-1, §20-14-2, §20-14-3, §20-14-4, and §20-14-8 of the Code of West Virginia, 1931, as amended, all relating to the Hatfield-McCoy Recreation Authority; updating legislative findings; adding the counties of Braxton, Clay, Fayette, Nicholas, and Webster to the list of participating counties; modifying the number of board members; providing that 10 members of the board constitutes a quorum; prohibiting persons from consuming non-intoxicating beer, nonintoxicating craft beer, or wine at any time within the Hatfield-McCoy Recreation Area; prohibiting a child under the age of six from being allowed on any trail within the Hatfield-McCoy Recreation Area; prohibits children under the age of eight years who are required to be in a child passenger safety device while occupying a motor vehicle from being allowed on any trail within the Hatfield-McCoy Recreation Area; and requiring all persons operating or riding upon an ATV, UTV, or motorcycle to follow the manufacturer's recommendations for that vehicle relating to age and size limitations for operators and passengers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.

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

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

21 The Legislature further finds that the economic benefits
22 of trail development are only realized when the ridership is
23 concentrated in specific areas. Before private capital will
24 be brought to the marketplace in support of a recreational
25 trail system, a density of trail ridership must be
26 demonstrated and sustained over a period of years to
27 warrant the investment. Therefore, any expansion of the
28 state's recreational trail systems must be strategic and
29 require a showing that the new trail system would not only
30 expand visitation, but would not materially detract from the
31 visitation and ridership on existing trail systems where
32 numerous private and public investments have already been
33 made.

34 The Legislature further finds that the creation and
35 empowering of a joint development entity to work with the
36 landowners, county officials and community leaders, state
37 and federal government agencies, recreational user groups,

38 and other interested parties to enable and facilitate the
39 implementation of the facilities will greatly assist in the
40 realization of these potential benefits.

41 The Legislature further finds that it is in the best
42 interests of the state to encourage private landowners to
43 make available for public use through the Hatfield-McCoy
44 Regional Recreation Authority land for these recreational
45 purposes by limiting their liability for injury to persons
46 entering thereon, by limiting their liability for injury to the
47 property of persons entering thereon, and by limiting their
48 liability to persons who may be injured or otherwise
49 damaged by the acts or omissions of persons entering
50 thereon.

§20-14-2. Definitions.

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

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

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

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

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

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

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

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

31 (h) "Participating county or counties" means the
32 counties of Boone, Braxton, Clay, Fayette, Kanawha,
33 Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas,
34 Wayne, Webster, and Wyoming that have agreed to operate
35 the Hatfield-McCoy Regional Recreation Authority as a
36 joint development entity and to participate in its
37 governance; and

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

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

1 (a) The public corporation, the Hatfield-McCoy
2 Regional Recreation Authority, previously created by this
3 section is hereby converted to a new public corporation
4 created as a joint development entity of the participating
5 counties for the purpose of enabling and facilitating the
6 development and operation of a system of trail-oriented
7 recreation facilities for use by off-highway motor vehicle

8 enthusiasts. This recreational trail system shall be located in
9 the counties of Boone, Braxton, Clay, Fayette, Kanawha,
10 Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas,
11 Wayne, Webster, and Wyoming with significant portions of
12 the recreational trail system being located on private
13 property made available for use through lease, license,
14 easement, or other appropriate legal form by a willing
15 landowner.

16 (b) The authority shall be governed by a board of no
17 more than two times the number of participating counties
18 who shall be representative of the various interests involved
19 in the Hatfield-McCoy Recreation Area project in the
20 participating counties and who shall be appointed as
21 follows:

22 (1) The county commission of each participating
23 county, as defined in section two of this article, shall appoint
24 one member of the board who represents and is associated
25 with travel and tourism or economic development efforts
26 within the county or who is associated with a mining,
27 logging, natural gas, or other resource-extraction industry or
28 who is a licensed land surveyor or licensed professional
29 engineer. The initial appointment shall be for a two-year
30 term, but all subsequent appointments shall be for a four-
31 year term.

32 (2) The county commission of each participating
33 county, as defined in §20-14-2 of this code, shall appoint
34 one member of the board who represents and is associated
35 with a corporation or individual landowner whose land is
36 being used or is expected to be used in the future as part of
37 the Hatfield-McCoy Recreation Area project or their
38 designee. This member shall be appointed to a four-year
39 term.

40 Any appointed member whose term has expired shall
41 serve until his or her successor has been duly appointed and
42 qualified. Any person appointed to fill a vacancy shall serve
43 only for the unexpired term. Any appointed member is

44 eligible for reappointment. Members of the board are not
45 entitled to compensation for services performed as members
46 but are entitled to reimbursement for all reasonable and
47 necessary expenses actually incurred in the performance of
48 their duties.

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

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

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

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

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

10 Ten members of the board constitute a quorum and a
11 quorum shall be present for the board to conduct business.

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

17 begins on July 1 and ends on the thirtieth day of the
18 following June.

19 The board shall appoint an executive director to act as
20 its chief executive officer, to serve at the will and pleasure
21 of the board. The board, acting through its executive
22 director, may employ any other personnel considered
23 necessary and may appoint counsel and legal staff for the
24 authority and retain such temporary engineering, financial,
25 and other consultants or technicians as may be required for
26 any special study or survey consistent with the provisions of
27 this article. The executive director shall carry out plans to
28 implement the provisions of this article and to exercise those
29 powers enumerated in the bylaws. The executive director
30 shall prepare annually a budget to be submitted to the board
31 for its review and approval prior to the commencement of
32 each fiscal year. The budget shall contain a detailed account
33 of all planned and proposed revenue and expenditures for
34 the authority for the upcoming fiscal year, including a
35 detailed list of employees by title, salary, cost of projected
36 benefits, and total compensation. Before August 15 the
37 executive director shall provide to the board and the county
38 commission for each participating county a detailed list of
39 actual expenditures and revenue by account and recipient
40 name for the previous fiscal year and a copy of the approved
41 budget for the current fiscal year.

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

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

§20-14-8. Prohibited acts, penalty.

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

9 (b) A person may not consume or possess any alcoholic
10 liquor, nonintoxicating beer, nonintoxicating craft beer, or
11 wine at any time or any location within the Hatfield-McCoy
12 Recreation Area.

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

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

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

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

34 (g) Every person within the Hatfield-McCoy Recreation
35 Area who is under 16 years of age shall at all times be under
36 the immediate supervision of, and within sight of, a person
37 who is at least 18 years of age and who either is a parent or
38 guardian of the youth or has the express permission of a
39 parent or guardian to supervise the youth. No parent,
40 guardian, or supervising adult may allow a child under the
41 age of 16 years to leave that person's sight and supervision
42 within the Hatfield-McCoy Recreation Area.

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

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

51 (j) Every person operating a motor vehicle within the
52 Hatfield-McCoy Recreation Area is subject to all of the
53 duties applicable to the driver of a motor vehicle by the
54 provisions of §17C-1-1 *et seq.* of this code except where
55 inconsistent with the provisions of this article and except as
56 to those provisions of §17C-1-1 *et seq.* of this code which
57 by their nature can have no application and may not operate
58 a motor vehicle in violation of those duties.

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

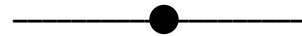
62 (l) A person may not operate or ride in a utility terrain
63 vehicle, as defined in §17F-1-1 *et seq.* of this code, or any
64 other motor vehicle with bench or bucket seating and a
65 steering wheel for control unless equipped with seat belts
66 meeting at a minimum federal motor vehicle safety standard
67 and properly worn by the driver and all passengers.

68 (m) (1) No child under the age of six years may be
69 allowed on any trail within the Hatfield-McCoy Recreation
70 Area; and

71 (2) No child under the age of eight years who is required
72 to be placed in a child passenger safety device system
73 meeting applicable federal motor vehicle safety standards
74 pursuant to §17C-15-46 of this code while occupying a
75 motor vehicle may be allowed on any trail within the
76 Hatfield-McCoy Recreation Area; and

77 (3) All persons operating or riding upon an ATV, UTV,
78 or motorcycle as defined in §20-15-1 *et seq.* of this code
79 shall follow the manufacturer's recommendations for that
80 vehicle relating to age and size limitations for operators and
81 passengers.

82 (n) A person who violates any provision of this section
83 is guilty of a misdemeanor and, upon conviction thereof,
84 shall be fined not more than \$100. Prosecution or conviction
85 for the misdemeanor described in this subsection may not
86 prevent or disqualify any other civil or criminal remedies
87 for the conduct prohibited by this section.



CHAPTER 175

**(Com. Sub. for H. B. 4607 - By Delegates Hamrick,
Higginbotham, Howell and Graves)**

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

AN ACT to amend and reenact §20-5-2 of the Code of West Virginia, 1931, as amended, relating to the Division of Natural Resources permitting the use of recreational unmanned aircraft systems in state parks, state forests, and on rail trails;

requiring persons who intend to operate unmanned aircraft systems to register with the superintendent prior to participating in the use of any unmanned aircraft system; establishing certain criteria for the restricted operation of unmanned aircraft systems within state parks, forests, and rail trails; and clarifying that persons who operate unmanned aircraft systems assume full responsibility and liability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PARKS AND RECREATION.

§20-5-2. Powers of the director with respect to the section of parks and recreation.

1 (a) The Director of the Division of Natural Resources is
2 responsible for the execution and administration of the
3 provisions in this article as an integral part of the parks and
4 recreation program of the state and shall organize and staff
5 the section of parks and recreation for the orderly, efficient
6 and economical accomplishment of these ends. The
7 authority granted in the year 1994 to the Director of the
8 Division of Natural Resources to employ up to six
9 additional unclassified personnel to carry out the parks'
10 functions of the Division of Natural Resources is continued.

11 (b) The Director of the Division of Natural Resources
12 shall:

13 (1) Establish, manage and maintain the state's parks and
14 recreation system for the benefit of the people of this state
15 and do all things necessary and incidental to the
16 development and administration of the state's parks and
17 recreation system;

18 (2) Acquire property for the state in the name of the
19 Division of Natural Resources by purchase, lease or
20 agreement; retain, employ and contract with legal advisors
21 and consultants; or accept or reject for the state, in the name
22 of the division, gifts, donations, contributions, bequests or
23 devises of money, security or property, both real and

24 personal, and any interest in the property, including lands
25 and waters, for state park or recreational areas for the
26 purpose of providing public recreation: *Provided*, That the
27 provisions of section §20-1-20 *et seq.* of this code are
28 specifically made applicable to any acquisitions of land:
29 *Provided, however*, That any sale, exchange or transfer of
30 property for the purposes of completing land acquisitions or
31 providing improved recreational opportunities to the
32 citizens of the state is subject to the procedures of §5a-10-1
33 *et seq.* of this code: *Provided further*, That no sale of any
34 park or recreational area property, including lands and
35 waters, used for purposes of providing public recreation on
36 the effective date of this article and no privatization of any
37 park may occur without statutory authority;

38 (3) Approve and direct the use of all revenue derived from
39 the operation of the state parks and public recreation system
40 for the operation, maintenance and improvement of the
41 system, individual projects of the system or for the retirement
42 of park development revenue bonds: *Provided*, That all
43 revenues derived from the operation of the state parks and
44 public recreation system shall be invested by the Treasurer and
45 all proceeds from investment earnings shall accrue for the
46 exclusive use for the operation, maintenance, and
47 improvement of the system, individual projects of the system
48 or for the retirement of park development revenue bonds;

49 (4) Effectively promote and market the state's parks,
50 state forests, state recreation areas and wildlife recreational
51 resources by approving the use of no less than 20 percent of
52 the:

53 (A) Funds appropriated for purposes of advertising and
54 marketing expenses related to the promotion and
55 development of tourism, pursuant to §29-22-18 (j) of this
56 code; and

57 (B) Funds authorized for expenditure from the Tourism
58 Promotion Fund for purposes of direct advertising, pursuant
59 to §5B-2-12 and §29-22A-10 of this code;

60 (5) Issue park development revenue bonds as provided
61 in this article;

62 (6) Provide for the construction and operation of cabins,
63 lodges, resorts, restaurants and other developed recreational
64 service facilities, subject to the provisions of §20-5-15 and
65 §20-1-20 of this code;

66 (7) The director may sell timber that has been severed
67 in a state park incidental to the construction of park facilities
68 or related infrastructure where the construction is authorized
69 by the Legislature in accordance with §20-1-20 of this code,
70 and the sale of the timber is otherwise in the best interest of
71 park development, without regard to proceeds derived from
72 the sale of timber. The gross proceeds derived from the sale
73 of timber shall be deposited into the operating budget of the
74 park from which the timber was harvested;

75 (8) Propose rules for legislative approval in accordance
76 with the provisions of §29A-3-1 *et seq.* of this code to
77 control the uses of parks: *Provided*, That the director may
78 not permit public hunting, except as otherwise provided in
79 this section, the exploitation of minerals or the harvesting of
80 timber for commercial purposes in any state park;

81 (9) Exempt designated state parks from the requirement
82 that all payments must be deposited in a bank within 24
83 hours for amounts less than \$500 notwithstanding any other
84 provision of this code to the contrary: *Provided*, That such
85 designated parks shall make a deposit in any amount no less
86 than every seven working days;

87 (10) Waive the use fee normally charged to an
88 individual or group for one day's use of a picnic shelter or
89 one week's use of a cabin in a state recreation area when the
90 individual or group donates the materials and labor for the
91 construction of the picnic shelter or cabin: *Provided*, That
92 the individual or group was authorized by the director to
93 construct the picnic shelter or cabin and that it was
94 constructed in accordance with the authorization granted

95 and the standards and requirements of the division
96 pertaining to the construction. The individual or group to
97 whom the waiver is granted may use the picnic shelter for
98 one reserved day or the cabin for one reserved week during
99 each calendar year until the amount of the donation equals
100 the amount of the loss of revenue from the waiver or until
101 the individual dies or the group ceases to exist, whichever
102 first occurs. The waiver is not transferable. The director
103 shall permit free use of picnic shelters or cabins to
104 individuals or groups who have contributed materials and
105 labor for construction of picnic shelters or cabins prior to
106 the effective date of this section. The director shall propose
107 a legislative rule for legislative approval in accordance with
108 §29A-3-1 *et seq.* of this code governing the free use of
109 picnic shelters or cabins provided in this section, the
110 eligibility for free use, the determination of the value of the
111 donations of labor and materials, the appropriate definitions
112 of a group and the maximum time limit for the use;

113 (11) Provide within the parks a market for West Virginia
114 arts, crafts and products, which shall permit gift shops
115 within the parks to offer for sale items purchased on the
116 open market from local artists, artisans, craftsmen and
117 suppliers and local or regional crafts cooperatives;

118 (12) Provide that reservations for reservable campsites
119 may be made, upon two days' advance notice, for any date
120 for which space is available within a state park or recreational
121 area managed by the parks and recreation section;

122 (13) Provide that reservations for all state parks and
123 recreational areas managed by the parks and recreation section
124 of the division may be made by use of a valid credit card;

125 (14) Develop a plan to establish a centralized computer
126 reservation system for all state parks and recreational areas
127 managed by the parks and recreation section and to
128 implement the plan as funds become available; and

129 (15) Notwithstanding the provisions of §20-2-58 of this
130 code, the Natural Resources Commission is authorized to
131 promulgate rules in accordance with the provisions of §29A-
132 3-1 *et seq.* of this code to permit and regulate the hunting of
133 white-tail deer in any state park as considered appropriate by
134 the director to protect the ecological integrity of the area.

135 (16) Permit the use of drones within State Parks, Forests
136 and Rail Trails. Persons who intend to operate an unmanned
137 aircraft system shall register at the area superintendent's office
138 prior to engaging or participating in the operation of any
139 unmanned aircraft system and specify where the activity will
140 take place. A superintendent may only prohibit, issue
141 directives, or implement time and place restrictions on
142 unmanned aircraft system use in areas or portions thereof in
143 order to: (i) protect the safety and privacy of other park users,
144 (ii) protect area facilities, (iii) protect the peaceful and quiet
145 atmosphere of the area, or (iv) prevent harassment of wildlife.
146 Upon registration the superintendent shall provide a list and
147 map to the unmanned aircraft system operator of any
148 prohibited areas within the park. Participants in drone
149 operation activities assume full responsibility and liability for
150 any risk or injury related to using an unmanned aircraft system.



CHAPTER 176

(Com. Sub. for H. B. 4320 - By Delegates McGeehan and Folk)

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

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

AN ACT to amend and reenact §39B-1-114 of the Code of West Virginia, 1931, as amended; and to amend and reenact §39B-2-101 of said code, all relating to limiting the ability of an agent under a power of attorney to take self-benefiting actions;

clarifying the presumption that an act is not within the scope of authority granted in a power of attorney when an agent benefits from the act to the detriment of an ancestor, spouse, heir, or descendant; requiring express grant of authority to exercise authority over the content of electronic communications sent or received by the principal; and clarifying the prohibition against an agent exercising authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§39B-1-114. Agent's duties.

1 (a) Notwithstanding provisions in the power of attorney,
2 an agent who has accepted appointment shall:

3 (1) Act in accordance with the principal's reasonable
4 expectations to the extent actually known by the agent and,
5 otherwise, in the principal's best interest;

6 (2) Act in good faith; and

7 (3) Act only within the scope of authority granted in the
8 power of attorney.

9 (b) Except as otherwise provided in the power of
10 attorney, an agent who has accepted appointment shall:

11 (1) Act loyally for the principal's benefit;

12 (2) Act so as not to create a conflict of interest that
13 impairs the agent's ability to act impartially in the
14 principal's best interest;

15 (3) Act with the care, competence and diligence
16 ordinarily exercised by agents in similar circumstances;

17 (4) Keep a record of all receipts, disbursements and
18 transactions made on behalf of the principal;

19 (5) Cooperate with a person that has authority to make
20 health-care decisions for the principal to carry out the
21 principal's reasonable expectations to the extent actually
22 known by the agent and, otherwise, act in the principal's
23 best interest; and

24 (6) Attempt to preserve the principal's estate plan, to the
25 extent actually known by the agent, if preserving the plan is
26 consistent with the principal's best interest based on all
27 relevant factors, including:

28 (A) The value and nature of the principal's property;

29 (B) The principal's foreseeable obligations and need for
30 maintenance;

31 (C) Minimization of taxes, including income, estate,
32 inheritance, generation-skipping transfer and gift taxes; and

33 (D) Eligibility for a benefit, a program or assistance
34 under a statute or regulation.

35 (c) An agent that acts in good faith is not liable to any
36 beneficiary of the principal's estate plan for failure to
37 preserve the plan.

38 (d) An agent that acts with care, competence and
39 diligence for the best interest of the principal is not liable
40 solely because the agent also benefits from the act or has an
41 individual or conflicting interest in relation to the property
42 or affairs of the principal.

43 (e) If an agent is selected by the principal because of
44 special skills or expertise possessed by the agent or in reliance
45 on the agent's representation that the agent has special skills or
46 expertise, the special skills or expertise must be considered in
47 determining whether the agent has acted with care,
48 competence and diligence under the circumstances.

49 (f) Absent a breach of duty to the principal, an agent is
50 not liable if the value of the principal's property declines.

51 (g) An agent who exercises authority to delegate to
52 another person the authority granted by the principal or who
53 engages another person on behalf of the principal is not
54 liable for an act, error of judgment or default of that person
55 if the agent exercises care, competence and diligence in
56 selecting and monitoring the person.

57 (h) Except as otherwise provided in the power of
58 attorney, an agent is not required to disclose receipts,
59 disbursements or transactions conducted on behalf of the
60 principal or provide an accounting unless: ordered by a
61 court or requested by the principal, a guardian, a
62 conservator, another fiduciary acting for the principal, a
63 governmental agency having authority to protect the welfare
64 of the principal or, upon the death of the principal, by the
65 personal representative or successor in interest of the
66 principal's estate. If so requested, within 30 days the agent
67 shall comply with the request or provide a writing or other
68 record substantiating why additional time is needed and
69 shall comply with the request within an additional 30 days.
70 If an agent fails or refuses to comply with the provisions of
71 this section, the court may award the principal or other
72 authorized party requesting the disclosure reimbursement of
73 reasonable attorneys fees and costs incurred.

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:

*NOTE: This section was also amended by S. B. 102 (Chapter 92), which passed prior to this act.

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; or

19 (8) Disclaim property, including a power of
20 appointment.

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.

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 subsections (a), (b), (d) and (e) of this
33 section, if a power of attorney grants to an agent authority
34 to do all acts that a principal could do, the agent has the
35 general authority described in §39B-2-104 through §39B-2-
36 116 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 subsections (a), (b) and (d) of this section,
41 if the subjects over which authority is granted in a power of
42 attorney are similar or overlap, the broadest authority
43 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.



CHAPTER 177

**(Com. Sub. for S. B. 456 - By Senators Gaunch,
Takubo, Ferns, Boso and Maroney)**

[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 §30-41-1, §30-41-
2, and §30-41-3, all relating to creating the Physical Therapy
Licensure Compact Act; authorizing the Board of Physical
Therapy to execute the compact; setting forth purposes;
setting forth the purposes for the compact; defining terms;
providing participation requirements; providing licensure

requirements; establishing a licensure process; establishing application process; providing for fees; providing requirements for renewal of a license; providing for joint investigation; establishing the effect of disciplinary actions; creating the commission to administer the compact; setting forth commission composition; establishing the authority of the commission; providing immunity; establishing commission rule-making authority; establishing licensure information system; providing for compact administrators; providing for judicial review; providing for state enforcement; providing the commission may intervene in proceedings; providing for legal enforcement of compact rules and provisions; providing for termination or withdrawal of a member state; providing for compact oversight; providing dispute resolution; setting forth provisions for resolution of disputes; establishing provisions for state eligibility; setting forth the circumstances under which the compact will become effective; providing for amending the compact; setting forth procedures for states to withdraw from the compact; providing process to amend the compact; establishing provisions related to severability; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. PHYSICAL THERAPY LICENSURE COMPACT ACT.

§30-41-1. Short title.

- 1 This act shall be known and may be cited as the Physical
- 2 Therapy Licensure Compact Act.

§30-41-2. Authority to execute compact.

- 1 The West Virginia Board of Physical Therapy, on behalf
- 2 of the State of West Virginia, is hereby authorized to
- 3 execute a compact in substantially the following form with
- 4 any one or more of the states of the United States, and the
- 5 Legislature hereby signifies in advance its approval and
- 6 ratification of such compact:

7 “PHYSICAL THERAPY LICENSURE COMPACT

8 SECTION 1. PURPOSE

9 The purpose of this Compact is to facilitate interstate
10 practice of physical therapy with the goal of improving
11 public access to physical therapy services. The practice of
12 physical therapy occurs in the state where the patient/client
13 is located at the time of the patient/client encounter. The
14 Compact preserves the regulatory authority of states to
15 protect public health and safety through the current system
16 of state licensure.

17 This Compact is designed to achieve the following
18 objectives:

19 1. Increase public access to physical therapy services by
20 providing for the mutual recognition of other member state
21 licenses;

22 2. Enhance the states’ ability to protect the public’s
23 health and safety;

24 3. Encourage the cooperation of member states in
25 regulating multi-state physical therapy practice;

26 4. Support spouses of relocating military members;

27 5. Enhance the exchange of licensure, investigative, and
28 disciplinary information between member states; and

29 6. Allow a remote state to hold a provider of services
30 with a compact privilege in that state accountable to that
31 state’s practice standards.

32 SECTION 2. DEFINITIONS

33 As used in this Compact, and except as otherwise
34 provided, the following definitions shall apply:

35 1. ‘Active duty military’ means full-time duty status in
36 the active uniformed service of the United States, including

37 members of the National Guard and Reserve on active duty
38 orders pursuant to 10 U.S.C. §§ 1209 and 1211.

39 2. 'Adverse action' means disciplinary action taken by
40 a physical therapy licensing board based upon misconduct,
41 unacceptable performance, or a combination of both.

42 3. 'Alternative program' means a non-disciplinary
43 monitoring or practice remediation process approved by a
44 physical therapy licensing board. This includes, but is not
45 limited to, substance abuse issues.

46 4. 'Compact privilege' means the authorization granted
47 by a remote state to allow a licensee from another member
48 state to practice as a physical therapist or work as a physical
49 therapist assistant in the remote state under its laws and
50 rules. The practice of physical therapy occurs in the member
51 state where the patient/client is located at the time of the
52 patient/client encounter.

53 5. 'Continuing competence' means a requirement, as a
54 condition of license renewal, to provide evidence of
55 participation in, and/or completion of, educational and
56 professional activities relevant to practice or area of work.

57 6. 'Data system' means a repository of information
58 about licensees, including examination, licensure,
59 investigative, compact privilege, and adverse action.

60 7. 'Encumbered license' means a license that a physical
61 therapy licensing board has limited in any way.

62 8. 'Executive Board' means a group of directors elected
63 or appointed to act on behalf of, and within the powers
64 granted to them by, the Commission.

65 9. 'Home state' means the member state that is the
66 licensee's primary state of residence.

67 10. 'Investigative information' means information,
68 records, and documents received or generated by a physical
69 therapy licensing board pursuant to an investigation.

70 11. 'Jurisprudence requirement' means the assessment
71 of an individual's knowledge of the laws and rules
72 governing the practice of physical therapy in a state.

73 12. 'Licensee' means an individual who currently holds
74 an authorization from the state to practice as a physical
75 therapist or to work as a physical therapist assistant.

76 13. 'Member state' means a state that has enacted the
77 Compact.

78 14. 'Party state' means any member state in which a
79 licensee holds a current license or compact privilege or is
80 applying for a license or compact privilege.

81 15. 'Physical therapist' means an individual who is
82 licensed by a state to practice physical therapy.

83 16. 'Physical therapist assistant' means an individual
84 who is licensed/certified by a state and who assists the
85 physical therapist in selected components of physical
86 therapy.

87 17. 'Physical therapy,' 'physical therapy practice,' and
88 'the practice of physical therapy' mean the care and services
89 provided by or under the direction and supervision of a
90 licensed physical therapist.

91 18. 'Physical Therapy Compact Commission' or
92 'Commission' means the national administrative body
93 whose membership consists of all states that have enacted
94 the Compact.

95 19. 'Physical therapy licensing board' or 'licensing
96 board' means the agency of a state that is responsible for the
97 licensing and regulation of physical therapists and physical
98 therapist assistants.

99 20. ‘Remote state’ means a member state other than the
100 home state, where a licensee is exercising or seeking to
101 exercise the compact privilege.

102 21. ‘Rule’ means a regulation, principle, or directive
103 promulgated by the Commission that has the force of law.

104 22. ‘State’ means any state, commonwealth, district, or
105 territory of the United States of America that regulates the
106 practice of physical therapy.

107 SECTION 3. STATE PARTICIPATION IN THE COMPACT

108 A. To participate in the Compact, a state must:

109 1. Participate fully in the Commission’s data system,
110 including using the Commission’s unique identifier as
111 defined in rules;

112 2. Have a mechanism in place for receiving and
113 investigating complaints about licensees;

114 3. Notify the Commission, in compliance with the terms
115 of the Compact and rules, of any adverse action or the
116 availability of investigative information regarding a
117 licensee;

118 4. Fully implement a criminal background check
119 requirement, within a time frame established by rule, by
120 receiving the results of the Federal Bureau of Investigation
121 record search on criminal background checks and use the
122 results in making licensure decisions in accordance with
123 Section 3B;

124 5. Comply with the rules of the Commission;

125 6. Utilize a recognized national examination as a
126 requirement for licensure pursuant to the rules of the
127 Commission; and

128 7. Have continuing competence requirements as a
129 condition for license renewal.

130 B. Upon adoption of this statute, the member state shall
131 have the authority to obtain biometric-based information
132 from each physical therapy licensure applicant and to
133 submit this information to the Federal Bureau of
134 Investigation for a criminal background check in
135 accordance with 28 U.S.C. § 534 and 42 U.S.C. § 14616.

136 C. A member state shall grant the compact privilege to
137 a licensee holding a valid unencumbered license in another
138 member state in accordance with the terms of the Compact
139 and rules.

140 D. Member states may charge a fee for granting a
141 compact privilege.

142 SECTION 4. COMPACT PRIVILEGE

143 A. To exercise the compact privilege under the terms
144 and provisions of the Compact, the licensee shall:

145 1. Hold a license in the home state;

146 2. Have no encumbrance on any state license;

147 3. Be eligible for a compact privilege in any member
148 state in accordance with Section 4D, G and H;

149 4. Have not had any adverse action against any license
150 or compact privilege within the previous 2 years;

151 5. Notify the Commission that the licensee is seeking
152 the compact privilege within a remote state(s);

153 6. Pay any applicable fees, including any state fee, for
154 the compact privilege;

155 7. Meet any jurisprudence requirements established by
156 the remote state(s) in which the licensee is seeking a
157 compact privilege; and

158 8. Report to the Commission adverse action taken by
159 any non-member state within 30 days from the date the
160 adverse action is taken.

161 B. The compact privilege is valid until the expiration
162 date of the home license. The licensee must comply with the
163 requirements of Section 4A to maintain the compact
164 privilege in the remote state.

165 C. A licensee providing physical therapy in a remote
166 state under the compact privilege shall function within the
167 laws and regulations of the remote state.

168 D. A licensee providing physical therapy in a remote
169 state is subject to that state's regulatory authority. A remote
170 state may, in accordance with due process and that state's
171 laws, remove a licensee's compact privilege in the remote
172 state for a specific period of time, impose fines, and/or take
173 any other necessary actions to protect the health and safety
174 of its citizens. The licensee is not eligible for a compact
175 privilege in any state until the specific time for removal has
176 passed and all fines are paid.

177 E. If a home-state license is encumbered, the licensee
178 shall lose the compact privilege in any remote state until the
179 following occur:

180 1. The home state license is no longer encumbered; and

181 2. Two years have elapsed from the date of the adverse
182 action.

183 F. Once an encumbered license in the home state is
184 restored to good standing, the licensee must meet the
185 requirements of Section 4A to obtain a compact privilege in
186 any remote state.

187 G. If a licensee's compact privilege in any remote state
188 is removed, the individual shall lose the compact privilege
189 in any remote state until the following occur:

190 1. The specific period of time for which the compact
191 privilege was removed has ended;

192 2. All fines have been paid; and

193 3. Two years have elapsed from the date of the adverse
194 action.

195 H. Once the requirements of Section 4G have been met,
196 the license must meet the requirements in Section 4A to
197 obtain a compact privilege in a remote state.

198 SECTION 5. ACTIVE DUTY MILITARY PERSONNEL
199 OR THEIR SPOUSES

200 A licensee who is active duty military or is the spouse
201 of an individual who is active duty military may designate
202 one of the following as the home state:

203 A. Home of record;

204 B. Permanent Change of Station (PCS); or

205 C. State of current residence if it is different than the
206 PCS state or home of record.

207 SECTION 6. ADVERSE ACTIONS

208 A. A home state shall have exclusive power to impose
209 adverse action against a license issued by the home state.

210 B. A home state may take adverse action based on the
211 investigative information of a remote state, so long as the
212 home state follows its own procedures for imposing adverse
213 action.

214 C. Nothing in this Compact shall override a member
215 state's decision that participation in an alternative program
216 may be used in lieu of adverse action and that such
217 participation shall remain non-public if required by the
218 member state's laws. Member states must require licensees
219 who enter any alternative programs in lieu of discipline to

220 agree not to practice in any other member state during the
221 term of the alternative program without prior authorization
222 from such other member state.

223 D. Any member state may investigate actual or alleged
224 violations of the statutes and rules authorizing the practice
225 of physical therapy in any other member state in which a
226 physical therapist or physical therapist assistant holds a
227 license or compact privilege.

228 E. A remote state shall have the authority to:

229 1. Take adverse actions as set forth in Section 4D
230 against a licensee's compact privilege in the state;

231 2. Issue subpoenas for both hearings and investigations
232 that require the attendance and testimony of witnesses and
233 the production of evidence. Subpoenas issued by a physical
234 therapy licensing board in a party state for the attendance
235 and testimony of witnesses, and/or the production of
236 evidence from another party state, shall be enforced in the
237 latter state by any court of competent jurisdiction, according
238 to the practice and procedure of that court applicable to
239 subpoenas issued in proceedings pending before it. The
240 issuing authority shall pay any witness fees, travel expenses,
241 mileage, and other fees required by the service statutes of
242 the state where the witnesses and/or evidence are located;
243 and

244 3. If otherwise permitted by state law, recover from the
245 licensee the costs of investigations and disposition of cases
246 resulting from any adverse action taken against that
247 licensee.

248 F. Joint Investigations:

249 1. In addition to the authority granted to a member state
250 by its respective physical therapy practice act or other
251 applicable state law, a member state may participate with
252 other member states in joint investigations of licensees.

253 2. Member states shall share any investigative,
254 litigation, or compliance materials in furtherance of any
255 joint or individual investigation initiated under the
256 Compact.

257 SECTION 7. ESTABLISHMENT OF THE PHYSICAL
258 THERAPY COMPACT COMMISSION.

259 A. The Compact member states hereby create and
260 establish a joint public agency known as the Physical
261 Therapy Compact Commission:

262 1. The Commission is an instrumentality of the Compact
263 states.

264 2. Nothing in this Compact shall be construed to be a
265 waiver of sovereign immunity or the state constitutional
266 provisions for proper venue by the State of West Virginia.

267 B. Membership, Voting, and Meetings:

268 1. Each member state shall have and be limited to one
269 delegate selected by that member state's licensing board.

270 2. The delegate shall be a current member of the
271 licensing board, who is a physical therapist, physical
272 therapist assistant, public member, or the board
273 administrator.

274 3. Any delegate may be removed or suspended from
275 office as provided by the law of the state from which the
276 delegate is appointed.

277 4. The member state board shall fill any vacancy
278 occurring in the Commission.

279 5. Each delegate shall be entitled to one vote with regard
280 to the promulgation of rules and creation of bylaws and shall
281 otherwise have an opportunity to participate in the business
282 and affairs of the Commission.

283 6. A delegate shall vote in person or by such other means
284 as provided in the bylaws. The bylaws may provide for
285 delegates' participation in meetings by telephone or other
286 means of communication.

287 7. The Commission shall meet at least once during each
288 calendar year. Additional meetings shall be held as set forth
289 in the bylaws.

290 C. The Commission shall have the following powers
291 and duties:

292 1. Establish the fiscal year of the Commission;

293 2. Establish bylaws;

294 3. Maintain its financial records in accordance with the
295 bylaws;

296 4. Meet and take such actions as are consistent with the
297 provisions of this Compact and the bylaws;

298 5. Promulgate uniform rules to facilitate and coordinate
299 implementation and administration of this Compact. The
300 rules shall have the force and effect of law and shall be
301 binding in all member states: *Provided*, That the West
302 Virginia licensing authority shall first promulgate rules
303 pursuant to West Virginia Code;

304 6. Bring and prosecute legal proceedings or actions in
305 the name of the Commission, provided that the standing of
306 any state physical therapy licensing board to sue or be sued
307 under applicable law shall not be affected;

308 7. Purchase and maintain insurance and bonds;

309 8. Borrow, accept, or contract for services of personnel,
310 including, but not limited to, employees of a member state;

311 9. Hire employees, elect or appoint officers, fix
312 compensation, define duties, grant such individuals
313 appropriate authority to carry out the purposes of the

314 Compact and to establish the Commission's personnel
315 policies and programs relating to conflicts of interest,
316 qualifications of personnel, and other related personnel
317 matters;

318 10. Accept any and all appropriate donations and grants
319 of money, equipment, supplies, materials, and services, and
320 to receive, utilize, and dispose of the same; provided that at
321 all times the Commission shall avoid any appearance of
322 impropriety and/or conflict of interest;

323 11. Lease, purchase, accept appropriate gifts or
324 donations of, or otherwise to own, hold, improve or use any
325 property, real, personal or mixed; provided that at all times
326 the Commission shall avoid any appearance of impropriety;

327 12. Sell, convey, mortgage, pledge, lease, exchange,
328 abandon, or otherwise dispose of any property real,
329 personal, or mixed;

330 13. Establish a budget and make expenditures;

331 14. Borrow money;

332 15. Appoint committees, including standing committees
333 comprising of members, state regulators, state legislators or
334 their representatives, and consumer representatives, and
335 such other interested persons as may be designated in this
336 Compact and the bylaws;

337 16. Provide and receive information from, and
338 cooperate with, law enforcement agencies;

339 17. Establish and elect an Executive Board; and

340 18. Perform such other functions as may be necessary
341 or appropriate to achieve the purposes of this Compact
342 consistent with the state regulation of physical therapy
343 licensure and practice.

344 D. The Executive Board

345 The Executive Board shall have the power to act on
346 behalf of the Commission according to the terms of this
347 Compact:

348 1. The Executive Board shall be comprised of nine
349 members:

350 a. Seven voting members who are elected by the
351 Commission from the current membership of the
352 Commission;

353 b. One ex-officio, nonvoting member from a recognized
354 national physical therapy professional association; and

355 c. One ex-officio, nonvoting member from a recognized
356 membership organization of the physical therapy licensing
357 boards.

358 2. The ex-officio members will be selected by their
359 respective organizations.

360 3. The Commission may remove any member of the
361 Executive Board as provided in bylaws.

362 4. The Executive Board shall meet at least annually.

363 5. The Executive Board shall have the following duties
364 and responsibilities:

365 a. Recommend to the entire Commission changes to the
366 rules or bylaws, changes to this Compact legislation, fees
367 paid by Compact member states such as annual dues, and
368 any commission Compact fee charged to licensees for the
369 compact privilege;

370 b. Ensure Compact administration services are
371 appropriately provided, contractual or otherwise;

372 c. Prepare and recommend the budget;

373 d. Maintain financial records on behalf of the
374 Commission;

375 e. Monitor Compact compliance of member states and
376 provide compliance reports to the Commission;

377 f. Establish additional committees as necessary; and

378 g. Other duties as provided in rules or bylaws.

379 E. Meetings of the Commission:

380 1. All meetings shall be open to the public, and public
381 notice of meetings shall be given in the same manner as
382 required under the rulemaking provisions in Section 9.

383 2. The Commission or the Executive Board or other
384 committees of the Commission may convene in a closed,
385 non-public meeting if the Commission or Executive Board
386 or other committees of the Commission must discuss:

387 a. Non-compliance of a member state with its
388 obligations under the Compact;

389 b. The employment, compensation, discipline or other
390 matters, practices or procedures related to specific
391 employees, or other matters related to the Commission's
392 internal personnel practices and procedures;

393 c. Current, threatened, or reasonably anticipated
394 litigation;

395 d. Negotiation of contracts for the purchase, lease, or
396 sale of goods, services, or real estate;

397 e. Accusing any person of a crime or formally censuring
398 any person;

399 f. Disclosure of trade secrets or commercial or financial
400 information that is privileged or confidential;

401 g. Disclosure of information of a personal nature where
402 disclosure would constitute a clearly unwarranted invasion
403 of personal privacy;

404 h. Disclosure of investigative records compiled for law
405 enforcement purposes;

406 i. Disclosure of information related to any investigative
407 reports prepared by or on behalf of or for use of the
408 Commission or other committee charged with responsibility
409 of investigation or determination of compliance issues
410 pursuant to the Compact; or

411 j. Matters specifically exempted from disclosure by
412 federal or member state statute.

413 3. If a meeting, or portion of a meeting, is closed
414 pursuant to this provision, the Commission's legal counsel
415 or designee shall certify that the meeting may be closed and
416 shall reference each relevant exempting provision.

417 4. The Commission shall keep minutes that fully and
418 clearly describe all matters discussed in a meeting and shall
419 provide a full and accurate summary of actions taken and
420 the reasons therefore, including a description of the views
421 expressed. All documents considered in connection with an
422 action shall be identified in such minutes. All minutes and
423 documents of a closed meeting shall remain under seal,
424 subject to release by a majority vote of the Commission or
425 order of a court of competent jurisdiction.

426 F. Financing of the Commission:

427 1. The Commission shall pay, or provide for the
428 payment of, the reasonable expenses of its establishment,
429 organization, and ongoing activities.

430 2. The Commission may accept any and all appropriate
431 revenue sources, donations, and grants of money,
432 equipment, supplies, materials, and services.

433 3. The Commission may levy on and collect an annual
434 assessment from each member state or impose fees on other
435 parties to cover the cost of the operations and activities of
436 the Commission and its staff, which must be in a total

437 amount sufficient to cover its annual budget as approved
438 each year for which revenue is not provided by other
439 sources. The aggregate annual assessment amount shall be
440 allocated based upon a formula to be determined by the
441 Commission, which shall promulgate a rule binding upon
442 all member states.

443 4. The Commission shall not incur obligations of any
444 kind prior to securing the funds adequate to meet the same;
445 nor shall the Commission pledge the credit of any of the
446 member states, except by and with the authority of the
447 member state.

448 5. The Commission shall keep accurate accounts of all
449 receipts and disbursements. The receipts and disbursements
450 of the Commission shall be subject to the audit and
451 accounting procedures established under its bylaws.
452 However, all receipts and disbursements of funds handled
453 by the Commission shall be audited yearly by a certified or
454 licensed public accountant, and the report of the audit shall
455 be included in and become part of the annual report of the
456 Commission.

457 G. Qualified Immunity, Defense, and Indemnification:

458 1. The members, officers, executive director,
459 employees, and representatives of the Commission shall be
460 immune from suit and liability, either personally or in their
461 official capacity, for any claim for damage to or loss of
462 property or personal injury or other civil liability caused by
463 or arising out of any actual or alleged act, error, or omission
464 that occurred, or that the person against whom the claim is
465 made had a reasonable basis for believing occurred within
466 the scope of Commission employment, duties, or
467 responsibilities; provided that nothing in this paragraph
468 shall be construed to protect any such person from suit
469 and/or liability for any damage, loss, injury, or liability
470 caused by the intentional or willful or wanton misconduct
471 of that person.

472 2. The Commission shall defend any member, officer,
473 executive director, employee, or representative of the
474 Commission in any civil action seeking to impose liability
475 arising out of any actual or alleged act, error, or omission
476 that occurred within the scope of Commission employment,
477 duties, or responsibilities, or that the person against whom
478 the claim is made had a reasonable basis for believing
479 occurred within the scope of Commission employment,
480 duties, or responsibilities; provided that nothing herein shall
481 be construed to prohibit that person from retaining his or her
482 own counsel; and provided further, that the actual or alleged
483 act, error, or omission did not result from that person's
484 intentional or willful or wanton misconduct.

485 3. The Commission shall indemnify and hold harmless
486 any member, officer, executive director, employee, or
487 representative of the Commission for the amount of any
488 settlement or judgment obtained against that person arising
489 out of any actual or alleged act, error, or omission that
490 occurred within the scope of Commission employment,
491 duties, or responsibilities, or that such person had a
492 reasonable basis for believing occurred within the scope of
493 Commission employment, duties, or responsibilities,
494 provided that the actual or alleged act, error, or omission did
495 not result from the intentional or willful or wanton
496 misconduct of that person.

497 SECTION 8. DATA SYSTEM

498 A. The Commission shall provide for the development,
499 maintenance, and utilization of a coordinated database and
500 reporting system containing licensure, adverse action, and
501 investigative information on all licensed individuals in
502 member states.

503 B. Notwithstanding any other provision of state law to
504 the contrary, a member state shall submit a uniform data set
505 to the data system on all individuals to whom this Compact
506 is applicable as required by the rules of the Commission,
507 including:

- 508 1. Identifying information;
- 509 2. Licensure data;
- 510 3. Adverse actions against a license or compact
511 privilege;
- 512 4. Non-confidential information related to alternative
513 program participation;
- 514 5. Any denial of application for licensure, and the
515 reason(s) for such denial; and
- 516 6. Other information that may facilitate the
517 administration of this Compact, as determined by the rules
518 of the Commission.
- 519 C. Investigative information pertaining to a licensee in
520 any member state will only be available to other party states.
- 521 D. The Commission shall promptly notify all member
522 states of any adverse action taken against a licensee or an
523 individual applying for a license. Adverse action
524 information pertaining to a licensee in any member state
525 will be available to any other member state.
- 526 E. Member states contributing information to the data
527 system may designate information that may not be shared
528 with the public without the express permission of the
529 contributing state.
- 530 F. Any information submitted to the data system that is
531 subsequently required to be expunged by the laws of the
532 member state contributing the information shall be removed
533 from the data system.

534 SECTION 9. RULEMAKING

- 535 A. The Commission shall exercise its rulemaking
536 powers pursuant to the criteria set forth in this section and
537 the rules adopted thereunder. Rules and amendments shall
538 become binding as of the date specified in each rule or

539 amendment subject to the limitations set forth in C(5) of
540 Section 7 of this Compact.

541 B. If a majority of the legislatures of the member states
542 rejects a rule, by enactment of a statute, resolution, or refusal
543 to adopt the rules as promulgated by the state licensing
544 authority, in the same manner used to adopt the Compact,
545 within four years of the date of adoption of the rule, then such
546 rule shall have no further force and effect in any member state.

547 C. Rules or amendments to the rules shall be adopted at
548 a regular or special meeting of the Commission.

549 D. Prior to promulgation and adoption of a final rule or
550 rules by the Commission, and at least 30 days in advance of
551 the meeting at which the rule will be considered and voted
552 upon, the Commission shall file a Notice of Proposed
553 Rulemaking:

554 1. On the website of the Commission or other publicly
555 accessible platform; and

556 2. On the website of each member state physical therapy
557 licensing board or other publicly accessible platform or the
558 publication in which each state would otherwise publish
559 proposed rules.

560 E. The Notice of Proposed Rulemaking shall include:

561 1. The proposed time, date, and location of the meeting
562 in which the rule will be considered and voted upon;

563 2. The text of the proposed rule or amendment and the
564 reason for the proposed rule;

565 3. A request for comments on the proposed rule from
566 any interested person; and

567 4. The manner in which interested persons may submit
568 notice to the Commission of their intention to attend the
569 public hearing and any written comments.

570 F. Prior to adoption of a proposed rule, the Commission
571 shall allow persons to submit written data, facts, opinions,
572 and arguments, which shall be made available to the public.

573 G. The Commission shall grant an opportunity for a
574 public hearing before it adopts a rule or amendment if a
575 hearing is requested by:

576 1. At least 25 persons;

577 2. A state or federal governmental subdivision or
578 agency; or

579 3. An association having at least 25 members.

580 H. If a hearing is held on the proposed rule or
581 amendment, the Commission shall publish the place, time,
582 and date of the scheduled public hearing. If the hearing is
583 held via electronic means, the Commission shall publish the
584 mechanism for access to the electronic hearing:

585 1. All persons wishing to be heard at the hearing shall
586 notify the executive director of the Commission or other
587 designated member in writing of their desire to appear and
588 testify at the hearing no fewer than five business days before
589 the scheduled date of the hearing.

590 2. Hearings shall be conducted in a manner providing
591 each person who wishes to comment a fair and reasonable
592 opportunity to comment orally or in writing.

593 3. All hearings will be recorded. A copy of the recording
594 will be made available on request.

595 4. Nothing in this section shall be construed as requiring
596 a separate hearing on each rule. Rules may be grouped for
597 the convenience of the Commission at hearings required by
598 this section.

599 I. Following the scheduled hearing date, or by the close
600 of business on the scheduled hearing date if the hearing was

601 not held, the Commission shall consider all written and oral
602 comments received.

603 J. If no written notice of intent to attend the public
604 hearing by interested parties is received, the Commission
605 may proceed with promulgation of the proposed rule
606 without a public hearing.

607 K. The Commission shall, by majority vote of all
608 members, take final action on the proposed rule and shall
609 determine the effective date of the rule, if any, based on the
610 rulemaking record and the full text of the rule.

611 L. Upon determination that an emergency exists, the
612 Commission may consider and adopt an emergency rule
613 without prior notice, opportunity for comment or hearing,
614 provided that the usual rulemaking procedures provided in
615 the Compact and in this section shall be retroactively
616 applied to the rule as soon as reasonably possible, in no
617 event later than 90 days after the effective date of the rule.
618 For the purposes of this provision, an emergency rule is one
619 that must be adopted immediately in order to:

620 1. Meet an imminent threat to public health, safety, or
621 welfare;

622 2. Prevent a loss of Commission or member state funds;

623 3. Meet a deadline for the promulgation of an
624 administrative rule that is established by federal law or rule;
625 or

626 4. Protect public health and safety.

627 M. The Commission or an authorized committee of the
628 Commission may direct revisions to a previously adopted
629 rule or amendment for purposes of correcting typographical
630 errors, errors in format, errors in consistency, or
631 grammatical errors. Public notice of any revisions shall be
632 posted on the website of the Commission. The revision shall
633 be subject to challenge by any person for a period of 30 days

634 after posting. The revision may be challenged only on
635 grounds that the revision results in a material change to a
636 rule. A challenge shall be made in writing and delivered to
637 the chair of the Commission prior to the end of the notice
638 period. If no challenge is made, the revision will take effect
639 without further action. If the revision is challenged, the
640 revision may not take effect without the approval of the
641 Commission.

642 SECTION 10. OVERSIGHT, DISPUTE RESOLUTION,
643 AND ENFORCEMENT

644 A. Oversight:

645 1. The executive, legislative, and judicial branches of
646 state government in each member state shall enforce this
647 Compact and take all actions necessary and appropriate to
648 effectuate the Compact's purposes and intent. The
649 provisions of this Compact and the rules promulgated
650 hereunder shall have standing as statutory law subject to the
651 limitations set forth herein.

652 2. All courts shall take judicial notice of the Compact
653 and the rules, if approved by the Legislature, in any judicial
654 or administrative proceeding in a member state pertaining
655 to the subject matter of this Compact which may affect the
656 powers, responsibilities, or actions of the Commission.

657 3. The Commission shall be entitled to receive service
658 of process in any such proceeding, and shall have standing
659 to intervene in such a proceeding for all purposes. Failure to
660 provide service of process to the Commission shall render a
661 judgment or order void as to the Commission, this Compact,
662 or promulgated rules.

663 B. Default, Technical Assistance, and Termination:

664 1. If the Commission determines that a member state has
665 defaulted in the performance of its obligations or
666 responsibilities under this Compact or the promulgated
667 rules, the Commission shall:

668 a. Provide written notice to the defaulting state and other
669 member states of the nature of the default, the proposed
670 means of curing the default and/or any other action to be
671 taken by the Commission; and

672 b. Provide remedial training and specific technical
673 assistance regarding the default.

674 2. If a state in default fails to cure the default, the
675 defaulting state may be terminated from, the Compact upon
676 an affirmative vote of a majority of the member states, and
677 all rights, privileges and benefits conferred by this Compact
678 may be terminated on the effective date of termination. A
679 cure of the default does not relieve the offending state of
680 obligations or liabilities incurred during the period of
681 default.

682 3. Termination of membership in the Compact shall be
683 imposed only after all other means of securing compliance
684 have been exhausted. Notice of intent to suspend or
685 terminate shall be given by the Commission to the governor,
686 the majority and minority leaders of the defaulting state's
687 legislature, and each of the member states.

688 4. A state that has been terminated is responsible for all
689 assessments, obligations, and liabilities incurred through the
690 effective date of termination, including obligations that
691 extend beyond the effective date of termination.

692 5. The Commission shall not bear any costs related to a
693 state that is found to be in default or that has been terminated
694 from the Compact, unless agreed upon in writing between
695 the Commission and the defaulting state.

696 6. The defaulting state may appeal the action of the
697 Commission by petitioning the U.S. District Court for the
698 District of Columbia or the federal district where the
699 Commission has its principal offices. The prevailing
700 member shall be awarded all costs of such litigation,
701 including reasonable attorneys' fees.

702 C. Dispute Resolution:

703 1. Upon request by a member state, the Commission
704 shall attempt to resolve disputes related to the Compact that
705 arise among member states and between member and non-
706 member states.

707 2. The Commission shall promulgate a rule providing
708 for both mediation and binding dispute resolution for
709 disputes as appropriate.

710 D. Enforcement:

711 1. The Commission, in the reasonable exercise of its
712 discretion, shall enforce the provisions and rules of this
713 Compact.

714 2. By majority vote, the Commission may initiate legal
715 action against a member state, in the state in which the state
716 member is located, where a member state is found to be in
717 default, in order to enforce compliance with the provisions
718 of the Compact, its promulgated rules, and bylaws. The
719 relief sought may include both injunctive relief and
720 damages. In the event judicial enforcement is necessary, the
721 prevailing member shall be awarded all costs of such
722 litigation, including reasonable attorneys' fees.

723 3. The remedies herein shall not be the exclusive
724 remedies of the Commission. The Commission may pursue
725 any other remedies available under federal or state law.

726 SECTION 11. DATE OF IMPLEMENTATION OF THE
727 INTERSTATE COMMISSION FOR PHYSICAL
728 THERAPY PRACTICE; ASSOCIATED RULES,
729 WITHDRAWAL, AND AMENDMENT

730 A. The Compact shall come into effect on the date on
731 which the Compact statute is enacted into law in the tenth
732 member state. The provisions, which become effective at
733 that time, shall be limited to the powers granted to the
734 Commission relating to assembly and the promulgation of

735 rules. Thereafter, the Commission shall meet and exercise
736 rulemaking powers necessary to the implementation and
737 administration of the Compact.

738 B. Any state that joins the Compact subsequent to the
739 Commission's initial adoption of the rules shall be subject
740 to the rules as they exist on the date on which the Compact
741 becomes law in that state. Any rule that has been previously
742 adopted by the Commission shall have the full force and
743 effect of law on the day the Compact becomes law in that
744 state.

745 C. Any member state may withdraw from this Compact
746 by enacting a statute repealing the same:

747 1. A member state's withdrawal shall not take effect
748 until six months after enactment of the repealing statute.

749 2. Withdrawal shall not affect the continuing
750 requirement of the withdrawing state's physical therapy
751 licensing board to comply with the investigative and
752 adverse action reporting requirements of this act prior to the
753 effective date of withdrawal.

754 D. Nothing contained in this Compact shall be construed
755 to invalidate or prevent any physical therapy licensure
756 agreement or other cooperative arrangement between a
757 member state and a non-member state that does not conflict
758 with the provisions of this Compact.

759 E. This Compact may be amended by the member states.
760 No amendment to this Compact shall become effective and
761 binding upon any member state until it is enacted into the
762 laws of all member states.

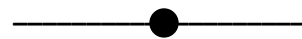
763 SECTION 12. CONSTRUCTION AND SEVERABILITY

764 This Compact shall be liberally construed so as to
765 effectuate the purposes thereof. The provisions of this
766 Compact shall be severable and if any phrase, clause,
767 sentence, or provision of this Compact is declared to be

768 contrary to the constitution of any party state or of the
769 United States or the applicability thereof to any government,
770 agency, person, or circumstance is held invalid, the validity
771 of the remainder of this Compact and the applicability
772 thereof to any government, agency, person, or circumstance
773 shall not be affected thereby. If this Compact shall be held
774 contrary to the constitution of any party state, the Compact
775 shall remain in full force and effect as to the remaining party
776 states and in full force and effect as to the party state
777 affected as to all severable matters.”

§30-41-3. Effective date.

1 This article shall be effective immediately upon
2 passage.



CHAPTER 178

**(Com. Sub. for S. B. 499 - By Senators Maroney,
Clements, Prezioso, Stollings, Takubo, Plymale, Cline
and Jeffries)**

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

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

AN ACT to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating to the licensing by the Board of Medicine; clarifying certain requirements to obtain licensure; reorganizing the minimum licensing requirements for a license; and providing the completion of a certain amount of graduate clinical training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

1 (a) A person seeking licensure as an allopathic
2 physician shall apply to the board.

3 (b) A license may be granted to an applicant who has
4 graduated and received the degree of doctor of medicine or
5 its equivalent from a school of medicine located within the
6 United States, the Commonwealth of Puerto Rico, or
7 Canada and which is approved by the Liaison Committee on
8 Medical Education or by the board and who:

9 (1) Submits a complete application;

10 (2) Pays the applicable fees;

11 (3) Demonstrates to the board's satisfaction that the
12 applicant:

13 (A) Is of good moral character;

14 (B) Is physically and mentally capable of engaging in
15 the practice of medicine and surgery;

16 (C) Has, within 10 consecutive years, passed all
17 component parts of the United States Medical Licensing
18 Examination or any prior examination or examination series
19 approved by the board which relates to a national standard,
20 is administered in the English language, and is designed to
21 ascertain an applicant's fitness to practice medicine and
22 surgery;

23 (D) Has successfully completed a minimum of one year
24 of graduate clinical training in a program which is approved
25 by the Accreditation Council for Graduate Medical
26 Education; and

27 (E) Meets any other criteria for licensure set forth in this
28 article or in rules promulgated by the board pursuant to §30-
29 3-7 of this code and in accordance with §29A-3-1 *et seq.* of
30 this code.

31 (c) A license may be granted to an applicant who has
32 received the degree of doctor of medicine or its equivalent
33 from a school of medicine located outside of the United
34 States, the Commonwealth of Puerto Rico, and Canada
35 who:

36 (1) Submits a complete application;

37 (2) Pays the applicable fees;

38 (3) Demonstrates to the board's satisfaction that the
39 applicant:

40 (A) Is of good moral character;

41 (B) Is physically and mentally capable of engaging in
42 the practice of medicine and surgery;

43 (C) Has, within 10 consecutive years, passed all
44 component parts of the United States Medical Licensing
45 Examination or any prior examination or examination series
46 approved by the board which relates to a national standard,
47 is administered in the English language, and is designed to
48 ascertain an applicant's fitness to practice medicine and
49 surgery;

50 (D) Has successfully completed:

51 (i) A minimum of two years of graduate clinical training
52 which is approved by the Accreditation Council for
53 Graduate Medical Education; or

54 (ii) A minimum of one year of graduate clinical training
55 which is approved by the Accreditation Council for
56 Graduate Medical Education and the applicant holds a
57 current certification by a member board of the American
58 Board of Medical Specialties;

59 (E) Holds a valid ECFMG certificate issued by the
60 Educational Commission for Foreign Medical Graduates; or

61 (i) Holds a full, unrestricted, and unconditional license
62 to practice medicine and surgery under the laws of another
63 state, the District of Columbia, Canada, or the
64 Commonwealth of Puerto Rico;

65 (ii) Has been engaged in the practice of medicine on a
66 full-time professional basis within the state or jurisdiction
67 where the applicant is fully licensed for a period of at least
68 five years; and

69 (iii) Is not the subject of any pending disciplinary action
70 by a medical licensing board and has not been the subject of
71 professional discipline reportable to the National
72 Practitioner Data Bank by a medical licensing board in any
73 jurisdiction;

74 (F) Can communicate in the English language; and

75 (G) Meets any other criteria for licensure set forth in this
76 article or in rules promulgated by the board pursuant to §30-
77 3-7 of this code and in accordance with §29A-3-1 *et seq.* of
78 this code.

79 (d) A person seeking licensure as a podiatrist shall apply
80 to the board. A license may be granted to an applicant who:

81 (1) Submits a complete application;

82 (2) Pays the applicable fees;

83 (3) Demonstrates to the board's satisfaction that the
84 applicant:

85 (A) Is of good moral character;

86 (B) Is physically and mentally capable of engaging in
87 the practice of podiatric medicine and surgery;

88 (C) Has graduated and received the degree of doctor of
89 podiatric medicine or its equivalent from a school of
90 podiatric medicine which is approved by the Council of
91 Podiatric Medical Education or by the board;

92 (D) Has, within 10 consecutive years, passed all
93 component parts of the American Podiatric Medical Licensing
94 Examination, or any prior examination or examination series
95 approved by the board which relates to a national standard, is
96 administered in the English language, and is designed to
97 ascertain an applicant's fitness to practice podiatric medicine;

98 (E) Has successfully completed a minimum of one year
99 of graduate clinical training in a program approved by the
100 Council on Podiatric Medical Education or the Colleges of
101 Podiatric Medicine. The board may consider a minimum of
102 two years of graduate podiatric clinical training in the
103 United States armed forces or three years' private podiatric
104 clinical experience in lieu of this requirement; and

105 (F) Meets any other reasonable criteria for licensure set
106 forth in this article or in legislative rules promulgated by the
107 board.

108 (e) Notwithstanding any of the provisions of this article,
109 the board may issue a restricted license to an applicant in
110 extraordinary circumstances under the following
111 conditions:

112 (1) Upon a finding by the board that based on the
113 applicant's exceptional education, training, and practice
114 credentials, the applicant's practice in the state would be
115 beneficial to the public welfare;

116 (2) Upon a finding by the board that the applicant's
117 education, training, and practice credentials are
118 substantially equivalent to the requirements of licensure
119 established in this article;

120 (3) Upon a finding by the board that the applicant
121 received his or her post-graduate medical training outside of
122 the United States and its territories;

123 (4) That the restricted license issued under extraordinary
124 circumstances is approved by a vote of three fourths of the
125 members of the board; and

126 (5) That orders denying applications for a restricted
127 license under this subsection are not appealable.

128 (f) The board may propose rules for legislative approval
129 in accordance with the provisions of §29A-3-1 *et seq.* of this
130 code that establish and regulate the restricted license issued
131 to an applicant in extraordinary circumstances pursuant to
132 the provisions of this section.

133 (g) Personal interviews by board members of all
134 applicants are not required. An applicant for a license may
135 be required by the board, in its discretion, to appear for a
136 personal interview and may be required to produce original
137 documents for review by the board.

138 (h) All licenses to practice medicine and surgery granted
139 prior to July 1, 2008, and valid on that date shall continue in
140 full effect for the term and under the conditions provided by
141 law at the time of the granting of the license: *Provided*, That
142 the provisions of §30-3-10(d) of this code do not apply to
143 any person legally entitled to practice chiropody or podiatry
144 in this state prior to June 11, 1965: *Provided, however*, That
145 all persons licensed to practice chiropody prior to June 11,
146 1965, are permitted to use the term “chiropody-podiatry”
147 and shall have the rights, privileges, and responsibilities of
148 a podiatrist set out in this article.

149 (i) The board may not issue a license to a person not
150 previously licensed in West Virginia whose license has been
151 revoked or suspended in another state until reinstatement of
152 his or her license in that state.

153 (j) The board need not reject a candidate for a
154 nonmaterial technical or administrative error or omission
155 in the application process that is unrelated to the
156 candidate’s professional qualifications as long as there is
157 sufficient information available to the board to determine
158 the eligibility and qualifications of the candidate for
159 licensure.

●

CHAPTER 179

(Com. Sub. for S. B. 521 - By Senators Trump, Gaunch, Maynard, Stollings and Boso)

[Passed March 10, 2018; in effect July 1, 2018.]
[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 §30-29-13, relating to requiring any newly appointed chief executive of a municipal law-enforcement agency to be either a certified law-enforcement officer, or to be certifiable as such, according to the requirements set forth in other applicable provisions of this code; and providing that chief executives employed prior to the effective date are exempt from this requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-13. Chief executive requirements.

1 Notwithstanding any provision of this code to the
2 contrary, on or after July 1, 2018, any person appointed to
3 serve as the chief executive of a municipal law-enforcement
4 agency shall be a certified, or certifiable as, a law-
5 enforcement officer as provided in §30-29-5 of this code:
6 *Provided,* That chief executives of municipal law-
7 enforcement agencies employed prior to July 1, 2018, who
8 are not certified law-enforcement officers are exempt from
9 this requirement for purposes of the position he or she holds
10 as of that date.

●

CHAPTER 180

(Com. Sub. for H. B. 2995 - By Delegates Overington, Paynter and Kessinger)

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

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

AN ACT to amend and reenact §30-10-12 of the Code of West Virginia, 1931, as amended, relating to qualifications for certification as an animal euthanasia technician; authorizing issuance of animal euthanasia technician certificate to certain persons certified by another state or jurisdiction; setting requirements for issuance of certificate; and authorizing application and fees to be prescribed by the Board of Veterinary Medicine in legislative rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. VETERINARIANS.

§30-10-12. Requirements to be a certified animal euthanasia technician.

1 (a) To be eligible to be a certified animal euthanasia
2 technician a person must:

3 (1) Apply at least thirty days prior to the date the next
4 written examinations are scheduled, using a form prescribed
5 by the board;

6 (2) Have a high school diploma or GED;

7 (3) Pay application and examination fees;

8 (4) Complete the certified animal euthanasia
9 technician's program established by the board;

- 10 (5) Pass the written and practical skills examinations;
- 11 (6) Pass the prescribed background check; and
- 12 (7) Complete all the other requirements established by
13 the board.
- 14 (b) A certified animal euthanasia technician may
15 practice animal euthanasia at a legally operated animal
16 control facility.
- 17 (c) A person certified as an animal euthanasia technician
18 by the board prior to July 1, 2010, shall for all purposes be
19 considered certified under this article and may renew
20 pursuant to the provisions of this article.
- 21 (d) A person certified by another state or jurisdiction
22 with certification requirements equivalent to, or exceeding,
23 the certification standards of this state may be issued a
24 certification under this section upon the submission of a
25 completed application and the appropriate fees, as
26 established by the board in legislative rules.

CHAPTER 181

**(Com. Sub. for H. B. 4023 - By Delegates Summers,
Ellington, Householder, Rohrbach, Hollen, Dean and
Butler)**

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to repeal §30-7C-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-7C-3 of said code, all relating to the regulation of dialysis technicians; establishing temporary permit time-frames; clarifying that

permit holder is eligible to renew his or her permit; and repealing an advisory council.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7C. DIALYSIS TECHNICIANS.

§30-7C-3. Qualifications; exceptions; application form and fees.

1 (a) To be certified by the board as a dialysis technician,
2 an individual shall demonstrate that he or she:

3 (1) Is of good moral character;

4 (2) Has acquired at least a high school diploma, general
5 equivalency diploma or equivalent;

6 (3) Has successfully completed an approved dialysis
7 technician training program;

8 (4) Has achieved national certification as a dialysis
9 technician; and

10 (5) Has met such other qualifications required by the
11 board by legislative rule.

12 (b) An applicant for certification shall file with the
13 board an application as established by the board
14 demonstrating that he or she has met the qualifications set
15 forth in this section, and pay an application fee as
16 established by legislative rule.

17 (c) (1) The board may, upon receipt of a completed
18 application and fee in accordance with legislative rule, issue
19 a temporary permit to practice as a dialysis technician to any
20 applicant who has completed a board approved dialysis
21 technician training program.

22 (2) A temporary permit is effective from the date of
23 issuance until three days after the receipt by the applicant
24 and the board of the results of the certification examination

25 or after eighteen months whichever is sooner, unless the
26 board revokes the temporary permit prior to its expiration.

27 (3) A temporary permit may be renewed one time for an
28 additional eighteen months from the renewal date unless the
29 board revokes the temporary permit prior to its expiration,
30 under the following circumstances:

31 (A) The national certification has lapsed, and

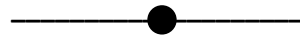
32 (B) A dialysis technician is required to work to qualify
33 for recertification.

34 (d) A dialysis technician previously licensed under this
35 article is continued to be licensed and is eligible to renew.

ARTICLE 7C. DIALYSIS TECHNICIANS.

§30-7C-9. Dialysis technician advisory council.

1 [Repealed.]



CHAPTER 182

**(H. B. 4025 - By Delegates Ellington, Summers,
Householder, Rohrbach, Hollen, Sobonya, Atkinson,
Butler and Dean)**

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §30-5-11 of the Code of West
Virginia, 1931, as amended, relating to permitting reciprocity
for licensure as a pharmacy technician.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.**

§30-5-11. Registration of pharmacy technicians.

1 (a) To be eligible for registration as a pharmacy
2 technician to assist in the practice of pharmacist care, the
3 applicant shall:

4 (1) Submit a written application to the board;

5 (2) Pay the applicable fees;

6 (3) Have graduated from high school or obtained a
7 Certificate of General Educational Development (GED) or
8 equivalent;

9 (4) Have:

10 (A) Graduated from a competency-based pharmacy
11 technician education and training program as approved by
12 legislative rule of the board;

13 (B) Completed a pharmacy-provided, competency-
14 based education and training program approved by the
15 board; or

16 (C) Obtained a national certification as a pharmacy
17 technician and have practiced in another jurisdiction for a
18 period of time as determined by the board.

19 (5) Have successfully passed an examination developed
20 using nationally recognized and validated psychometric and
21 pharmacy practice standards approved by the board;

22 (6) Not be an alcohol or drug abuser, as these terms are
23 defined in §27-1A-11 of this code: *Provided*, That an
24 applicant in an active recovery process, which may, in the
25 discretion of the board, be evidenced by participation in a
26 twelve-step program or other similar group or process, may
27 be considered;

28 (7) Not have been convicted of a felony in any
29 jurisdiction within ten years preceding the date of
30 application for license, which conviction remains
31 unreversed;

32 (8) Not have been convicted of a misdemeanor or felony
33 in any jurisdiction if the offense for which he or she was
34 convicted bearing a rational nexus to the practice of
35 pharmacist care, which conviction remains unreversed; and

36 (9) Have fulfilled any other requirement specified by the
37 board in rule.

38 (b) A person whose license to practice pharmacist care
39 has been denied, revoked, suspended, or restricted for
40 disciplinary purposes in any jurisdiction is not eligible to be
41 registered as a pharmacy technician.

42 (c) A person registered to assist in the practice
43 pharmacist care issued by the board shall for all purposes be
44 considered registered under this article and may renew
45 pursuant to the provisions of this article.



CHAPTER 183

**(Com. Sub. for H. B. 4027 - By Delegates Ellington,
Summers, Householder, Rohrbach, Hollen and Dean)**

[Passed March 6, 2018; in effect ninety days from passage.]

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

AN ACT to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-3-16, all relating to creating an education permit for allopathic physician resident; prohibiting the practice of medicine and surgery without an

authorization from the board; removing an exemption; providing an application process; providing criteria to obtain the permit; and providing emergency rulemaking authority; and providing rulemaking authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Licensing requirements for the practice of medicine and surgery or podiatry; exceptions; unauthorized practice; notice; criminal penalties.

1 (a) It is unlawful for any person who does not hold an
2 active, unexpired license issued pursuant to this article, or
3 who is not practicing pursuant to the licensure exceptions
4 set forth in this section, to:

5 (1) Engage in the practice of medicine and surgery or
6 podiatry in this state;

7 (2) Represent that he or she is a physician, surgeon or
8 podiatrist authorized to practice medicine and surgery or
9 podiatry in this state; or

10 (3) Use any title, word or abbreviation to indicate or
11 induce others to believe that he or she is licensed to practice
12 medicine and surgery or podiatry in this state.

13 (b) It is unlawful for any person who does not hold an
14 active, unexpired license issued pursuant to this article to
15 engage in the practice of telemedicine within this state. As
16 used in this section, the “practice of telemedicine” means
17 the practice of medicine using communication tools such as
18 electronic communication, information technology or other
19 means of interaction between a licensed health care
20 professional in one location and a patient in another
21 location, with or without an intervening health care
22 provider, and typically involves secure real time
23 audio/video conferencing or similar secure audio/video
24 services, remote monitoring, interactive video and store and

25 forward digital image or health data technology to provide
26 or support health care delivery by replicating the interaction
27 of a traditional in person encounter between a provider and
28 a patient. The practice of telemedicine occurs in this state
29 when the patient receiving health care services through a
30 telemedicine encounter is physically located in this state.

31 (c) It is not unlawful for a person:

32 (1) Who is a licensed health care provider under this
33 code to act within his or her scope of practice;

34 (2) Who is not a licensed health care professional in this
35 state to provide first aid care in an emergency situation; or

36 (3) To engage in the bona fide religious tenets of any
37 recognized church in the administration of assistance to the
38 sick or suffering by mental or spiritual means.

39 (d) The following persons are exempt from the licensure
40 requirements under this article:

41 (1) A person enrolled in a school of medicine approved
42 by the Liaison Committee on Medical Education or by the
43 board;

44 (2) A person enrolled in a school of podiatric medicine
45 approved by the Council of Podiatry Education or by the
46 board;

47 (3) A person engaged in graduate podiatric training in a
48 program approved by the Council on Podiatric Education or
49 by the board;

50 (4) A physician or podiatrist engaged in the
51 performance of his or her official duties holding one or more
52 licenses from another state or foreign country and who is a
53 commissioned medical officer of, a member of or employed
54 by:

55 (A) The United States Military;

56 (B) The Department of Defense;

57 (C) The United States Public Health Service; or

58 (D) Any other federal agency;

59 (5) A physician or podiatrist holding one or more
60 unrestricted licenses granted by another state or foreign
61 country serving as visiting medical faculty engaged in
62 education, training or research duties at a medical school or
63 institution recognized by the board for up to six months if:

64 (A) The physician does not engage in the practice of
65 medicine and surgery or podiatry outside of the auspices of
66 the sponsoring school or institution; and

67 (B) The sponsoring medical school or institution
68 provides prior written notification to the board including the
69 physician's name, all jurisdictions of licensure and the
70 beginning and end date of the physician's visiting medical
71 faculty status;

72 (6) A physician or podiatrist holding one or more
73 unrestricted licenses granted by another state present in the
74 state as a member of an air ambulance treatment team or
75 organ harvesting team;

76 (7) A physician or podiatrist holding one or more
77 unrestricted licenses granted by another state or foreign
78 country providing a consultation on a singular occasion to a
79 licensed physician or podiatrist in this state, whether the
80 consulting physician or podiatrist is physically present in
81 the state for the consultation or not;

82 (8) A physician or podiatrist holding one or more
83 unrestricted licenses granted by another state or foreign
84 country providing teaching assistance, in a medical
85 capacity, for a period not to exceed seven days;

86 (9) A physician or podiatrist holding one or more
87 unrestricted licenses granted by another state or foreign

88 country serving as a volunteer in a noncompensated role for
89 a charitable function for a period not to exceed seven days;
90 and

91 (10) A physician or podiatrist holding one or more
92 unrestricted licenses granted by another state or foreign
93 country providing medical services to a college or
94 university affiliated and/or sponsored sports team or an
95 incorporated sports team if:

96 (A) He or she has a written agreement with that sports
97 team to provide care to team members, band member,
98 cheerleader, mascot, coaching staff and families traveling
99 with the team for a specific sporting event, team appearance
100 or training camp occurring in this state;

101 (B) He or she may only provide care or consultation to
102 team members, coaching staff and families traveling with
103 the team no longer than seven consecutive days per sporting
104 event;

105 (C) He or she is not authorized to practice at a health
106 care facility or clinic, acute care facility or urgent care
107 center located in this state, but the physician may
108 accompany the patient to the facility and consult; and

109 (D) The physician or podiatrist may be permitted, by
110 written permission from the executive director, to extend his
111 or her authorization to practice medicine for a maximum of
112 seven additional consecutive days if the requestor shows
113 good cause for the extension.

114 (e) A physician or podiatrist who does not hold a license
115 issued by the board and who is practicing medicine in this
116 state pursuant to the exceptions to licensure set forth in this
117 section may practice in West Virginia under one or more of
118 the licensure exceptions for no greater than a cumulative
119 total of thirty days in any one calendar year.

120 (f) The executive director shall send by certified mail to
121 a physician not licensed in this state a written order that

122 revokes the privilege to practice medicine under this section
123 if the executive director finds good cause to do so. If no
124 current address can be determined, the order may be sent by
125 regular mail to the physician's last known address.

126 (g) A person who engages in the unlawful practice of
127 medicine and surgery or podiatry while holding a license
128 issued pursuant to this article which has been classified by
129 the board as expired for ninety days or fewer is guilty of a
130 misdemeanor and, upon conviction, shall be fined not more
131 than \$5,000 or confined in jail not more than twelve months,
132 or both fined and confined.

133 (h) A person who is found to be engaging in the practice
134 of medicine and: (1) Has never been licensed by the board
135 under this article; (2) holds a license which has been
136 classified by the board as expired for greater than ninety
137 days; or (3) holds a license which has been placed in
138 inactive status, revoked, suspended or surrendered to the
139 board is guilty of a felony and, upon conviction, shall be
140 fined not more than \$10,000 or imprisoned in a correctional
141 facility for not less than one year nor more than five years
142 or both fined and imprisoned.

143 (i) Upon a determination by the board that any report or
144 complaint submitted to it concerns allegations of the
145 unlawful practice of medicine and surgery by an individual
146 who is licensed under another article of this chapter, the
147 board shall refer the complaint to the appropriate licensing
148 authority. Additionally, whenever the board receives
149 credible information that an individual is engaging in the
150 unlawful practice of medicine and surgery or podiatry in
151 violation of this section, the board may report such
152 information to the appropriate state and/or federal law
153 enforcement authority and/or prosecuting attorney.

§30-3-16. Educational Permit.

1 (a) Beginning July 1, 2019, no person shall participate
2 in a program of graduate medical training in this state unless

3 such person holds a license to practice medicine and surgery
4 in this state or has been issued an educational permit issued
5 by the board.

6 (b) An educational permit issued by the board
7 authorizes the recipient to practice medicine and surgery
8 only within the parameters of the recipient's training
9 program.

10 (c) An applicant for an educational permit shall file an
11 application with the board and furnish evidence establishing
12 that the applicant has satisfied the following requirements:

13 (1) The applicant is eighteen years of age or over;

14 (2) The applicant has paid the applicable fee;

15 (3) The applicant is of good moral character;

16 (4) The applicant has:

17 (A) Graduated from an allopathic college approved by
18 the Liaison Committee on Medical Education;

19 (B) Graduated from a medical college that meets
20 requirements for certification by the Educational
21 Commission for Foreign Medical Graduates; or

22 (C) Completed an alternate pathway for meeting initial
23 entry requirements or prerequisite or transfer requirements
24 recognized by the Accreditation Council for Graduate
25 Medical Education;

26 (5) The applicant:

27 (A) Is under contract as a resident in a program of post-
28 graduate clinical training approved by the Accreditation
29 Council for Graduate Medical Education; or

30 (B) Has completed a residency program approved by the
31 Accreditation Council for Graduate Medical Education or a
32 residency program recognized by the Educational

33 Commission for Foreign Medical Graduates and is under
34 contract as a fellow in an approved program of post-
35 graduate clinical training sponsored by an institution that is
36 accredited to provide graduate medical education;

37 (6) The applicant has never held a license to practice
38 medicine and surgery in West Virginia; and

39 (7) The applicant has fulfilled any other reasonable
40 requirement specified in rule by the Board.

41 (d) An educational permit shall be valid for up to one
42 year of post-graduate training. An educational permit may
43 be renewed if the holder remains eligible to receive a
44 renewed permit.

45 (e) The Board may deny an application or suspend or
46 revoke a permit at any time upon grounds defined by the
47 board by legislative rule.

48 (f) In order to give timely effect to this section, the board
49 may promulgate emergency rules pursuant to the provisions
50 of §29A-3-15 of this code, including:

51 (1) An implementation schedule for the issuance of
52 educational permits prior to July 1, 2019;

53 (2) The extent to which residents and fellows may
54 practice medicine and surgery pursuant to an educational
55 permit;

56 (3) Criteria for the issuance of reciprocal educational
57 permits for out of state allopathic medical residents seeking
58 to complete a residency rotation in West Virginia;

59 (4) Requirements for educational permits and the
60 renewal of such permits, including eligibility criteria for
61 renewal;

62 (5) Criteria for when an educational permit application
63 may be denied;

- 64 (6) Grounds for permit suspension or revocation;
- 65 (7) A fee schedule;
- 66 (8) Procedures for transitioning existing medical
67 education trainees prior to implementation; and
- 68 (9) Any other rules necessary to effectuate and
69 implement the provisions of this section.

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CHAPTER 184

**(Com. Sub. for H. B. 4156 - By Delegates Summers,
Ellington, Espinosa, Householder and Frich)**

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

AN ACT to amend and reenact §30-7-1 and §30-7-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §30-7-5a; and to amend and reenact §30-7A-8 of said code; and, all relating to the regulation of nursing schools; defining terms; modifying accreditation standards for registered nursing schools; modifying accreditation standards for practical nursing schools; requiring national accreditation of registered nursing schools; setting out school of nursing faculty requirements; establishing the qualifications nursing school faculty members; providing an exception to the qualification of nursing school faculty and permitting practical nursing programs to be regulated by the board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-1. Definitions.

1 As used in this article:

2 “Advanced practice registered nurse” means a
3 registered nurse who has acquired advanced clinical
4 knowledge and skills preparing him or her to provide direct
5 and indirect care to patients as a certified nurse practitioner,
6 certified nurse-midwife, certified registered nurse
7 anesthetist, or clinical nurse specialist, who has completed
8 a board-approved graduate-level education program and
9 who has passed a board-approved national certification
10 examination;

11 “Board” means the West Virginia Board of Examiners
12 for Registered Professional Nurses;

13 “Collaborative relationship” means a working
14 relationship, structured through a written agreement, in
15 which an advanced practice registered nurse may prescribe
16 drugs in collaboration with a qualified physician;

17 “Direct patient care” means the provision of services to
18 a sick, injured, mentally or physically disabled, elderly or
19 fragile patient that requires some degree of interaction with
20 that patient. Direct patient care may include assessment,
21 treatment, counseling, procedures, self-care, patient
22 education, administration of medication, and
23 implementation of a care plan;

24 “Practice of registered professional nursing” or
25 “registered professional nursing” means the performance
26 for compensation of any service requiring substantial
27 specialized judgment and skill based on knowledge and
28 application of principles of nursing derived from the
29 biological, physical and social sciences, such as responsible
30 supervision of a patient requiring skill in observation of
31 symptoms and reactions and the accurate recording of the
32 facts, or the supervision and teaching of other persons with
33 respect to such principles of nursing, or in the
34 administration of medications and treatments as prescribed
35 by a licensed physician, a licensed dentist or a licensed

36 advanced practice registered nurse, or the application of
37 such nursing procedures as involve understanding of cause
38 and effect in order to safeguard life and health of a patient
39 and others; and

40 “Temporary permit” means a permit authorizing the
41 holder to practice registered professional nursing in this
42 state until such permit is no longer effective or the holder is
43 granted a license by the West Virginia State Board of
44 Examiners for Registered Professional Nurses.

§30-7-5. Schools of nursing.

1 (a) A nursing program is determined to be board
2 approved if the program is accredited by a national nursing
3 accrediting agency recognized by the United States
4 Department of Education. The accreditation is considered
5 board approved and is exempt from board rules that require
6 ongoing approval if the school or program maintains this
7 accreditation.

8 (b) By July 1, 2022, all nursing programs shall be
9 accredited by a national accrediting agency recognized by
10 the United States Department of Education. A program
11 created after July 1, 2018, shall have 5 years to obtain
12 accreditation by an accrediting agency recognized by the
13 United States Department of Education.

14 (c) The board may require information concerning the
15 nursing program to be reported to the board by legislative
16 rule. The requested information shall be consistent with
17 information already being collected by the schools which is
18 required to maintain the program’s accreditation.

19 (d) The board shall approve a new nursing program until
20 the program is accredited by a national nursing accrediting
21 agency recognized by the United States Department of
22 Education.

§30-7-5a. Schools of nursing faculty requirements.

1 (a) Full-time nursing faculty members shall:

2 (1) Have a graduate degree with a major in nursing;
3 have a bachelor's degree with a major in nursing and be
4 enrolled in a graduate degree program with a major in
5 nursing within one year of employment as a faculty
6 member; or have a bachelor's degree with a major in nursing
7 and at least 10 years of direct patient care experience in
8 nursing;

9 (2) Have evidence of current experience in nursing
10 practice and education sufficient to demonstrate
11 professional competence. For faculty with less than two
12 years' experience in education, the nursing program
13 administrator will submit to the board mentoring and
14 orientation plans as defined by board guidelines and
15 function under the guidance of a faculty member fully
16 qualified in the specific teaching area and professional
17 competence; and

18 (3) Have credentials which verify status as a registered
19 professional nurse in West Virginia.

20 (b) Part-time nursing faculty members shall:

21 (1) Have a graduate degree with a major in nursing;
22 have a bachelor's degree with a major in nursing and be
23 enrolled in a graduate degree program with a major in
24 nursing within one year of employment as a faculty
25 member; or have a bachelor's degree with a major in nursing
26 and at least two years of direct patient care experience in
27 nursing;

28 (2) Have evidence of current experience in nursing
29 practice and education sufficient to demonstrate
30 professional competence. For faculty with less than two
31 years' experience in education, the nursing program
32 administrator will submit to the board mentoring and
33 orientation plans as defined by board guidelines and
34 function under the guidance of a faculty member fully

35 qualified in the specific teaching area and professional
36 competence; and

37 (3) Have credentials which verify status as a registered
38 professional nurse in West Virginia.

39 (c) The board may grant an exception to the
40 requirements in §30-7-5a(a) and §30-7-5a(b) of this code
41 for faculty members who have qualifications other than
42 those set forth in these subsections which are acceptable to
43 the board.

ARTICLE 7A. PRACTICAL NURSES.

§30-7A-8. Schools of practical nursing.

1 (a) A practical nursing program is determined to be
2 board approved if approved by the board, or the program is
3 accredited by a national accrediting agency recognized by
4 the United States Department of Education. The
5 accreditation is considered board approved and is exempt
6 from board rules that require ongoing approval if the school
7 or program maintains this accreditation.

8 (b) By July 1, 2022, all practical nursing programs shall
9 be accredited by a national accrediting agency recognized
10 by the United States Department of Education. A program
11 created after July 1, 2018, shall have 5 years to obtain
12 accreditation by an accrediting agency recognized by the
13 United States Department of Education.

14 (c) The board may require information concerning the
15 practical nursing program to be reported to the board by
16 legislative rule. The requested information shall be consistent
17 with information already being collected by the schools which
18 is required to maintain the program's accreditation.

19 (d) The board shall approve a new practical nursing
20 program until the program is accredited by a national
21 accrediting agency recognized by the United States
22 Department of Education.

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CHAPTER 185

**(H. B. 4285 - By Delegates Frich, Westfall, White and
A. Evans)
(By Request of The Division of Financial Institutions)**

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §31-17A-4, §31-17A-6 and §31-17A-9 of the Code of West Virginia, 1931, as amended, all relating to the licensing requirements of mortgage loan originators; increasing the number of hours of education required for licensure and to meet continuing education requirements; and increasing the licensure application fee.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE
LICENSING ACT.**

§31-17A-4. State license application and issuance.

1 (a) Applicants for a license must apply in a form as
2 prescribed by the commissioner. Each form shall contain
3 content as set forth by instruction or procedure of the
4 commissioner and may be changed or updated as necessary
5 by the commissioner in order to carry out the purposes of
6 this article. The application must be submitted with an
7 application fee of \$200 plus the actual cost of fingerprint
8 processing, together with any processing fee assessed by the
9 Nationwide Mortgage Licensing System and Registry. The
10 commissioner may elect to reduce or waive the application
11 fees for mortgage loan originators employed by bona fide
12 nonprofit organizations or other community housing
13 development organizations that serve the housing needs of
14 households or persons below the HUD-established median

15 income for their area of residence. Any waiver of fees or
16 other costs under this paragraph shall not be construed as a
17 waiver of the duty to comply with all other provisions of this
18 article.

19 (b) The commissioner is authorized to establish
20 relationships or contracts with the Nationwide Mortgage
21 Licensing System and Registry or other entities designated
22 by the Nationwide Mortgage Licensing System and
23 Registry to collect and maintain records and process
24 transaction fees or other fees related to licensees or other
25 persons subject to this article.

26 (c) In connection with an application for licensing as a
27 mortgage loan originator, the applicant shall, at a minimum,
28 furnish to the Nationwide Mortgage Licensing System and
29 Registry information concerning the applicant's identity,
30 including:

31 (1) Fingerprints for submission to the Federal Bureau of
32 Investigation and any governmental agency or entity
33 authorized to receive such information for a state, national
34 and international criminal history background check; and

35 (2) Personal history and experience in a form prescribed
36 by the Nationwide Mortgage Licensing System and
37 Registry and the commissioner, including the submission of
38 authorization for the Nationwide Mortgage Licensing
39 System and Registry and the commissioner to obtain:

40 (A) An independent credit report obtained from a
41 consumer reporting agency described in Section 603(p) of
42 the Fair Credit Reporting Act; and

43 (B) Information related to any administrative, civil or
44 criminal findings by any governmental jurisdiction.

45 (d) To reduce the points of contact which the Federal
46 Bureau of Investigation may have to maintain, the
47 commissioner may use the Nationwide Mortgage Licensing
48 System and Registry or its designated vendor as a

49 channeling agent for requesting information from and
50 distributing information to the Department of Justice or any
51 governmental agency.

52 (e) To reduce the points of contact which the
53 commissioner may have to maintain, the commissioner may
54 use the Nationwide Mortgage Licensing System and
55 Registry as a channeling agent for requesting and
56 distributing information to and from any source so directed
57 by the commissioner.

58 (f) Nonresident mortgage loan originators licensed
59 under this article by their acceptance of the license
60 acknowledge that they are subject to the jurisdiction of the
61 courts of West Virginia and the service of process pursuant
62 to §46A-2-137 and §56-3-33 of this code.

63 (g) The commissioner may grant a provisional license
64 to a mortgage loan originator who has met all other
65 requirements for licensing under this article but: (1) Has not
66 passed a test regarding West Virginia mortgage laws and
67 regulations required for licensure: *Provided*, That the
68 provisionally licensed mortgage loan originator takes and
69 passes that test within 60 days of the test becoming
70 available; or (2) for whom the commissioner has not
71 received the results of a criminal background check despite
72 the good faith effort of the applicant to provide in a timely
73 manner the information necessary to obtain a criminal
74 background check.

§31-17A-6. Prelicensing and relicensing education of loan originators.

1 (a) To meet the prelicensing education requirement, a
2 person must complete at least 24 hours of education
3 approved in accordance with subsection (b) of this section,
4 which shall include at least:

5 (1) Three hours of federal law and regulations;

6 (2) Three hours of ethics, which shall include instruction
7 on fraud, consumer protection and fair lending issues;

8 (3) Two hours of training related to lending standards
9 for the nontraditional mortgage product marketplace; and

10 (4) Four hours of training related to West Virginia
11 mortgage and consumer laws or issues.

12 (b) For purposes of subsection (a) of this section,
13 prelicensing education courses shall be reviewed and
14 approved by the Nationwide Mortgage Licensing System
15 and Registry or the Division based upon reasonable
16 standards. Review and approval of a prelicensing education
17 course shall include review and approval of the course
18 provider.

19 (c) Nothing in this section precludes any prelicensing
20 education course, as approved by the Nationwide Mortgage
21 Licensing System and Registry or the Division, that is
22 provided by the employer of the applicant or an entity which
23 is affiliated with the applicant by an agency contract, or any
24 subsidiary or affiliate of such employer or entity.

25 (d) Prelicensing education may be offered either in a
26 classroom, online or by any other means approved by the
27 Nationwide Mortgage Licensing System and Registry.

28 (e) The prelicensing education requirements approved
29 by the Nationwide Mortgage Licensing System and
30 Registry or the Division in subdivisions (1), (2) and (3)
31 subsection (a) of this section for any state shall be accepted
32 as credit towards completion of prelicensing education
33 requirements in West Virginia.

34 (f) A person previously licensed under this article
35 subsequent to July 1, 2009, applying to be licensed again
36 must prove that they have completed all of the continuing
37 education requirements for the year in which the license was
38 last held.

§31-17A-9. Continuing education for mortgage loan originators.

1 (a) To meet the annual continuing education
2 requirements, a licensed mortgage loan originator must
3 complete at least nine hours of education approved in
4 accordance with subsection (b) of this section, which shall
5 include at least:

6 (1) Three hours of federal law and regulations;

7 (2) Two hours of ethics, which shall include instruction
8 on fraud, consumer protection and fair lending issues;

9 (3) Two hours of training related to lending standards
10 for the nontraditional mortgage product marketplace; and

11 (4) Two hours of West Virginia law or regulations.

12 (b) For purposes of subsection (a) of this section,
13 continuing education courses shall be reviewed and approved
14 by the Nationwide Mortgage Licensing System and Registry
15 or the Division based upon reasonable standards. Review and
16 approval of a continuing education course shall include review
17 and approval of the course provider.

18 (c) Nothing in this section precludes any education
19 course, as approved by the Nationwide Mortgage Licensing
20 System and Registry, that is provided by the employer of
21 the mortgage loan originator or an entity which is affiliated
22 with the mortgage loan originator by an agency contract, or
23 any subsidiary or affiliate of the employer or entity.

24 (d) Continuing education may be offered either in a
25 classroom, online or by any other means approved by the
26 Nationwide Mortgage Licensing System and Registry.

27 (e) A licensed mortgage loan originator:

28 (1) Except for §31-17A-8(b) of this code and subsection
29 (i) of this section, may only receive credit for a continuing
30 education course in the year in which the course is taken; and

31 (2) May not take the same approved course in the same
32 or successive years to meet the annual requirements for
33 continuing education.

34 (f) A licensed mortgage loan originator who is an
35 approved instructor of an approved continuing education
36 course may receive credit for the licensed mortgage loan
37 originator's own annual continuing education requirement
38 at the rate of two hours credit for every one hour taught.

39 (g) A person having successfully completed the
40 education requirements approved by the Nationwide
41 Mortgage Licensing System and Registry in subdivisions
42 (1), (2) and (3), subsection (a) of this section for any state
43 shall be accepted as credit towards completion of continuing
44 education requirements in West Virginia.

45 (h) A licensed mortgage loan originator who subsequently
46 becomes unlicensed must complete the continuing education
47 requirements for the last year in which the license was held
48 prior to issuance of a new or renewed license.

49 (i) A person meeting the renewal requirements of §31-
50 17A-8(a)(1) and §31-17A-8(a)(3) of this code may make up
51 any deficiency in continuing education as established by the
52 commissioner.

CHAPTER 186

**(H. B. 4332 - By Delegates Rohrbach, Fleischauer,
Longstreth, Summers 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 §30-5-22 and §30-5-29 of the
Code of West Virginia, 1931, as amended, all relating to the

pharmacy practice act; allowing home peritoneal renal dialysis equipment and drugs to be distributed to patients with end state renal disease; providing for payment by Medicaid under the current benefit structure; and exempting cashiers from licensure under the Larry W. Border Pharmacy Practice Act.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.**

§30-5-22. Pharmacies to be registered.

1 (a) A pharmacy, an ambulatory health care facility, and
2 a charitable clinic pharmacy shall register with the board.

3 (b) A person desiring to operate, maintain, open or
4 establish a pharmacy shall register with the board.

5 (c) To be eligible for a registration to operate, maintain,
6 open or establish a pharmacy the applicant shall:

7 (1) Submit a written application to the board;

8 (2) Pay all applicable fees;

9 (3) Designate a pharmacist-in-charge; and

10 (4) Successfully complete an inspection by the board.

11 (d) A separate application shall be made and separate
12 registration issued for each location.

13 (e) Registration is not transferable.

14 (f) Registration expire and shall be renewed annually.

15 (g) If a registration expires, the pharmacy shall be
16 reinspected and an inspection fee is required.

17 (h) A registrant shall employ a pharmacist-in-charge
18 and operate in compliance with the legislative rules

19 governing the practice of pharmacist care and the operation
20 of a pharmacy.

21 (i) The provisions of this section do not apply to the sale
22 of nonprescription drugs which are not required to be
23 dispensed pursuant to a practitioner's prescription.

24 (j) The provisions of this section do not apply to the sale
25 or distribution of dialysate, drugs or devices necessary to
26 perform home peritoneal renal dialysis to patients with end
27 state renal disease, provided the requirements of §30-5-29
28 of this code are met.

§30-5-29. Limitations of article.

1 (a) This article may not be construed to prevent, restrict
2 or in any manner interfere with the sale of nonnarcotic
3 nonprescription drugs which may be lawfully sold without
4 a prescription in accordance with the United States Food,
5 Drug and Cosmetic Act or the laws of this state, nor may
6 any legislative rule be adopted by the board which shall
7 require the sale of nonprescription drugs by a licensed
8 pharmacist or in a pharmacy or which shall prevent, restrict
9 or otherwise interfere with the sale or distribution of such
10 drugs by any retail merchant. The sale or distribution of
11 nonprescription drugs may not be deemed to be improperly
12 engaging in the practice of pharmacist care.

13 (b) This article may not be construed to interfere with
14 any legally qualified practitioner of medicine, dentistry or
15 veterinary medicine, who is not the proprietor of the store
16 for the dispensing or retailing of drugs and who is not in the
17 employ of such proprietor, in the compounding of his or her
18 own prescriptions or to prevent him or her from supplying
19 to his or her patients such medicines as he or she may deem
20 proper, if such supply is not made as a sale.

21 (c) The exception provided in subsection (b) of this
22 section does not apply to an ambulatory health care facility:
23 *Provided*, That a legally licensed and qualified practitioner
24 of medicine or dentistry may supply medicines to patients

25 that he or she treats in a free clinic and that he or she deems
26 appropriate.

27 (d) This article may not be construed to prevent, restrict
28 or in any manner interfere with the sale or distribution of
29 dialysate, drugs or devices necessary to perform home
30 peritoneal renal dialysis to patients with end state renal
31 disease, nor may any legislative rule be adopted by the
32 board which shall require the sale or distribution of such
33 peritoneal dialysis products by a licensed pharmacist or in a
34 pharmacy, provided the following criteria are met:

35 (1) The dialysate, drugs or devices are approved or
36 cleared by the Food and Drug Administration, as required
37 by federal law.

38 (2) The dialysate, drugs or devices are lawfully held by
39 a manufacturer or a manufacturer's agent that has obtained
40 the proper permit from the board as a manufacturer or
41 wholesale distributor, or third-party logistics provider.

42 (3) The dialysate, drugs or devices are held and
43 delivered in their original, sealed packaging from the
44 manufacturing facility.

45 (4) The dialysate, drugs or devices are delivered only
46 upon receipt of a physician's prescription by a licensed
47 pharmacy, and the transmittal of an order from the licensed
48 pharmacy to the manufacturer or the manufacturer's agent;
49 and

50 (5) The manufacturer or a manufacturer's agent delivers
51 the dialysate, drugs, or devices directly to:

52 (A) A patient with chronic kidney failure, or his/her
53 designee, for the patient's self-administration of the dialysis
54 therapy; or

55 (B) A health care provider or institution for
56 administration or delivery of the dialysis therapy to a patient
57 with chronic kidney failure.

58 (e) The provisions of §30-5-29(d) of this code shall not
59 alter the manner in which dialysate, drugs, devices
60 necessary to perform home peritoneal renal dialysis to
61 patients with end state renal disease are billed by Medicaid
62 under the current pharmacy benefit structure.

63 (f) A person who handles a prescription drug only
64 during the point of sale to provide the prescription drug to a
65 patient and accept payment is not subject to the licensure
66 requirements of this article. This handling process includes
67 the cashier having access to the pharmacy's operating
68 system to verify unique information for each patient. A
69 pharmacy may require an individual to complete a criminal
70 background check before he or she is hired.

CHAPTER 187

**(H. B. 4486 - By Delegates White, Frich, Lane,
Westfall, Queen, Dean, Martin, Eldridge, Phillips,
Moore and Foster)**

[Passed March 9, 2018; in effect ninety days from passage.]

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

AN ACT to amend and reenact §32A-2-3 of the Code of West Virginia, 1931, as amended, relating to persons required to obtain a license to engage in the business of currency exchange, transportation, or transmission; and providing an exemption from licensure for certain entities which administer the Electronic Filing Depository system on behalf of state securities regulators.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-3. Exemptions.

1 (a) The following are exempt from the provisions of this
2 article:

3 (1) Banks, trust companies, foreign bank agencies,
4 credit unions, savings banks, and savings and loan
5 associations authorized to do business in the state or which
6 qualify as federally insured depository institutions, whether
7 organized under the laws of this state, any other state, or the
8 United States;

9 (2) The United States and any department or agency of
10 the United States;

11 (3) The United States Postal Service;

12 (4) This state and any political subdivision of this state;

13 (5) The provision of electronic transfer of government
14 benefits for any federal, state, or county governmental
15 agency as defined in Federal Reserve Board Regulation E,
16 by a contractor for and on behalf of the United States or any
17 department, agency or instrumentality of the United States,
18 or any state or any political subdivisions of a state;

19 (6) Persons engaged solely in the business of currency
20 transportation who operate an armored car service in this
21 state pursuant to licensure under §30-18-1 *et seq.* of this
22 code: *Provided*, That the net worth of the licensee exceeds
23 \$5 million. The term “armored car service” as used in this
24 article means a service provided by a person transporting or
25 offering to transport, under armed security guard, currency
26 or other things of value in a motor vehicle specially
27 equipped to offer a high degree of security. Persons seeking
28 to claim this exemption shall notify the commissioner of
29 their intent to do so and demonstrate that they qualify for its
30 use. Persons seeking an exemption under this subdivision
31 are not exempt from the provisions of this article if they also
32 engage in currency exchange or currency transmission;

33 (7) Persons engaged in the business of currency
34 transportation whose activities are limited exclusively to
35 providing services to federally insured depository institutions,
36 or to any federal, state, or local governmental entities;

37 (8) Persons engaged solely in the business of removing
38 currency from vending machines providing goods or
39 services, if the machines are not used for gambling purposes
40 or to convey any gambling ticket, token, or other device
41 used in a game of chance;

42 (9) The State Regulatory Registry, LLC, which
43 administers the Nationwide Mortgage Licensing System
44 and Registry on behalf of states and federal banking
45 regulators: and

46 (10) The North American Securities Administrators
47 Association and any subsidiaries, which administer the
48 Electronic Filing Depository system on behalf of state
49 securities regulators.

50 (b) Any person who holds and maintains a valid license
51 under this article may engage in the business of money
52 transmission or currency exchange at one or more locations
53 through or by means of an authorized delegate or delegates
54 as set forth in section twenty-seven of this article, as the
55 licensee may designate and appoint from time to time. No
56 such authorized delegate is required to obtain a separate
57 license under this article, but the use of sub-delegates is
58 prohibited and the authorized delegate may only conduct
59 business on behalf of its licensee.

60 (c) The issuance and sale of stored value cards or similar
61 prepaid products which are intended to purchase items only
62 from the issuer or seller of the stored value card is exempt
63 from the provisions of this article.

64 (d) Any person who is required and properly obtains a
65 license under this article to transport currency is exempt from
66 the requirements of article eighteen, chapter thirty of this code.

●

CHAPTER 188

(Com. Sub. for H. B. 4524 - By Delegates Ellington, Summers and Rohrbach)

[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 enacting a new section designated as § 30-5-12c, relating to establishing guidelines for the substitution of certain biological pharmaceuticals by pharmacists; defining terms; providing for guidelines relating to substitution of interchangeable biological products; establishing communication requirements between the pharmacists and prescriber relating to substitution of interchangeable biological products; requiring maintenance of records relating to biological products dispensed for at least two years; providing for emergency rules; establishing manufacturing standards; clarifying process for complaints; and providing for immunity for certain actions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-12c. Substitution of biological product: Definitions; selection of interchangeable biological products; exceptions; records; labels; manufacturing standards; emergency rules; complaints; and immunity.

1 (a) As used in this section:

2 “Biological product” means the same as that term is
3 defined in 42 U.S.C. § 262.

4 “Brand name” means the proprietary or trade name
5 selected by the manufacturer and placed upon a drug or drug
6 product, its container, label, or wrapping at the time of
7 packaging.

8 “Interchangeable biological product” means a
9 biological product that the federal Food and Drug
10 Administration has:

11 (1) Licensed and determined meets the standards for
12 interchangeability pursuant to 42 U.S.C § 262(k)(4); or

13 (2) Determined is therapeutically equivalent as set forth
14 in the latest edition of or supplement to the federal Food and
15 Drug Administration’s Approved Drug Products with
16 Therapeutic Equivalence Evaluations.

17 “Proper name” means the nonproprietary name of a
18 biological product.

19 “Substitute” means to dispense without the prescriber’s
20 express authorization an interchangeable biological product
21 in the place of the drug ordered or prescribed.

22 (b) Except as limited by subsection (c) and unless
23 instructed otherwise by the patient, a pharmacist who
24 receives a prescription for a specific biological product shall
25 select a less expensive interchangeable biological product
26 unless in the exercise of his or her professional judgment the
27 pharmacist believes that the less expensive drug is not
28 suitable for the particular patient. The pharmacist shall
29 provide notice to the patient or the patient’s designee
30 regarding the selection of a less expensive interchangeable
31 biological product.

32 (c) If, in the professional opinion of the prescriber, it is
33 medically necessary that an equivalent drug product or
34 interchangeable biological product not be selected, the
35 prescriber may so indicate by certifying that the specific
36 brand-name drug product prescribed, or the specific brand-
37 name biological product prescribed, is medically necessary

38 for that particular patient. In the case of a prescription
39 transmitted orally, the prescriber must expressly indicate to
40 the pharmacist that the specific brand-name drug product
41 prescribed, or the specific biological product prescribed is
42 medically necessary.

43 (d) (1) Within five business days following the
44 dispensing of a biological product, the dispensing
45 pharmacist or the pharmacist's designee shall communicate
46 the specific product provided to the patient, including the
47 name of the product and the manufacturer, to the prescriber
48 through any of the following electronic records systems:

49 (A) An interoperable electronic medical records system;

50 (B) An electronic prescribing technology;

51 (C) A pharmacy benefit management system; or

52 (D) A pharmacy record.

53 (2) Communication through an electronic records
54 system as described in §30-5-12c(d)(1) of this code is
55 presumed to provide notice to the prescriber.

56 (3) If the pharmacist is unable to communicate pursuant
57 to an electronic records system the pharmacist shall
58 communicate to the prescriber which biological product was
59 dispensed to the patient using facsimile, telephone,
60 electronic transmission, or other prevailing means.

61 (4) Communication is not required under this subsection
62 when:

63 (A) There is no Federal Food and Drug Administration
64 approved interchangeable biological product for the product
65 prescribed; or

66 (B) A refill prescription is not changed from the product
67 dispensed on the prior filling of the prescription.

68 (e) The pharmacist shall maintain a record of the
69 biological product dispensed for at least two years. Such
70 record shall include the manufacturer and proper name of
71 the interchangeable biological product selected.

72 (f) All biological products shall be labeled in
73 accordance with the instructions of the practitioner.

74 (g) Unless the practitioner directs otherwise, the
75 prescription label on all biological products dispensed by
76 the pharmacist shall indicate the proper name using
77 abbreviations, if necessary, and either the name of the
78 manufacturer or packager, whichever is applicable, in the
79 pharmacist's discretion. The same notation will be made on
80 the original prescription retained by the pharmacist.

81 (h) A pharmacist may not dispense a product under the
82 provisions of this section unless the manufacturer has
83 shown that the biological product has been manufactured
84 with the following minimum good manufacturing standards
85 and practices by:

86 (1) Labeling products with the name of the original
87 manufacturer and control number;

88 (2) Maintaining quality control standards equal to or
89 greater than those of the United States Food and Drug
90 Administration;

91 (3) Marking products with identification code or
92 monogram; and

93 (4) Labeling products with an expiration date.

94 (i) The West Virginia Board of Pharmacy shall
95 promulgate emergency rules pursuant to the provisions of
96 §29A-3-15 of this code setting standards for substituted
97 interchangeable biological products, obtaining compliance
98 with the provisions of this section, and enforcing the
99 provisions of this section.

100 (j) Any person shall have the right to file a complaint
101 with the West Virginia Board of Pharmacy regarding any
102 violation of the provisions of this article. Such complaints
103 shall be investigated by the Board of Pharmacy.

104 (k) No pharmacist or pharmacy complying with the
105 provisions of this section shall be liable in any way for the
106 dispensing of an interchangeable biological product
107 substituted under the provisions of this section, unless the
108 interchangeable biological product was incorrectly substituted.

109 (l) In no event where the pharmacist substitutes an
110 interchangeable biological product under the provisions of
111 this section shall the prescribing physician be liable in any
112 action for loss, damage, injury, or death of any person
113 occasioned by or arising from, the use of the substitute
114 biological product unless the original biological product
115 was incorrectly prescribed.

116 (m) Failure of a practitioner to specify that a specific
117 brand name is necessary for a particular patient shall not
118 constitute evidence of negligence unless the practitioner had
119 reasonable cause to believe that the health of the patient
120 required the use of a certain product and no other.



CHAPTER 189

**(Com. Sub. for S. B. 267 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed February 20, 2018; in effect July 1, 2018.]
[Approved by the Governor on February 21, 2018.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-9A-8 of said code; and to amend and reenact §18A-4-2 and §18A-4-8a of said code, all relating to increasing compensation for

certain public employees; increasing the annual salaries of members of the West Virginia State Police; increasing the minimum salaries payable to public school teachers and professional personnel during the contract year; and increasing the minimum monthly pay for public school service personnel.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

***§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.**

1 (a) The superintendent shall establish within the West
2 Virginia State Police a system to provide for: The promotion
3 of members to the supervisory ranks of sergeant, first
4 sergeant, second lieutenant, and first lieutenant; the
5 classification of nonsupervisory members within the field
6 operations force to the ranks of trooper, senior trooper,
7 trooper first class, or corporal; the classification of members
8 assigned to the forensic laboratory as criminalist I-VIII; and
9 the temporary reclassification of members assigned to
10 administrative duties as administrative support specialist I-
11 VIII.

12 (b) The superintendent may propose legislative rules for
13 promulgation in accordance with §29A-3-1 *et seq.* of this
14 code for the purpose of ensuring consistency, predictability,
15 and independent review of any system developed under the
16 provisions of this section.

17 (c) The superintendent shall provide to each member a
18 written manual governing any system established under the
19 provisions of this section and specific procedures shall be
20 identified for the evaluation and testing of members for
21 promotion or reclassification and the subsequent placement
22 of any members on a promotional eligibility or
23 reclassification recommendation list.

*NOTE: This section was also amended by H. B. 4145 (Chapter 193) which passed subsequent to this act.

24 (d) Beginning on July 1, 2018, members shall receive
25 annual salaries payable at least twice per month as follows:

26 ANNUAL SALARY SCHEDULE (BASE PAY)

27 SUPERVISORY AND NONSUPERVISORY RANKS

28	Cadet During Training.....	\$ 34,858
29	Cadet Trooper After Training.....	\$ 42,122
30	Trooper Second Year.....	43,130
31	Trooper Third Year.....	43,513
32	Senior Trooper.....	43,912
33	Trooper First Class	44,518
34	Corporal.....	45,124
35	Sergeant	49,425
36	First Sergeant.....	51,576
37	Second Lieutenant	53,726
38	First Lieutenant.....	55,877
39	Captain.....	58,028
40	Major	60,178
41	Lieutenant Colonel	62,329

42 ANNUAL SALARY SCHEDULE (BASE PAY)

43 ADMINISTRATION SUPPORT SPECIALIST

44 CLASSIFICATION

45	I	43,130
46	II	43,912

47 III44,518

48 IV45,124

49 V49,425

50 VI51,576

51 VII53,726

52 VIII55,877

ANNUAL SALARY SCHEDULE (BASE PAY)

CRIMINALIST CLASSIFICATION

55 I43,130

56 II43,912

57 III44,518

58 IV45,124

59 V49,425

60 VI51,576

61 VII53,726

62 VIII55,877

63 Beginning July 1, 2019, the annual salaries for members
 64 of each of the West Virginia State Police, the
 65 Administration Support Specialists, and the Criminalist
 66 classifications set forth in the schedules in this subsection
 67 shall be increased an additional \$432.

68 Each member of the West Virginia State Police whose
 69 salary is fixed and specified in this annual salary schedule
 70 is entitled to the length of service increases set forth in §15-
 71 2-5(e) of this code and supplemental pay as provided in §15-
 72 2-5(g) of this code.

73 (e) Each member of the West Virginia State Police
74 whose salary is fixed and specified pursuant to this section
75 shall receive, and is entitled to, an increase in salary over
76 that set forth in §15-2-5(d) of this code for grade in rank,
77 based on length of service, including that service served
78 before and after the effective date of this section with the
79 West Virginia State Police as follows: Beginning on
80 January 1, 2015, and continuing thereafter, at the end of two
81 years of service with the West Virginia State Police, the
82 member shall receive a salary increase of \$500 to be
83 effective during his or her next year of service and a like
84 increase at yearly intervals thereafter, with the increases to
85 be cumulative.

86 (f) In applying the salary schedules set forth in this
87 section where salary increases are provided for length of
88 service, members of the West Virginia State Police in
89 service at the time the schedules become effective shall be
90 given credit for prior service and shall be paid the salaries
91 the same length of service entitles them to receive under the
92 provisions of this section.

93 (g) The Legislature finds and declares that because of
94 the unique duties of members of the West Virginia State
95 Police, it is not appropriate to apply the provisions of state
96 wage and hour laws to them. Accordingly, members of the
97 West Virginia State Police are excluded from the provisions
98 of state wage and hour law. This express exclusion shall not
99 be construed as any indication that the members were or
100 were not covered by the wage and hour law prior to this
101 exclusion.

102 In lieu of any overtime pay they might otherwise have
103 received under the wage and hour law, and in addition to
104 their salaries and increases for length of service, members
105 who have completed basic training and who are exempt
106 from federal Fair Labor Standards Act guidelines may
107 receive supplemental pay as provided in this section.

108 The authority of the superintendent to propose a
109 legislative rule or amendment thereto for promulgation in
110 accordance with §29A-3-1 *et seq.* of this code to establish
111 the number of hours per month which constitute the
112 standard pay period for the members of the West Virginia
113 State Police is hereby continued. The rule shall further
114 establish, on a graduated hourly basis, the criteria for receipt
115 of a portion or all of supplemental payment when hours are
116 worked in excess of the standard pay period. The
117 superintendent shall certify at least twice per month to the
118 West Virginia State Police's payroll officer the names of
119 those members who have worked in excess of the standard
120 pay period and the amount of their entitlement to
121 supplemental payment. The supplemental payment may not
122 exceed \$200 per pay period. The superintendent and civilian
123 employees of the West Virginia State Police are not eligible
124 for any supplemental payments.

125 (h) Each member of the West Virginia State Police,
126 except the superintendent and civilian employees, shall
127 execute, before entering upon the discharge of his or her
128 duties, a bond with security in the sum of \$5,000 payable to
129 the State of West Virginia, conditioned upon the faithful
130 performance of his or her duties, and the bond shall be
131 approved as to form by the Attorney General and as to
132 sufficiency by the Governor.

133 (i) In consideration for compensation paid by the West
134 Virginia State Police to its members during those members'
135 participation in the West Virginia State Police Cadet
136 Training Program pursuant to §30-29-8 of this code, the
137 West Virginia State Police may require of its members by
138 written agreement entered into with each of them in advance
139 of such participation in the program that, if a member should
140 voluntarily discontinue employment any time within one
141 year immediately following completion of the training
142 program, he or she shall be obligated to pay to the West
143 Virginia State Police a pro rata portion of such
144 compensation equal to that part of such year which the

145 member has chosen not to remain in the employ of the West
146 Virginia State Police.

147 (j) Any member of the West Virginia State Police who
148 is called to perform active duty training or inactive duty
149 training in the National Guard or any reserve component of
150 the armed forces of the United States annually shall be
151 granted, upon request, leave time not to exceed 30 calendar
152 days for the purpose of performing the active duty training
153 or inactive duty training and the time granted may not be
154 deducted from any leave accumulated as a member of the
155 West Virginia State Police.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-8. Foundation allowance for professional student support services.

1 (a) The basic foundation allowance to the county for
2 professional student support personnel shall be the amount
3 of money determined in accordance with the following:

4 (1) The sum of the state minimum salaries, as
5 determined in accordance with the provisions of §18-4-1 *et*
6 *seq.* of this code, for all state aid eligible school nurse and
7 counselor positions in the county during the 2008 fiscal year
8 which number shall be reduced in the same proportion as
9 the number of professional educators allowed to be funded
10 under §18-9A-4 of this code to the total number of
11 professional educators employed that are state aid eligible.
12 In performing this calculation, the numerator shall be the
13 number of professional educators actually funded under
14 §18-9A-4 of this code and the denominator shall be the total
15 number of professional educators employed that are eligible
16 to be funded under §18-9A-4 of this code;

17 (2) The amount derived from the calculation in §18-9A-
18 8(a)(1) of this code is increased by one half percent;

19 (3) The amount derived from the calculation in §18-9A-
20 8(a)(2) of this code is the basic foundation allowance to the
21 county for professional student support personnel for the
22 2009 fiscal year;

23 (4) For fiscal years 2010, 2011, 2012, and 2013, the
24 basic foundation allowance to the county for professional
25 student support personnel increases by one-half percent per
26 year over the allowance for the previous year; and

27 (5) For all fiscal years thereafter, the basic foundation
28 allowance to the county for professional student support
29 personnel remains the same amount as in the 2013 fiscal
30 year, plus any additional amount of funding necessary to
31 cover the increases in the State Minimum Salary Schedule
32 set forth in §18A-4-2 of this code effective for the fiscal year
33 beginning July 1, 2018, and thereafter.

34 (b) The additional positions for counselors that may be
35 created as a result of the one percent increase provided
36 pursuant to this section shall be assigned to schools where
37 the counselor can:

38 (1) Enhance student achievement;

39 (2) Provide early intervention for students in grades
40 prekindergarten through five; and

41 (3) Enhance student development and career readiness.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

***§18A-4-2. State minimum salaries for teachers.**

1 (a) It is the goal of the Legislature to increase the state
2 minimum salary for teachers with zero years of experience
3 and an A. B. degree, including the equity supplement, to at
4 least \$43,000 by fiscal year 2019.

*NOTE: This section was also amended by H. B. 4145 (Chapter 193)
which passed subsequent to this act.

5 (b) (1) For school year 2018–2019, each teacher shall
 6 receive the amount prescribed in the State Minimum Salary
 7 Schedule as set forth in this section; specific additional
 8 amounts prescribed in this section or article; and any county
 9 supplement in effect in a county pursuant to §18A-4-5a of
 10 this code during the contract year.

STATE MINIMUM SALARY SCHEDULE

Years Exp	4th Class	3rd Class	2nd Class	A.B. A.B.	A.B. + 15	M.A. M.A.	M.A. + 15	M.A. + 30	M.A. + 45	Doc- torate
0	28,725	29,414	29,680	31,123	31,884	33,651	34,412	35,173	35,934	36,969
1	29,053	29,742	30,008	31,641	32,402	34,170	34,931	35,691	36,452	37,487
2	29,382	30,070	30,336	32,160	32,921	34,688	35,449	36,210	36,971	38,006
3	29,710	30,398	30,664	32,679	33,439	35,207	35,968	36,728	37,489	38,524
4	30,282	30,970	31,236	33,441	34,202	35,970	36,731	37,491	38,252	39,287
5	30,610	31,298	31,564	33,960	34,721	36,488	37,249	38,010	38,771	39,806
6	30,938	31,626	31,892	34,478	35,239	37,007	37,768	38,528	39,289	40,324
7	31,266	31,955	32,220	34,997	35,758	37,525	38,286	39,047	39,808	40,843
8	31,594	32,283	32,549	35,515	36,276	38,044	38,805	39,565	40,326	41,361
9	31,922	32,611	32,877	36,034	36,795	38,562	39,323	40,084	40,845	41,880
10	32,251	32,939	33,205	36,554	37,314	39,082	39,843	40,604	41,364	42,399
11	32,579	33,267	33,533	37,072	37,833	39,601	40,361	41,122	41,883	42,918
12	32,907	33,595	33,861	37,591	38,351	40,119	40,880	41,641	42,401	43,436
13	33,235	33,923	34,189	38,109	38,870	40,638	41,398	42,159	42,920	43,955
14	33,563	34,251	34,517	38,628	39,388	41,156	41,917	42,678	43,438	44,473
15	33,891	34,579	34,845	39,146	39,907	41,675	42,435	43,196	43,957	44,992
16	34,219	34,907	35,173	39,665	40,425	42,193	42,954	43,715	44,475	45,510
17	34,547	35,236	35,501	40,183	40,944	42,712	43,473	44,233	44,994	46,029
18	34,875	35,564	35,830	40,702	41,463	43,230	43,991	44,752	45,513	46,548
19	35,203	35,892	36,158	41,220	41,981	43,749	44,510	45,270	46,031	47,066
20	35,531	36,220	36,486	41,739	42,500	44,267	45,028	45,789	46,550	47,585
21	35,860	36,548	36,814	42,257	43,018	44,786	45,547	46,307	47,068	48,103
22	36,188	36,876	37,142	42,776	43,537	45,304	46,065	46,826	47,587	48,622
23	36,516	37,204	37,470	43,295	44,055	45,823	46,584	47,344	48,105	49,140
24	36,844	37,532	37,798	43,813	44,574	46,342	47,102	47,863	48,624	49,659
25	37,172	37,860	38,126	44,332	45,092	46,860	47,621	48,382	49,142	50,177
26	37,500	38,188	38,454	44,850	45,611	47,379	48,139	48,900	49,661	50,696

27	37,828	38,516	38,782	45,369	46,129	47,897	48,658	49,419	50,179	51,214
28	38,156	38,845	39,110	45,887	46,648	48,416	49,176	49,937	50,698	51,733
29	38,484	39,173	39,439	46,406	47,166	48,934	49,695	50,456	51,216	52,251
30	38,812	39,501	39,767	46,924	47,685	49,453	50,213	50,974	51,735	52,770
31	39,141	39,829	40,095	47,443	48,204	49,971	50,732	51,493	52,253	53,288
32	39,469	40,157	40,423	47,961	48,722	50,490	51,251	52,011	52,772	53,807
33	39,797	40,485	40,751	48,480	49,241	51,008	51,769	52,530	53,291	54,326
34	40,125	40,813	41,079	48,998	49,759	51,527	52,288	53,048	53,809	54,844
35	40,453	41,141	41,407	49,517	50,278	52,045	52,806	53,567	54,328	55,363

11 (2) For school year 2019–2020, each teacher shall
 12 receive the amount prescribed in the State Minimum Salary
 13 Schedule as set forth in this section, plus \$404; specific
 14 additional amounts prescribed in this section or article; and
 15 any county supplement in effect in a county pursuant to
 16 §18A-4-5a of this code during the contract year.

17 (3) For school year 2020–2021, each teacher shall
 18 receive the amount prescribed in the State Minimum Salary
 19 Schedule as set forth in this section, plus \$808; specific
 20 additional amounts prescribed in this section or article; and
 21 any county supplement in effect in a county pursuant to
 22 §18A-4-5a of this code during the contract year.

23 (c) Six hundred dollars shall be paid annually to each
 24 classroom teacher who has at least 20 years of teaching
 25 experience. The payments: (i) Shall be in addition to any
 26 amounts prescribed in the applicable State Minimum Salary
 27 Schedule; (ii) shall be paid in equal monthly installments;
 28 and (iii) shall be considered a part of the state minimum
 29 salaries for teachers.

30 (d) To meet the objective of salary equity among the
 31 counties as set forth in §18A-4-5 of this code, each teacher
 32 shall be paid an equity supplement amount as applicable for
 33 his or her classification of certification or classification of
 34 training and years of experience as follows, subject to the
 35 provisions of that section:

36 (1) For “4th Class” at zero years of experience, \$1,781.
37 An additional \$38 shall be paid for each year of experience
38 up to and including 35 years of experience;

39 (2) For “3rd Class” at zero years of experience, \$1,796.
40 An additional \$67 shall be paid for each year of experience
41 up to and including 35 years of experience;

42 (3) For “2nd Class” at zero years of experience, \$1,877.
43 An additional \$69 shall be paid for each year of experience
44 up to and including 35 years of experience;

45 (4) For “A. B.” at zero years of experience, \$2,360. An
46 additional \$69 shall be paid for each year of experience up
47 to and including 35 years of experience;

48 (5) For “A. B. + 15” at zero years of experience, \$2,452.
49 An additional \$69 shall be paid for each year of experience
50 up to and including 35 years of experience;

51 (6) For “M. A.” at zero years of experience, \$2,644. An
52 additional \$69 shall be paid for each year of experience up
53 to and including 35 years of experience;

54 (7) For “M. A. + 15” at zero years of experience, \$2,740.
55 An additional \$69 shall be paid for each year of experience
56 up to and including 35 years of experience;

57 (8) For “M. A. + 30” at zero years of experience, \$2,836.
58 An additional \$69 shall be paid for each year of experience
59 up to and including 35 years of experience;

60 (9) For “M. A. + 45” at zero years of experience, \$2,836.
61 An additional \$69 shall be paid for each year of experience
62 up to and including 35 years of experience; and

63 (10) For “Doctorate” at zero years of experience,
64 \$2,927. An additional \$69 shall be paid for each year of
65 experience up to and including 35 years of experience.

66 These payments: (i) Shall be in addition to any amounts
67 prescribed in the applicable State Minimum Salary
68 Schedule, any specific additional amounts prescribed in this

69 section and article and any county supplement in effect in a
 70 county pursuant to §18A-4-5a of this code; (ii) shall be paid
 71 in equal monthly installments; and (iii) shall be considered
 72 a part of the state minimum salaries for teachers.

***§18A-4-8a. Service personnel minimum monthly salaries.**

1 (a) The minimum monthly pay for each service
 2 employee shall be as follows:

3 (1) For school year 2018–2019, the minimum monthly
 4 pay for each service employee whose employment is for a
 5 period of more than three and one-half hours a day shall be
 6 at least the amounts indicated in the State Minimum Pay
 7 Scale Pay Grade and the minimum monthly pay for each
 8 service employee whose employment is for a period of three
 9 and one-half hours or less a day shall be at least one-half the
 10 amount indicated in the State Minimum Pay Scale Pay
 11 Grade set forth in this subdivision.

STATE MINIMUM SALARY SCHEDULE

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,704	1,725	1,767	1,820	1,873	1,936	1,968	2,041
1	1,736	1,758	1,799	1,852	1,906	1,969	2,000	2,074
2	1,769	1,790	1,832	1,885	1,938	2,001	2,033	2,106
3	1,801	1,823	1,865	1,918	1,971	2,034	2,066	2,139
4	1,834	1,856	1,897	1,950	2,003	2,067	2,098	2,173
5	1,867	1,888	1,930	1,983	2,036	2,099	2,131	2,205
6	1,899	1,921	1,964	2,016	2,069	2,132	2,164	2,238
7	1,933	1,953	1,996	2,048	2,101	2,165	2,196	2,271
8	1,966	1,986	2,029	2,081	2,134	2,197	2,229	2,303
9	1,998	2,019	2,062	2,115	2,167	2,230	2,261	2,336
10	2,031	2,052	2,094	2,147	2,199	2,264	2,295	2,369
11	2,064	2,085	2,127	2,180	2,232	2,296	2,328	2,401

***NOTE:** This section was also amended by H. B. 4145 (Chapter 193)
 which passed subsequent to this act.

12	2,096	2,118	2,159	2,213	2,266	2,329	2,360	2,434
13	2,129	2,150	2,192	2,245	2,298	2,361	2,393	2,467
14	2,162	2,183	2,225	2,278	2,331	2,394	2,426	2,499
15	2,194	2,216	2,257	2,310	2,363	2,427	2,458	2,532
16	2,227	2,248	2,290	2,343	2,396	2,459	2,491	2,565
17	2,259	2,281	2,324	2,376	2,429	2,492	2,524	2,598
18	2,292	2,314	2,356	2,408	2,461	2,525	2,556	2,631
19	2,326	2,346	2,389	2,441	2,494	2,557	2,589	2,663
20	2,358	2,379	2,422	2,475	2,527	2,590	2,622	2,697
21	2,391	2,411	2,454	2,507	2,559	2,623	2,654	2,731
22	2,424	2,445	2,487	2,540	2,592	2,656	2,688	2,763
23	2,456	2,478	2,520	2,573	2,626	2,690	2,722	2,797
24	2,489	2,510	2,552	2,605	2,658	2,724	2,755	2,831
25	2,522	2,543	2,585	2,638	2,692	2,756	2,789	2,863
26	2,554	2,576	2,617	2,672	2,726	2,790	2,821	2,897
27	2,587	2,608	2,650	2,704	2,758	2,822	2,855	2,930
28	2,620	2,641	2,684	2,738	2,792	2,856	2,889	2,964
29	2,652	2,675	2,717	2,770	2,825	2,890	2,921	2,998
30	2,686	2,707	2,751	2,804	2,858	2,922	2,955	3,031
31	2,719	2,741	2,785	2,838	2,892	2,956	2,989	3,064
32	2,753	2,774	2,817	2,871	2,924	2,990	3,021	3,098
33	2,787	2,807	2,851	2,905	2,958	3,022	3,055	3,131
34	2,819	2,841	2,885	2,939	2,992	3,056	3,089	3,164
35	2,853	2,875	2,917	2,971	3,024	3,090	3,122	3,198
36	2,887	2,908	2,951	3,005	3,059	3,123	3,156	3,230
37	2,919	2,942	2,985	3,039	3,093	3,157	3,189	3,264
38	2,953	2,974	3,017	3,071	3,125	3,190	3,222	3,298
39	2,987	3,008	3,051	3,105	3,159	3,223	3,256	3,330
40	3,019	3,042	3,084	3,138	3,193	3,257	3,289	3,364

12 (2) For school year 2019–2020, and continuing
 13 thereafter, the minimum monthly pay for each service
 14 employee whose employment is for a period of more than
 15 three and one-half hours a day shall be at least the amounts
 16 indicated in the State Minimum Pay Scale Pay Grade, plus
 17 \$22; and the minimum monthly pay for each service
 18 employee whose employment is for a period of three and
 19 one-half hours or less a day shall be at least one-half the
 20 amount indicated in the State Minimum Pay Scale Pay
 21 Grade, plus \$11.

22 (3) Each service employee shall receive the amount
 23 prescribed in the State Minimum Pay Scale Pay Grade in
 24 accordance with the provisions of this subsection according
 25 to their class title and pay grade as set forth in this
 26 subdivision:

27 CLASS TITLE	PAY GRADE
28 Accountant I	D
29 Accountant II	E
30 Accountant III	F
31 Accounts Payable Supervisor	G
32 Aide I	A
33 Aide II	B
34 Aide III	C
35 Aide IV	D
36 Audiovisual Technician	C
37 Auditor	G
38 Autism Mentor	F
39 Braille Specialist	E

40	Bus Operator	D
41	Buyer	F
42	Cabinetmaker	G
43	Cafeteria Manager	D
44	Carpenter I	E
45	Carpenter II	F
46	Chief Mechanic	G
47	Clerk I	B
48	Clerk II	C
49	Computer Operator	E
50	Cook I	A
51	Cook II	B
52	Cook III	C
53	Crew Leader	F
54	Custodian I	A
55	Custodian II	B
56	Custodian III	C
57	Custodian IV	D
58	Director or Coordinator of Services	H
59	Draftsman	D
60	Early Childhood Classroom Assistant Teacher I	E
61	Early Childhood Classroom Assistant Teacher II	E

62	Early Childhood Classroom Assistant Teacher III	F
63	Educational Sign Language Interpreter I	F
64	Educational Sign Language Interpreter II	G
65	Electrician I	F
66	Electrician II	G
67	Electronic Technician I	F
68	Electronic Technician II	G
69	Executive Secretary	G
70	Food Services Supervisor	G
71	Foreman	G
72	General Maintenance	C
73	Glazier	D
74	Graphic Artist	D
75	Groundsman	B
76	Handyman	B
77	Heating and Air Conditioning Mechanic I	E
78	Heating and Air Conditioning Mechanic II	G
79	Heavy Equipment Operator	E
80	Inventory Supervisor	D
81	Key Punch Operator	B
82	Licensed Practical Nurse	F
83	Locksmith	G

84	Lubrication Man	C
85	Machinist	F
86	Mail Clerk	D
87	Maintenance Clerk	C
88	Mason	G
89	Mechanic	F
90	Mechanic Assistant	E
91	Office Equipment Repairman I	F
92	Office Equipment Repairman II	G
93	Painter	E
94	Paraprofessional	F
95	Payroll Supervisor	G
96	Plumber I	E
97	Plumber II	G
98	Printing Operator	B
99	Printing Supervisor	D
100	Programmer	H
101	Roofing/Sheet Metal Mechanic	F
102	Sanitation Plant Operator	G
103	School Bus Supervisor	E
104	Secretary I	D
105	Secretary II	E

106 Secretary IIIF

107 Sign Support Specialist E

108 Supervisor of MaintenanceH

109 Supervisor of TransportationH

110 Switchboard Operator-ReceptionistD

111 Truck DriverD

112 Warehouse Clerk C

113 Watchman B

114 WelderF

115 WVEIS Data Entry and Administrative Clerk B

116 (b) An additional \$12 per month is added to the
 117 minimum monthly pay of each service person who holds a
 118 high school diploma or its equivalent.

119 (c) An additional \$11 per month also is added to the
 120 minimum monthly pay of each service person for each of
 121 the following:

122 (1) A service person who holds 12 college hours or
 123 comparable credit obtained in a trade or vocational school
 124 as approved by the state board;

125 (2) A service person who holds 24 college hours or
 126 comparable credit obtained in a trade or vocational school
 127 as approved by the state board;

128 (3) A service person who holds 36 college hours or
 129 comparable credit obtained in a trade or vocational school
 130 as approved by the state board;

131 (4) A service person who holds 48 college hours or
 132 comparable credit obtained in a trade or vocational school
 133 as approved by the state board;

134 (5) A service employee who holds 60 college hours or
135 comparable credit obtained in a trade or vocational school
136 as approved by the state board;

137 (6) A service person who holds 72 college hours or
138 comparable credit obtained in a trade or vocational school
139 as approved by the state board;

140 (7) A service person who holds 84 college hours or
141 comparable credit obtained in a trade or vocational school
142 as approved by the state board;

143 (8) A service person who holds 96 college hours or
144 comparable credit obtained in a trade or vocational school
145 as approved by the state board;

146 (9) A service person who holds 108 college hours or
147 comparable credit obtained in a trade or vocational school
148 as approved by the state board;

149 (10) A service person who holds 120 college hours or
150 comparable credit obtained in a trade or vocational school
151 as approved by the state board.

152 (d) An additional \$40 per month also is added to the
153 minimum monthly pay of each service person for each of
154 the following:

155 (1) A service person who holds an associate's degree;

156 (2) A service person who holds a bachelor's degree;

157 (3) A service person who holds a master's degree;

158 (4) A service person who holds a doctorate degree.

159 (e) An additional \$11 per month is added to the
160 minimum monthly pay of each service person for each of
161 the following:

162 (1) A service person who holds a bachelor's degree plus
163 15 college hours;

164 (2) A service person who holds a master's degree plus
165 15 college hours;

166 (3) A service person who holds a master's degree plus
167 30 college hours;

168 (4) A service person who holds a master's degree plus
169 45 college hours; and

170 (5) A service person who holds a master's degree plus
171 60 college hours.

172 (f) To meet the objective of salary equity among the
173 counties, each service person is paid an equity supplement,
174 as set forth in §18A-4-5 of this code, of \$164 per month,
175 subject to the provisions of that section. These payments: (i)
176 Are in addition to any amounts prescribed in the applicable
177 State Minimum Pay Scale Pay Grade, any specific
178 additional amounts prescribed in this section and article and
179 any county supplement in effect in a county pursuant to
180 §18A-4-5b of this code; (ii) are paid in equal monthly
181 installments; and (iii) are considered a part of the state
182 minimum salaries for service personnel.

183 (g) When any part of a school service person's daily
184 shift of work is performed between the hours of 6:00 p. m.
185 and 5:00 a. m. the following day, the employee is paid no
186 less than an additional \$10 per month and one half of the
187 pay is paid with local funds.

188 (h) Any service person required to work on any legal
189 school holiday is paid at a rate one and one-half times the
190 person's usual hourly rate.

191 (i) Any full-time service personnel required to work in
192 excess of their normal working day during any week which
193 contains a school holiday for which they are paid is paid for
194 the additional hours or fraction of the additional hours at a
195 rate of one and one-half times their usual hourly rate and
196 paid entirely from county board funds.

197 (j) A service person may not have his or her daily work
198 schedule changed during the school year without the
199 employee's written consent and the person's required daily
200 work hours may not be changed to prevent the payment of time
201 and one-half wages or the employment of another employee.

202 (k) The minimum hourly rate of pay for extra duty
203 assignments as defined in §18A-4-8b of this code is no less
204 than one seventh of the person's daily total salary for each hour
205 the person is involved in performing the assignment and paid
206 entirely from local funds: *Provided*, That an alternative
207 minimum hourly rate of pay for performing extra duty
208 assignments within a particular category of employment may
209 be used if the alternate hourly rate of pay is approved both by
210 the county board and by the affirmative vote of a two-thirds
211 majority of the regular full-time persons within that
212 classification category of employment within that county:
213 *Provided, however*, That the vote is by secret ballot if
214 requested by a service person within that classification
215 category within that county. The salary for any fraction of an
216 hour the employee is involved in performing the assignment is
217 prorated accordingly. When performing extra duty
218 assignments, persons who are regularly employed on a one-
219 half day salary basis shall receive the same hourly extra duty
220 assignment pay computed as though the person were
221 employed on a full-day salary basis.

222 (l) The minimum pay for any service personnel engaged in
223 the removal of asbestos material or related duties required for
224 asbestos removal is their regular total daily rate of pay and no
225 less than an additional \$3 per hour or no less than \$5 per hour
226 for service personnel supervising asbestos removal
227 responsibilities for each hour these employees are involved in
228 asbestos-related duties. Related duties required for asbestos
229 removal include, but are not limited to, travel, preparation of
230 the work site, removal of asbestos, decontamination of the
231 work site, placing and removal of equipment and removal of
232 structures from the site. If any member of an asbestos crew is
233 engaged in asbestos-related duties outside of the employee's
234 regular employment county, the daily rate of pay is no less than

235 the minimum amount as established in the employee's regular
236 employment county for asbestos removal and an additional
237 \$30 per each day the employee is engaged in asbestos removal
238 and related duties. The additional pay for asbestos removal and
239 related duties shall be payable entirely from county funds.
240 Before service personnel may be used in the removal of
241 asbestos material or related duties, they shall have completed
242 a federal Environmental Protection Act-approved training
243 program and be licensed. The employer shall provide all
244 necessary protective equipment and maintain all records
245 required by the Environmental Protection Act.

246 (m) For the purpose of qualifying for additional pay as
247 provided in §18A-5-8 of this code, an aide is considered to
248 be exercising the authority of a supervisory aide and control
249 over pupils if the aide is required to supervise, control,
250 direct, monitor, escort, or render service to a child or
251 children when not under the direct supervision of a certified
252 professional person within the classroom, library, hallway,
253 lunchroom, gymnasium, school building, school grounds, or
254 wherever supervision is required. For purposes of this
255 section, "under the direct supervision of a certified
256 professional person" means that certified professional
257 person is present, with and accompanying the aide.

CHAPTER 190

(S. B. 464 - By Senators Gaunch, Boso 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 §5-5-2 of the Code of West Virginia,
1931, as amended, relating to changing the statutory payment
date for incremental salary increases due state employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.**§5-5-2. Granting incremental salary increases based on years of service.**

1 (a) Every eligible employee with three or more years of
2 service shall receive an annual salary increase equal to \$60
3 times the employee's years of service. In each fiscal year
4 and on or before July 31, each eligible employee shall
5 receive an annual increment increase of \$60 for that fiscal
6 year.

7 (b) Every employee becoming newly eligible as a result
8 of meeting the three years of service minimum requirement
9 on July 1, in any fiscal year is entitled to the annual salary
10 increase equal to \$60 times the employee's years of service,
11 where he or she has not in a previous fiscal year received
12 the benefit of an increment computation. Thereafter, the
13 employee shall receive a single annual increment increase
14 of \$60 for each subsequent fiscal year.

15 (c) These incremental increases are in addition to any
16 across-the-board, cost-of-living, or percentage salary
17 increases which may be granted in any fiscal year by the
18 Legislature.

19 (d) This section shall not be construed to prohibit other
20 pay increases based on merit, seniority, promotion, or other
21 reason, if funds are available for the other pay increases:
22 *Provided*, That the executive head of each spending unit
23 shall first grant the mandated increase in compensation in
24 this section to all eligible employees prior to the
25 consideration of any increases based on merit, seniority,
26 promotion, or other reason.

●

CHAPTER 191

**(S. B. 635 - By Senators Arvon, Boso, Drennan,
Facemire, Ferns, Gaunch, Palumbo, Prezioso,
Stollings, Sypolt, Takubo and Blair)**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §5-5-4 of the Code of West Virginia, 1931, as amended, relating to a 2019 across-the-board salary adjustment for employees of the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4. Department of Health and Human Resources salary adjustment.

1 The Legislature hereby directs that an across-the-board
2 salary adjustment be provided for employees of the various
3 bureaus and offices of the Department of Health and Human
4 Resources. This salary adjustment shall be provided from
5 the funding appropriated to the department in the fiscal year
6 2019 and may not be construed to require additional
7 appropriations from the Legislature. This adjustment is
8 separate from and in addition to any other salary adjustment
9 approved during the 2018 regular session of the Legislature
10 relative to the 2019 budget. In the event any provision of
11 this section conflicts with any rule, policy, or provision of
12 this code, the provisions of this section control. In
13 determining the salary adjustments, the department may
14 give additional consideration to specific job classifications
15 including, but not limited, to child protective services, as

16 may be determined relevant by the secretary. Due to the
17 limits of funding, the results of the salary adjustments shall
18 not be subject to the provisions of §6C-2-1 *et seq.* of this
19 code. It is the specific intent of the Legislature that no
20 private cause of action, either express or implied, shall arise
21 pursuant to the provisions or implementation of this section.

●

CHAPTER 192

**(Com. Sub. for H. B. 4142 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 10, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-5-4b, relating to providing certain employees of the Division of Corrections, Division of Juvenile Services, and West Virginia Regional Jail and Correctional Facility Authority increases in annual pay: providing legislative findings; providing funding sources; providing that pay rates and employment requirements shall not be subject to procedures for state employees' grievances; providing for primacy of section; limiting private causes of action; and, providing that if employee will make more than the maximum allowable by the Division of Personnel for the pay grade, this salary increase shall still take effect, and that employee shall make more than the pay grade maximum.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4b. Division of Corrections, Division of Juvenile Services, and Regional Jail Authority pay equity salary adjustment.

1 (a) The Legislature hereby finds that the Division of
2 Corrections, Division of Juvenile Services and the West
3 Virginia Regional Jail and Correctional Facility Authority
4 have extreme difficulty with recruiting and retaining
5 employees of all types.

6 (b) The Legislature hereby directs that a pay equity salary
7 adjustment and increase be provided to all employees of the
8 Division of Corrections, Division of Juvenile Services, and the
9 West Virginia Regional Jail and Correctional Facility
10 Authority, regardless of where the employee reports to work.
11 This salary adjustment shall be for a total of \$6,000
12 apportioned over a three-year period as follows:

13 (1) On July 1, 2018, applicable employees of the Division
14 of Corrections, Division of Juvenile Services, and the West
15 Virginia Regional Jail and Correctional Facility Authority
16 shall be given an increase in annual pay of \$2,000;

17 (2) On July 1, 2019, applicable employees of the Division
18 of Corrections, Division of Juvenile Services, and the West
19 Virginia Regional Jail and Correctional Facility Authority
20 shall be given an increase in annual pay of \$2,000; and

21 (3) On July 1, 2020, applicable employees of the
22 Division of Corrections, Division of Juvenile Services, and
23 the West Virginia Regional Jail and Correctional Facility
24 Authority shall be given an increase in annual pay of \$2,000.

25 (c) Funding for the pay rates for employees of the
26 Division of Corrections and Division of Juvenile Services
27 shall be provided from the general revenue appropriations
28 to the Division of Corrections and Division of Juvenile
29 Services, respectively.

30 (d) The salary adjustment for employees of the West
31 Virginia Regional Jail Authority shall be funded from the
32 special revenue fund established in §31-20-10 of this code,
33 and shall not require additional general revenue
34 appropriations from the Legislature.

35 (e) In the event any provision of this section conflicts
36 with any rule, policy, or provision of this code, this section
37 shall control. Due to the limits of funding, the
38 implementation of the pay rates and employment
39 requirements shall not be subject to the provisions of §6C-
40 2-1 *et seq.* of this code. The provisions of this section are
41 rehabilitative in nature and it is the specific intent of the
42 Legislature that no private cause of action, either express or
43 implied, shall arise pursuant to the provisions or
44 implementation of this section.

45 (f) If, following this pay raise, the employee will make
46 more than the maximum allowable by the Division of
47 Personnel for the pay grade, this salary increase shall still
48 take effect, and that employee shall make more than the pay
49 grade maximum.



CHAPTER 193

**(Com. Sub. for H. B. 4145 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed March 6, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 6, 2018.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended as contained in Enrolled Committee Substitute for Senate Bill 267, Regular Session, 2018; and to amend and reenact §18A-4-2 and §18A-4-8a of said code as contained in Enrolled Committee Substitute for Senate Bill 267, Regular Session, 2018, all relating to increasing compensation for certain public employees; increasing the annual salaries of members of the West Virginia State Police; increasing the minimum salaries payable to public school teachers and professional personnel

during the contract year; and increasing the minimum monthly pay for public school service personnel.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

***§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.**

1 (a) The superintendent shall establish within the West
2 Virginia State Police a system to provide for: The promotion
3 of members to the supervisory ranks of sergeant, first sergeant,
4 second lieutenant, and first lieutenant; the classification of
5 nonsupervisory members within the field operations force to
6 the ranks of trooper, senior trooper, trooper first class, or
7 corporal; the classification of members assigned to the forensic
8 laboratory as criminalist I-VIII; and the temporary
9 reclassification of members assigned to administrative duties
10 as administrative support specialist I-VIII.

11 (b) The superintendent may propose legislative rules for
12 promulgation in accordance with §29A-3-1 *et seq.* of this
13 code for the purpose of ensuring consistency, predictability,
14 and independent review of any system developed under the
15 provisions of this section.

16 (c) The superintendent shall provide to each member a
17 written manual governing any system established under the
18 provisions of this section and specific procedures shall be
19 identified for the evaluation and testing of members for
20 promotion or reclassification and the subsequent placement
21 of any members on a promotional eligibility or
22 reclassification recommendation list.

23 (d) Beginning on July 1, 2018, members shall receive
24 annual salaries payable at least twice per month as follows:

*NOTE: This section was also amended by S. B. 267 (Chapter 189) which passed prior to this act.

25 ANNUAL SALARY SCHEDULE (BASE PAY)

26 SUPERVISORY AND NONSUPERVISORY RANKS

27 Cadet During Training..... \$ 36,154

28 Cadet Trooper After Training.....43,414

29 Trooper Second Year.....44,426

30 Trooper Third Year.....44,809

31 Senior Trooper.....45,208

32 Trooper First Class45,814

33 Corporal.....46,420

34 Sergeant50,721

35 First Sergeant.....52,872

36 Second Lieutenant55,022

37 First Lieutenant.....57,173

38 Captain.....59,324

39 Major61,474

40 Lieutenant Colonel63,625

41 ANNUAL SALARY SCHEDULE (BASE PAY)

42 ADMINISTRATION SUPPORT SPECIALIST
43 CLASSIFICATION

44 I44,426

45 II45,208

46 III45,814

47 IV46,420

48 V50,721
 49 VI52,872
 50 VII55,022
 51 VIII57,173

ANNUAL SALARY SCHEDULE (BASE PAY)

CRIMINALIST CLASSIFICATION

54 I44,426
 55 II45,208
 56 III45,814
 57 IV46,420
 58 V50,721
 59 VI52,872
 60 VII55,022
 61 VIII57,173

62 Each member of the West Virginia State Police whose
 63 salary is fixed and specified in this annual salary schedule
 64 is entitled to the length of service increases set forth in §15-
 65 2-5(e) of this code and supplemental pay as provided in §15-
 66 2-5(g) of this code.

67 (e) Each member of the West Virginia State Police
 68 whose salary is fixed and specified pursuant to this section
 69 shall receive, and is entitled to, an increase in salary over
 70 that set forth in §15-2-5(d) of this code for grade in rank,
 71 based on length of service, including that service served
 72 before and after the effective date of this section with the
 73 West Virginia State Police as follows: Beginning on
 74 January 1, 2015, and continuing thereafter, at the end of two
 75 years of service with the West Virginia State Police, the

76 member shall receive a salary increase of \$500 to be
77 effective during his or her next year of service and a like
78 increase at yearly intervals thereafter, with the increases to
79 be cumulative.

80 (f) In applying the salary schedules set forth in this
81 section where salary increases are provided for length of
82 service, members of the West Virginia State Police in
83 service at the time the schedules become effective shall be
84 given credit for prior service and shall be paid the salaries
85 the same length of service entitles them to receive under the
86 provisions of this section.

87 (g) The Legislature finds and declares that because of
88 the unique duties of members of the West Virginia State
89 Police, it is not appropriate to apply the provisions of state
90 wage and hour laws to them. Accordingly, members of the
91 West Virginia State Police are excluded from the provisions
92 of state wage and hour law. This express exclusion shall not
93 be construed as any indication that the members were or
94 were not covered by the wage and hour law prior to this
95 exclusion.

96 In lieu of any overtime pay they might otherwise have
97 received under the wage and hour law, and in addition to
98 their salaries and increases for length of service, members
99 who have completed basic training and who are exempt
100 from federal Fair Labor Standards Act guidelines may
101 receive supplemental pay as provided in this section.

102 The authority of the superintendent to propose a
103 legislative rule or amendment thereto for promulgation in
104 accordance with §29A-3-1 *et seq.* of this code to establish
105 the number of hours per month which constitute the
106 standard pay period for the members of the West Virginia
107 State Police is hereby continued. The rule shall further
108 establish, on a graduated hourly basis, the criteria for receipt
109 of a portion or all of supplemental payment when hours are
110 worked in excess of the standard pay period. The
111 superintendent shall certify at least twice per month to the

112 West Virginia State Police's payroll officer the names of
113 those members who have worked in excess of the standard
114 pay period and the amount of their entitlement to
115 supplemental payment. The supplemental payment may not
116 exceed \$200 per pay period. The superintendent and civilian
117 employees of the West Virginia State Police are not eligible
118 for any supplemental payments.

119 (h) Each member of the West Virginia State Police,
120 except the superintendent and civilian employees, shall
121 execute, before entering upon the discharge of his or her
122 duties, a bond with security in the sum of \$5,000 payable to
123 the State of West Virginia, conditioned upon the faithful
124 performance of his or her duties, and the bond shall be
125 approved as to form by the Attorney General and as to
126 sufficiency by the Governor.

127 (i) In consideration for compensation paid by the West
128 Virginia State Police to its members during those members'
129 participation in the West Virginia State Police Cadet
130 Training Program pursuant to §30-29-8 of this code, the
131 West Virginia State Police may require of its members by
132 written agreement entered into with each of them in advance
133 of such participation in the program that, if a member should
134 voluntarily discontinue employment any time within one
135 year immediately following completion of the training
136 program, he or she shall be obligated to pay to the West
137 Virginia State Police a pro rata portion of such
138 compensation equal to that part of such year which the
139 member has chosen not to remain in the employ of the West
140 Virginia State Police.

141 (j) Any member of the West Virginia State Police who
142 is called to perform active duty training or inactive duty
143 training in the National Guard or any reserve component of
144 the armed forces of the United States annually shall be
145 granted, upon request, leave time not to exceed 30 calendar
146 days for the purpose of performing the active duty training
147 or inactive duty training and the time granted may not be

148 deducted from any leave accumulated as a member of the
149 West Virginia State Police.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

*§18A-4-2. State minimum salaries for teachers.

1 (a) It is the goal of the Legislature to increase the state
2 minimum salary for teachers with zero years of experience
3 and an A. B. degree, including the equity supplement, to at
4 least \$43,000 by fiscal year 2019.

5 (b) For school year 2018–2019, and continuing
6 thereafter, each teacher shall receive the amount prescribed
7 in the State Minimum Salary Schedule as set forth in this
8 section; specific additional amounts prescribed in this
9 section or article; and any county supplement in effect in a
10 county pursuant to §18A-4-5a of this code during the
11 contract year.

STATE MINIMUM SALARY SCHEDULE

Years Exp	4th Class	3rd Class	2nd Class	A.B. A.B.	A.B. + 15	M.A. M.A.	M.A. + 15	M.A. + 30	M.A. + 45	Doc- torate
0	29,937	30,626	30,892	32,335	33,096	34,863	35,624	36,385	37,146	38,181
1	30,265	30,954	31,220	32,853	33,614	35,382	36,143	36,903	37,664	38,699
2	30,594	31,282	31,548	33,372	34,133	35,900	36,661	37,422	38,183	39,218
3	30,922	31,610	31,876	33,891	34,651	36,419	37,180	37,940	38,701	39,736
4	31,494	32,182	32,448	34,653	35,414	37,182	37,943	38,703	39,464	40,499
5	31,822	32,510	32,776	35,172	35,933	37,700	38,461	39,222	39,983	41,018
6	32,150	32,838	33,104	35,690	36,451	38,219	38,980	39,740	40,501	41,536
7	32,478	33,167	33,432	36,209	36,970	38,737	39,498	40,259	41,020	42,055
8	32,806	33,495	33,761	36,727	37,488	39,256	40,017	40,777	41,538	42,573
9	33,134	33,823	34,089	37,246	38,007	39,774	40,535	41,296	42,057	43,092
10	33,463	34,151	34,417	37,766	38,526	40,294	41,055	41,816	42,576	43,611

*NOTE: This section was also amended by S. B. 267 (Chapter 189)
which passed prior to this act.

11	33,791	34,479	34,745	38,284	39,045	40,813	41,573	42,334	43,095	44,130
12	34,119	34,807	35,073	38,803	39,563	41,331	42,092	42,853	43,613	44,648
13	34,447	35,135	35,401	39,321	40,082	41,850	42,610	43,371	44,132	45,167
14	34,775	35,463	35,729	39,840	40,600	42,368	43,129	43,890	44,650	45,685
15	35,103	35,791	36,057	40,358	41,119	42,887	43,647	44,408	45,169	46,204
16	35,431	36,119	36,385	40,877	41,637	43,405	44,166	44,927	45,687	46,722
17	35,759	36,448	36,713	41,395	42,156	43,924	44,685	45,445	46,206	47,241
18	36,087	36,776	37,042	41,914	42,675	44,442	45,203	45,964	46,725	47,760
19	36,415	37,104	37,370	42,432	43,193	44,961	45,722	46,482	47,243	48,278
20	36,743	37,432	37,698	42,951	43,712	45,479	46,240	47,001	47,762	48,797
21	37,072	37,760	38,026	43,469	44,230	45,998	46,759	47,519	48,280	49,315
22	37,400	38,088	38,354	43,988	44,749	46,516	47,277	48,038	48,799	49,834
23	37,728	38,416	38,682	44,507	45,267	47,035	47,796	48,556	49,317	50,352
24	38,056	38,744	39,010	45,025	45,786	47,554	48,314	49,075	49,836	50,871
25	38,384	39,072	39,338	45,544	46,304	48,072	48,833	49,594	50,354	51,389
26	38,712	39,400	39,666	46,062	46,823	48,591	49,351	50,112	50,873	51,908
27	39,040	39,728	39,994	46,581	47,341	49,109	49,870	50,631	51,391	52,426
28	39,368	40,057	40,322	47,099	47,860	49,628	50,388	51,149	51,910	52,945
29	39,696	40,385	40,651	47,618	48,378	50,146	50,907	51,668	52,428	53,463
30	40,024	40,713	40,979	48,136	48,897	50,665	51,425	52,186	52,947	53,982
31	40,353	41,041	41,307	48,655	49,416	51,183	51,944	52,705	53,465	54,500
32	40,681	41,369	41,635	49,173	49,934	51,702	52,463	53,223	53,984	55,019
33	41,009	41,697	41,963	49,692	50,453	52,220	52,981	53,742	54,503	55,538
34	41,337	42,025	42,291	50,210	50,971	52,739	53,500	54,260	55,021	56,056
35	41,665	42,353	42,619	50,729	51,490	53,257	54,018	54,779	55,540	56,575

12 (c) Six hundred dollars shall be paid annually to each
13 classroom teacher who has at least 20 years of teaching
14 experience. The payments: (i) Shall be in addition to any
15 amounts prescribed in the applicable State Minimum Salary
16 Schedule; (ii) shall be paid in equal monthly installments;
17 and (iii) shall be considered a part of the state minimum
18 salaries for teachers.

19 (d) To meet the objective of salary equity among the
20 counties as set forth in §18A-4-5 of this code, each teacher
21 shall be paid an equity supplement amount as applicable for
22 his or her classification of certification or classification of
23 training and years of experience as follows, subject to the
24 provisions of that section:

25 (1) For “4th Class” at zero years of experience, \$1,781.
26 An additional \$38 shall be paid for each year of experience
27 up to and including 35 years of experience;

28 (2) For “3rd Class” at zero years of experience, \$1,796.
29 An additional \$67 shall be paid for each year of experience
30 up to and including 35 years of experience;

31 (3) For “2nd Class” at zero years of experience, \$1,877.
32 An additional \$69 shall be paid for each year of experience
33 up to and including 35 years of experience;

34 (4) For “A. B.” at zero years of experience, \$2,360. An
35 additional \$69 shall be paid for each year of experience up
36 to and including 35 years of experience;

37 (5) For “A. B. + 15” at zero years of experience, \$2,452.
38 An additional \$69 shall be paid for each year of experience
39 up to and including 35 years of experience;

40 (6) For “M. A.” at zero years of experience, \$2,644. An
41 additional \$69 shall be paid for each year of experience up
42 to and including 35 years of experience;

43 (7) For “M. A. + 15” at zero years of experience, \$2,740.
44 An additional \$69 shall be paid for each year of experience
45 up to and including 35 years of experience;

46 (8) For “M. A. + 30” at zero years of experience, \$2,836.
47 An additional \$69 shall be paid for each year of experience
48 up to and including 35 years of experience;

49 (9) For “M. A. + 45” at zero years of experience, \$2,836.
50 An additional \$69 shall be paid for each year of experience
51 up to and including 35 years of experience; and

52 (10) For “Doctorate” at zero years of experience,
 53 \$2,927. An additional \$69 shall be paid for each year of
 54 experience up to and including 35 years of experience.

55 These payments: (i) Shall be in addition to any amounts
 56 prescribed in the applicable State Minimum Salary
 57 Schedule, any specific additional amounts prescribed in this
 58 section and article and any county supplement in effect in a
 59 county pursuant to §18A-4-5a of this code; (ii) shall be paid
 60 in equal monthly installments; and (iii) shall be considered
 61 a part of the state minimum salaries for teachers.

***§18A-4-8a. Service personnel minimum monthly salaries.**

1 (a) The minimum monthly pay for each service
 2 employee shall be as follows:

3 (1) For school year 2018–2019, and continuing
 4 thereafter, the minimum monthly pay for each service
 5 employee whose employment is for a period of more than
 6 three and one-half hours a day shall be at least the amounts
 7 indicated in the State Minimum Pay Scale Pay Grade and
 8 the minimum monthly pay for each service employee whose
 9 employment is for a period of three and one-half hours or
 10 less a day shall be at least one-half the amount indicated in
 11 the State Minimum Pay Scale Pay Grade set forth in this
 12 subdivision.

STATE MINIMUM SALARY SCHEDULE

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,770	1,791	1,833	1,886	1,939	2,002	2,034	2,107
1	1,802	1,824	1,865	1,918	1,972	2,035	2,066	2,140
2	1,835	1,856	1,898	1,951	2,004	2,067	2,099	2,172
3	1,867	1,889	1,931	1,984	2,037	2,100	2,132	2,205
4	1,900	1,922	1,963	2,016	2,069	2,133	2,164	2,239
5	1,933	1,954	1,996	2,049	2,102	2,165	2,197	2,271

*NOTE: This section was also amended by S. B. 267 (Chapter 189)
 which passed prior to this act.

6	1,965	1,987	2,030	2,082	2,135	2,198	2,230	2,304
7	1,999	2,019	2,062	2,114	2,167	2,231	2,262	2,337
8	2,032	2,052	2,095	2,147	2,200	2,263	2,295	2,369
9	2,064	2,085	2,128	2,181	2,233	2,296	2,327	2,402
10	2,097	2,118	2,160	2,213	2,265	2,330	2,361	2,435
11	2,130	2,151	2,193	2,246	2,298	2,362	2,394	2,467
12	2,162	2,184	2,225	2,279	2,332	2,395	2,426	2,500
13	2,195	2,216	2,258	2,311	2,364	2,427	2,459	2,533
14	2,228	2,249	2,291	2,344	2,397	2,460	2,492	2,565
15	2,260	2,282	2,323	2,376	2,429	2,493	2,524	2,598
16	2,293	2,314	2,356	2,409	2,462	2,525	2,557	2,631
17	2,325	2,347	2,390	2,442	2,495	2,558	2,590	2,664
18	2,358	2,380	2,422	2,474	2,527	2,591	2,622	2,697
19	2,392	2,412	2,455	2,507	2,560	2,623	2,655	2,729
20	2,424	2,445	2,488	2,541	2,593	2,656	2,688	2,763
21	2,457	2,477	2,520	2,573	2,625	2,689	2,720	2,797
22	2,490	2,511	2,553	2,606	2,658	2,722	2,754	2,829
23	2,522	2,544	2,586	2,639	2,692	2,756	2,788	2,863
24	2,555	2,576	2,618	2,671	2,724	2,790	2,821	2,897
25	2,588	2,609	2,651	2,704	2,758	2,822	2,855	2,929
26	2,620	2,642	2,683	2,738	2,792	2,856	2,887	2,963
27	2,653	2,674	2,716	2,770	2,824	2,888	2,921	2,996
28	2,686	2,707	2,750	2,804	2,858	2,922	2,955	3,030
29	2,718	2,741	2,783	2,836	2,891	2,956	2,987	3,064
30	2,752	2,773	2,817	2,870	2,924	2,988	3,021	3,097
31	2,785	2,807	2,851	2,904	2,958	3,022	3,055	3,130
32	2,819	2,840	2,883	2,937	2,990	3,056	3,087	3,164
33	2,853	2,873	2,917	2,971	3,024	3,088	3,121	3,197
34	2,885	2,907	2,951	3,005	3,058	3,122	3,155	3,230
35	2,919	2,941	2,983	3,037	3,090	3,156	3,188	3,264
36	2,953	2,974	3,017	3,071	3,125	3,189	3,222	3,296

37	2,985	3,008	3,051	3,105	3,159	3,223	3,255	3,330
38	3,019	3,040	3,083	3,137	3,191	3,256	3,288	3,364
39	3,053	3,074	3,117	3,171	3,225	3,289	3,322	3,396
40	3,085	3,108	3,150	3,204	3,259	3,323	3,355	3,430

13 (2) Each service employee shall receive the amount
 14 prescribed in the State Minimum Pay Scale Pay Grade in
 15 accordance with the provisions of this subsection according
 16 to their class title and pay grade as set forth in this
 17 subdivision:

18	CLASS TITLE	PAY GRADE
19	Accountant I	D
20	Accountant II	E
21	Accountant III	F
22	Accounts Payable Supervisor	G
23	Aide I	A
24	Aide II	B
25	Aide III	C
26	Aide IV	D
27	Audiovisual Technician	C
28	Auditor	G
29	Autism Mentor	F
30	Braille Specialist	E
31	Bus Operator	D
32	Buyer	F
33	Cabinetmaker	G

34	Cafeteria Manager	D
35	Carpenter I	E
36	Carpenter II	F
37	Chief Mechanic	G
38	Clerk I	B
39	Clerk II	C
40	Computer Operator	E
41	Cook I	A
42	Cook II	B
43	Cook III	C
44	Crew Leader	F
45	Custodian I	A
46	Custodian II	B
47	Custodian III	C
48	Custodian IV	D
49	Director or Coordinator of Services	H
50	Draftsman	D
51	Early Childhood Classroom Assistant Teacher I	E
52	Early Childhood Classroom Assistant Teacher II	E
53	Early Childhood Classroom Assistant Teacher III	F
54	Educational Sign Language Interpreter I	F
55	Educational Sign Language Interpreter II	G

56	Electrician I	F
57	Electrician II	G
58	Electronic Technician I	F
59	Electronic Technician II	G
60	Executive Secretary	G
61	Food Services Supervisor	G
62	Foreman	G
63	General Maintenance	C
64	Glazier	D
65	Graphic Artist	D
66	Groundsman	B
67	Handyman	B
68	Heating and Air Conditioning Mechanic I	E
69	Heating and Air Conditioning Mechanic II	G
70	Heavy Equipment Operator	E
71	Inventory Supervisor	D
72	Key Punch Operator	B
73	Licensed Practical Nurse	F
74	Locksmith	G
75	Lubrication Man	C
76	Machinist	F
77	Mail Clerk	D

78	Maintenance Clerk	C
79	Mason	G
80	Mechanic	F
81	Mechanic Assistant	E
82	Office Equipment Repairman I	F
83	Office Equipment Repairman II	G
84	Painter	E
85	Paraprofessional	F
86	Payroll Supervisor	G
87	Plumber I	E
88	Plumber II	G
89	Printing Operator	B
90	Printing Supervisor	D
91	Programmer	H
92	Roofing/Sheet Metal Mechanic	F
93	Sanitation Plant Operator	G
94	School Bus Supervisor	E
95	Secretary I	D
96	Secretary II	E
97	Secretary III	F
98	Sign Support Specialist	E
99	Supervisor of Maintenance	H

100 Supervisor of TransportationH
 101 Switchboard Operator-ReceptionistD
 102 Truck DriverD
 103 Warehouse Clerk C
 104 Watchman B
 105 Welder F
 106 WVEIS Data Entry and Administrative Clerk B

107 (b) An additional \$12 per month is added to the
 108 minimum monthly pay of each service person who holds a
 109 high school diploma or its equivalent.

110 (c) An additional \$11 per month also is added to the
 111 minimum monthly pay of each service person for each of
 112 the following:

113 (1) A service person who holds 12 college hours or
 114 comparable credit obtained in a trade or vocational school
 115 as approved by the state board;

116 (2) A service person who holds 24 college hours or
 117 comparable credit obtained in a trade or vocational school
 118 as approved by the state board;

119 (3) A service person who holds 36 college hours or
 120 comparable credit obtained in a trade or vocational school
 121 as approved by the state board;

122 (4) A service person who holds 48 college hours or
 123 comparable credit obtained in a trade or vocational school
 124 as approved by the state board;

125 (5) A service employee who holds 60 college hours or
 126 comparable credit obtained in a trade or vocational school
 127 as approved by the state board;

128 (6) A service person who holds 72 college hours or
129 comparable credit obtained in a trade or vocational school
130 as approved by the state board;

131 (7) A service person who holds 84 college hours or
132 comparable credit obtained in a trade or vocational school
133 as approved by the state board;

134 (8) A service person who holds 96 college hours or
135 comparable credit obtained in a trade or vocational school
136 as approved by the state board;

137 (9) A service person who holds 108 college hours or
138 comparable credit obtained in a trade or vocational school
139 as approved by the state board;

140 (10) A service person who holds 120 college hours or
141 comparable credit obtained in a trade or vocational school
142 as approved by the state board.

143 (d) An additional \$40 per month also is added to the
144 minimum monthly pay of each service person for each of
145 the following:

146 (1) A service person who holds an associate's degree;

147 (2) A service person who holds a bachelor's degree;

148 (3) A service person who holds a master's degree;

149 (4) A service person who holds a doctorate degree.

150 (e) An additional \$11 per month is added to the
151 minimum monthly pay of each service person for each of
152 the following:

153 (1) A service person who holds a bachelor's degree plus
154 15 college hours;

155 (2) A service person who holds a master's degree plus
156 15 college hours;

157 (3) A service person who holds a master's degree plus
158 30 college hours;

159 (4) A service person who holds a master's degree plus
160 45 college hours; and

161 (5) A service person who holds a master's degree plus
162 60 college hours.

163 (f) To meet the objective of salary equity among the
164 counties, each service person is paid an equity supplement,
165 as set forth in §18A-4-5 of this code, of \$164 per month,
166 subject to the provisions of that section. These payments: (i)
167 Are in addition to any amounts prescribed in the applicable
168 State Minimum Pay Scale Pay Grade, any specific
169 additional amounts prescribed in this section and article and
170 any county supplement in effect in a county pursuant to
171 §18A-4-5b of this code; (ii) are paid in equal monthly
172 installments; and (iii) are considered a part of the state
173 minimum salaries for service personnel.

174 (g) When any part of a school service person's daily
175 shift of work is performed between the hours of 6:00 p. m.
176 and 5:00 a. m. the following day, the employee is paid no
177 less than an additional \$10 per month and one half of the
178 pay is paid with local funds.

179 (h) Any service person required to work on any legal
180 school holiday is paid at a rate one and one-half times the
181 person's usual hourly rate.

182 (i) Any full-time service personnel required to work in
183 excess of their normal working day during any week which
184 contains a school holiday for which they are paid is paid for
185 the additional hours or fraction of the additional hours at a
186 rate of one and one-half times their usual hourly rate and
187 paid entirely from county board funds.

188 (j) A service person may not have his or her daily work
189 schedule changed during the school year without the
190 employee's written consent and the person's required daily

191 work hours may not be changed to prevent the payment of time
192 and one-half wages or the employment of another employee.

193 (k) The minimum hourly rate of pay for extra duty
194 assignments as defined in §18A-4-8b of this code is no less
195 than one seventh of the person's daily total salary for each hour
196 the person is involved in performing the assignment and paid
197 entirely from local funds: *Provided*, That an alternative
198 minimum hourly rate of pay for performing extra duty
199 assignments within a particular category of employment may
200 be used if the alternate hourly rate of pay is approved both by
201 the county board and by the affirmative vote of a two-thirds
202 majority of the regular full-time persons within that
203 classification category of employment within that county:
204 *Provided, however*, That the vote is by secret ballot if
205 requested by a service person within that classification
206 category within that county. The salary for any fraction of an
207 hour the employee is involved in performing the assignment is
208 prorated accordingly. When performing extra duty
209 assignments, persons who are regularly employed on a one-
210 half day salary basis shall receive the same hourly extra duty
211 assignment pay computed as though the person were
212 employed on a full-day salary basis.

213 (l) The minimum pay for any service personnel engaged in
214 the removal of asbestos material or related duties required for
215 asbestos removal is their regular total daily rate of pay and no
216 less than an additional \$3 per hour or no less than \$5 per hour
217 for service personnel supervising asbestos removal
218 responsibilities for each hour these employees are involved in
219 asbestos-related duties. Related duties required for asbestos
220 removal include, but are not limited to, travel, preparation of
221 the work site, removal of asbestos, decontamination of the
222 work site, placing and removal of equipment and removal of
223 structures from the site. If any member of an asbestos crew is
224 engaged in asbestos-related duties outside of the employee's
225 regular employment county, the daily rate of pay is no less than
226 the minimum amount as established in the employee's regular
227 employment county for asbestos removal and an additional

228 \$30 per each day the employee is engaged in asbestos removal
229 and related duties. The additional pay for asbestos removal and
230 related duties shall be payable entirely from county funds.
231 Before service personnel may be used in the removal of
232 asbestos material or related duties, they shall have completed
233 a federal Environmental Protection Act-approved training
234 program and be licensed. The employer shall provide all
235 necessary protective equipment and maintain all records
236 required by the Environmental Protection Act.

237 (m) For the purpose of qualifying for additional pay as
238 provided in §18A-5-8 of this code, an aide is considered to
239 be exercising the authority of a supervisory aide and control
240 over pupils if the aide is required to supervise, control,
241 direct, monitor, escort, or render service to a child or
242 children when not under the direct supervision of a certified
243 professional person within the classroom, library, hallway,
244 lunchroom, gymnasium, school building, school grounds, or
245 wherever supervision is required. For purposes of this
246 section, “under the direct supervision of a certified
247 professional person” means that certified professional
248 person is present, with and accompanying the aide.

CHAPTER 194

**(Com. Sub. for S. B. 272 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

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

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

AN ACT to amend and reenact §16-5T-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-5T-6; to amend and reenact §16-46-4 of said code; and to amend said code by

adding thereto a new section, designated §16-46-7, all relating to drug control; requiring reports to the Office of Drug Control Policy; allowing the Office of Drug Control Policy to establish a pilot program for community response to persons who have experienced a recent overdose; requiring governmental agencies to require first responders to carry Naloxone subject to certain conditions; requiring governmental agencies to require first responders to be trained in Naloxone use; providing that Naloxone is subject to funding and availability; and providing for a statewide standing order for Naloxone by the state health officer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.

§16-5T-4. Entities required to report; required information.

1 (a) To fulfill the purposes of this article, the following
2 information shall be reported to the Office of Drug Control
3 Policy:

4 (1) An emergency medical or law-enforcement response
5 to a suspected, reported, or confirmed overdose, or a
6 response in which an overdose is identified by the
7 responders;

8 (2) Medical treatment for an overdose;

9 (3) The dispensation or provision of an opioid
10 antagonist; and

11 (4) Death attributed to overdose or “drug poisoning”.

12 (b) The following entities shall be required to report
13 information contained in §16-5T-4(a) of this code:

14 (1) Pharmacies operating in the state;

15 (2) Health care providers;

16 (3) Medical examiners;

- 17 (4) Law-enforcement agencies, including prosecuting
18 attorneys, state, county, and local police departments;
- 19 (5) Emergency response providers; and
- 20 (6) Hospital emergency rooms and departments.

§16-5T-6. Community Overdose Response Demonstration Pilot Project.

1 (a) The Director of the Office of Drug Control Policy
2 shall establish a Community Overdose Response
3 Demonstration Pilot Project, to be continued for a period of
4 four years, to develop model government programs to
5 promote public health and general welfare through a
6 comprehensive community-based response to drug
7 overdoses in communities across West Virginia.

8 (b) The purpose of the demonstration pilot project is the
9 development of community programs that will focus and
10 use existing resources of government agencies to create
11 outreach programs to educate concerned family and
12 community members, including first responders, to
13 recognize an opioid overdose, and to immediately respond
14 with life-saving measures and quick response teams
15 comprised of law enforcement, emergency medical
16 personnel, and a trained opiate case manager to conduct an
17 in-home visit within one week of an overdose.

18 (c) The objective of the demonstration pilot project is to
19 improve public health by addressing drug overdoses
20 through a comprehensive community development plan.
21 The plan should serve as a model to improve public health
22 and education through a comprehensive community-based
23 response to drug overdoses across the state.

24 (d) Communities that experience a high frequency of
25 drug overdoses, compared with national averages as
26 determined by the Office of Drug Control Policy, are
27 eligible for participation in the demonstration pilot project.

28 (e) The demonstration pilot project shall be developed
29 and administered by the Office of Drug Control Policy to
30 encourage state and local agencies and community groups
31 to work together and coordinate government and
32 community responses to drug overdoses, and identify new
33 and existing funds, personnel, and other existing resources
34 available for the demonstration pilot project. Demonstration
35 projects may include:

36 (1) Outreach programs to educate concerned family and
37 community members, including first responders, to
38 recognize an opioid overdose and to immediately respond
39 with life-saving measures. This outreach may include basic
40 information, training in the proper and safe administration
41 of Naloxone to reverse drug overdoses, and the distribution
42 of Naloxone kits; and

43 (2) Quick response teams comprised of law
44 enforcement, emergency medical personnel, and a case
45 manager trained in substance use disorder to conduct an in-
46 home visit within one week of an overdose. The quick
47 response teams would work cooperatively to triage and
48 assess overdose survivors and provide linkage to treatment
49 and services for rehabilitation with the goal of reducing
50 repeated overdoses.

51 (f) The demonstration project may receive funding and
52 other committed resources from federal, state, or local
53 government and community groups.

54 (g) A community desiring to participate in the
55 demonstration project shall submit a plan to the director that
56 provides for the following elements:

57 (1) Community participation;

58 (2) Development of a community action plan with
59 measurable, achievable, realistic, time-phased objectives;

60 (3) Implementation of the community action plan; and

61 (4) Evaluation of results.

62 (h) By majority vote, the Governor's Advisory Council
63 on Substance Use Disorder Policy created pursuant to
64 Executive Order 10-17 may select one or more communities
65 from those that submit plans for participation in the
66 demonstration pilot project.

67 (i) Commencing December 1, 2018, and each year
68 thereafter, each participating community shall give a
69 progress report to the director and commencing January 1,
70 2019, and each year thereafter, the director shall give a
71 summary report of all the participating communities to the
72 Legislative Oversight Commission on Health and Human
73 Resources Accountability as established in §16-29E-1 *et*
74 *seq.* of this code, on progress made by the pilot
75 demonstration project, including suggested legislation,
76 necessary changes to the demonstration pilot project, and
77 suggested expansion of the demonstration project.

78 (j) This section is not intended to, and does not, create
79 any right or benefit, substantive or procedural, enforceable
80 at law or in equity by any party against the state, its
81 departments, agencies, or entities, its officers, employees, or
82 agents, or any other person.

83 (k) The demonstration project terminates on July 1,
84 2022.

ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS.

§16-46-4. Possession and administration of an opioid antagonist by initial responders; limited liability.

1 (a) Local and state governmental agencies that employ
2 initial responders must provide opioid antagonist rescue kits
3 to their initial responders, require initial responders to
4 successfully complete the training required by §16-46-6(b)
5 of this code, and require the initial responders to carry the
6 opioid antagonist rescue kits in accordance with agency
7 procedures so as to optimize the initial responders' capacity

8 to timely assist in the prevention of opioid overdoses:
9 *Provided*, That a local or state governmental agency has
10 designated sufficient funding or supplies of opioid
11 antagonist rescue kits.

12 (b) In the absence of gross negligence or willful
13 misconduct, nothing in this section shall be construed to
14 impose civil or criminal liability on a local or state
15 governmental agency or an initial responder acting in good
16 faith in the administration or provision of an opioid
17 antagonist in cases where an individual appears to be
18 experiencing an opioid overdose.

19 (c) As used in this section, an “opioid antagonist rescue
20 kit” means a kit containing:

21 (1) Two doses of an opioid antagonist in either a generic
22 form or in a form approved by the United States Federal
23 Food and Drug Administration; and

24 (2) Overdose education materials that conform to Office
25 of Emergency Medical Services or federal Substance Abuse
26 and Mental Health Services Administration guidelines for
27 opioid overdose education that explain the signs and causes
28 of an opioid overdose and instruct when and how to
29 administer in accordance with medical best practices:

30 (A) Life-saving rescue techniques; and

31 (B) An opioid antagonist.

§16-46-7. Statewide standing orders for opioid antagonist.

1 (a) The state health officer may prescribe on a statewide
2 basis an opioid antagonist by one or more standing orders to
3 eligible recipients.

4 (b) A standing order must specify, at a minimum:

5 (1) The opioid antagonist formulations and means of
6 administration that are approved for dispensing;

7 (2) The eligible recipients to whom the opioid
8 antagonist may be dispensed;

9 (3) Any training that is required for an eligible recipient
10 to whom the opioid antagonist is dispensed;

11 (4) The circumstances under which an eligible recipient
12 may distribute or administer the opioid antagonist; and

13 (5) The timeline for renewing and updating the standing
14 order.

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CHAPTER 195

**(Com. Sub. for S. B. 359 - By Senators Trump, Unger
and Weld)**

[Passed March 7, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended, relating generally to mental hygiene proceedings; eliminating requirement that new mental hygiene commissioners undergo a minimum of three days training in mental hygiene areas; removing requirement that training program include training in manifestations of mental illness and addiction; and authorizing the Supreme Court to establish curricula for mental hygiene commissioners and those magistrates designated by the chief judge of a judicial circuit to hold probable cause and emergency detention hearings involving involuntary hospitalization.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.

1 (a) *Appointment of mental hygiene commissioners.* —
2 The chief judge in each judicial circuit of this state shall
3 appoint a competent attorney and may, if necessary, appoint
4 additional attorneys to serve as mental hygiene
5 commissioners to preside over involuntary hospitalization
6 hearings. Mental hygiene commissioners shall be persons of
7 good moral character and of standing in their profession and
8 they shall, before assuming the duties of such
9 commissioner, take the oath required of other special
10 commissioners as provided in §6-1-1 *et seq.* of this code.

11 All persons newly appointed to serve as mental hygiene
12 commissioners shall attend and complete an orientation
13 course, within one year of their appointment, consisting of
14 training provided annually by the Supreme Court of
15 Appeals. In addition, existing mental hygiene
16 commissioners and any magistrates designated by the chief
17 judge of a judicial circuit to hold probable cause and
18 emergency detention hearings involving involuntary
19 hospitalization shall attend and complete a course provided
20 by the Supreme Court of Appeals. Persons attending such
21 courses outside the county of their residence shall be
22 reimbursed out of the budget of the Supreme Court -
23 General Judicial for reasonable expenses incurred. The
24 Supreme Court of Appeals shall establish curricula and
25 rules for such courses, including rules providing for the
26 reimbursement of reasonable expenses as authorized herein.

27 (b) *Duties of mental hygiene commissioners.* —

28 (1) Mental hygiene commissioners may sign and issue
29 summonses for the attendance, at any hearing held pursuant
30 to §27-5-4 of this code, of the individual sought to be
31 committed; may sign and issue subpoenas for witnesses,
32 including subpoenas duces tecum; may place any witness

33 under oath; may elicit testimony from applicants,
34 respondents, and witnesses regarding factual issues raised
35 in the petition; and may make findings of fact on evidence
36 and may make conclusions of law, but such findings and
37 conclusions shall not be binding on the circuit court. All
38 mental hygiene commissioners shall be reasonably
39 compensated at a uniform rate determined by the Supreme
40 Court of Appeals. Mental hygiene commissioners shall
41 submit all requests for compensation to the administrative
42 director of the courts for payment. Mental hygiene
43 commissioners shall discharge their duties and hold their
44 offices at the pleasure of the chief judge of the judicial
45 circuit in which he or she is appointed and may be removed
46 at any time by such chief judge. It shall be the duty of a
47 mental hygiene commissioner to conduct orderly inquiries
48 into the mental health of the individual sought to be
49 committed concerning the advisability of committing the
50 individual to a mental health facility. The mental hygiene
51 commissioner shall safeguard, at all times, the rights and
52 interests of the individual as well as the interests of the state.
53 The mental hygiene commissioner shall make a written
54 report of his or her findings to the circuit court. In any
55 proceedings before any court of record as set forth in this
56 article, the court of record shall appoint an interpreter for
57 any individual who is deaf or cannot speak or who speaks a
58 foreign language and who may be subject to involuntary
59 commitment to a mental health facility.

60 (2) A mental hygiene commissioner appointed by the
61 circuit court of one county or multiple county circuits may
62 serve in such capacity in a jurisdiction other than that of his
63 or her original appointment if such be agreed upon by the
64 terms of a cooperative agreement between the circuit courts
65 and county commissions of two or more counties entered
66 into to provide prompt resolution of mental hygiene matters
67 during noncourt hours or on nonjudicial days.

68 (c) *Duties of prosecuting attorney.* — It shall be the duty
69 of the prosecuting attorney or one of his or her assistants to

70 represent the applicants in all final commitment proceedings
71 filed pursuant to the provisions of this article. The
72 prosecuting attorney may appear in any proceeding held
73 pursuant to the provisions of this article if he or she deems
74 it to be in the public interest.

75 (d) *Duties of sheriff.* — Upon written order of the circuit
76 court, mental hygiene commissioner, or magistrate in the
77 county where the individual formally accused of being
78 mentally ill or addicted is a resident or is found, the sheriff
79 of that county shall take said individual into custody and
80 transport him or her to and from the place of hearing and the
81 mental health facility. The sheriff shall also maintain
82 custody and control of the accused individual during the
83 period of time in which the individual is waiting for the
84 involuntary commitment hearing to be convened and while
85 such hearing is being conducted: *Provided*, That an
86 individual who is a resident of a state other than West
87 Virginia shall, upon a finding of probable cause, be
88 transferred to his or her state of residence for treatment
89 pursuant to §27-5-4(p) of this code: *Provided, however*,
90 That where an individual is a resident of West Virginia but
91 not a resident of the county in which he or she is found and
92 there is a finding of probable cause, the county in which the
93 hearing is held may seek reimbursement from the county of
94 residence for reasonable costs incurred by the county
95 attendant to the mental hygiene proceeding.
96 Notwithstanding any provision of this code to the contrary,
97 sheriffs may enter into cooperative agreements with sheriffs
98 of one or more other counties, with the concurrence of their
99 respective circuit courts and county commissions, whereby
100 transportation and security responsibilities for hearings held
101 pursuant to the provisions of this article during noncourt
102 hours or on nonjudicial days may be shared in order to
103 facilitate prompt hearings and to effectuate transportation of
104 persons found in need of treatment.

105 (e) *Duty of sheriff upon presentment to mental health*
106 *care facility.* — When a person is brought to a mental health

107 care facility for purposes of evaluation for commitment
108 under this article, if he or she is violent or combative, the
109 sheriff or his or her designee shall maintain custody of the
110 person in the facility until the evaluation is completed, or
111 the county commission shall reimburse the mental health
112 care facility at a reasonable rate for security services
113 provided by the mental health care facility for the period of
114 time the person is at the hospital prior to the determination
115 of mental competence or incompetence.

116 (f) *Duties of Supreme Court of Appeals.* — The Supreme
117 Court of Appeals shall provide uniform petition, procedure,
118 and order forms which shall be used in all involuntary
119 hospitalization proceedings brought in this state.

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CHAPTER 196

**(Com. Sub. for S. B. 408 - By Senators Takubo,
Maroney, Stollings and Plymale)**

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

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

AN ACT to repeal §16-5D-16 and §16-5D-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5C-3 of said code; and to amend and reenact §16-5D-2, §16-5D-3, §16-5D-4, §16-5D-5, §16-5D-6, §16-5D-7, §16-5D-8, §16-5D-9, §16-5D-10, §16-5D-11, §16-5D-12, §16-5D-13, and §16-5D-15 of said code, all relating to the licensure of nursing homes and assisted living residences; requiring real-time online publication of certain information related to nursing homes and assisted living residences by Secretary of Department of Health and Human Resources in lieu of annual report; identifying information to be published online; defining terms; updating definitions; clarifying rule requirements; identifying additional legislative rules to be

proposed by Secretary of Department of Health and Human Resources; allowing physical and electronic delivery methods for certain reports; repealing outdated sections of code; eliminating duplicative provisions of code; clarifying enforcement action and due process procedures; setting forth actions to be taken if license is suspended, denied, limited, or revoked; requiring reporting by assisted living residence administrator to Secretary of Board of Pharmacy; barring certain individuals from application to operate another assisted living facility; setting maximum period of suspension on license suspension for assisted living facility; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5C. NURSING HOMES.

§16-5C-3. Powers, duties, and rights of secretary.

1 In the administration of this article, the secretary shall
2 have the following powers, duties, and rights:

3 (a) To enforce rules and standards promulgated
4 hereunder for nursing homes;

5 (b) To exercise as sole authority all powers relating to
6 the issuance, suspension, and revocation of licenses of
7 nursing homes;

8 (c) To enforce rules promulgated hereunder
9 governing the qualification of applicants for nursing
10 home licenses, including, but not limited to, educational
11 requirements, financial requirements, personal, and
12 ethical requirements;

13 (d) To receive and disburse federal funds and to take
14 whatever action not contrary to law as may be proper and
15 necessary to comply with the requirements and conditions
16 for the receipt of such federal funds;

17 (e) To receive and disburse for authorized purposes any
18 moneys appropriated to the department by the Legislature;

19 (f) To receive and disburse for purposes authorized by
20 this article any funds that may come to the department by
21 gift, grant, donation, bequest, or devise, according to the
22 terms thereof, as well as funds derived from the
23 department's operation, or otherwise;

24 (g) To make contracts, and to execute all instruments
25 necessary or convenient in carrying out the secretary's
26 functions and duties; and all such contracts, agreements, and
27 instruments will be executed by the secretary;

28 (h) To appoint officers, agents, employees, and other
29 personnel and fix their compensation;

30 (i) To offer and sponsor educational and training
31 programs for nursing homes for clinical, administrative,
32 management, and operational personnel;

33 (j) To undertake survey, research and planning projects,
34 and programs relating to administration and operation of
35 nursing homes and to the health, care, treatment, and service
36 in general of such homes;

37 (k) To assess civil penalties for violations of facility
38 standards, in accordance with §16-5C-10 of this code;

39 (l) To inspect any nursing home and any records
40 maintained therein that are necessary to determine
41 compliance with licensure laws or Medicare or Medicaid
42 certification, subject to the provisions of §16-5C-9 and §16-
43 5C-10 of this code;

44 (m) To establish and implement procedures, including
45 informal conferences, investigations, and hearings, subject
46 to applicable provisions of §29A-3-1 *et seq.* of this code,
47 and to enforce compliance with the provisions of this article
48 and with rules issued hereunder;

49 (n) To subpoena witnesses and documents, administer
50 oaths and affirmations, and to examine witnesses under oath
51 for the conduct of any investigation or hearing. Upon failure
52 of a person without lawful excuse to obey a subpoena to
53 give testimony, and upon reasonable notice to all persons
54 affected thereby, the secretary may apply to the circuit court
55 of the county in which the hearing is to be held for an order
56 compelling compliance;

57 (o) To make complaint or cause proceedings to be
58 instituted against any person or persons for the violation of
59 the provisions of this article or of rules issued hereunder.
60 Such action may be taken by the secretary without the
61 sanction of the prosecuting attorney of the county in which
62 proceedings are instituted if the officer fails or refuses to
63 discharge his or her duty. The circuit court of the county in
64 which the conduct has occurred or, if emergency
65 circumstances require, the Circuit Court of Kanawha
66 County shall have jurisdiction in all civil enforcement
67 actions brought under this article and may order equitable
68 relief without bond. In no such case may the secretary or
69 any person acting under the secretary's direction be required
70 to give security for costs;

71 (p) To delegate authority to the secretary's employees
72 and agents to perform all functions of the secretary;

73 (q) To make available to the Governor, the Legislature,
74 and the public at all times online access through the Office
75 of Health Facility Licensure and Certification website the
76 following information. The online information will describe
77 the licensing and investigatory activities of the department
78 during the year. The online information will include a list of
79 all nursing homes in the state, whether such homes are
80 proprietary or nonproprietary; the name of the administrator
81 or administrators; the total number of beds; the legal name
82 of the facility; state identification number; health
83 investigations information and reports; life safety
84 investigations information and reports; and whether or not

85 those nursing homes listed accept Medicare and Medicaid
86 residents; and

87 (r) To establish a formal process for licensed facilities
88 to file complaints about the inspection process or inspectors.

ARTICLE 5D. ASSISTED LIVING RESIDENCES.

§16-5D-2. Definitions.

1 (a) As used in this article, unless a different meaning
2 appears from the context:

3 (1) “Assisted living residence” means any living
4 facility, residence, or place of accommodation, however
5 named, available for four or more residents, in this state
6 which is advertised, offered, maintained, or operated by the
7 ownership or management, whether for a consideration or
8 not, for the express or implied purpose of having personal
9 assistance or supervision, or both, provided to any residents
10 therein who are dependent upon the services of others by
11 reason of physical or mental impairment and who may also
12 require nursing care at a level that is not greater than limited
13 and intermittent nursing care: *Provided*, That the care or
14 treatment in a household, whether for compensation or not,
15 of any person related by blood or marriage, within the
16 degree of consanguinity of second cousin to the head of the
17 household, or his or her spouse, may not be deemed to
18 constitute an assisted living residence within the meaning of
19 this article. Nothing contained in this article applies to
20 hospitals, as defined under §16-5B-1 of this code; or state
21 institutions, as defined under §25-1-3 or §27-1-6 of this
22 code; or residential care homes operated by the federal
23 government or the state; or institutions operated for the
24 treatment and care of alcoholic patients; or offices of
25 physicians; or hotels, boarding homes, or other similar
26 places that furnish to their guests only room and board; or
27 to homes or asylums operated by fraternal orders pursuant
28 to §35-3-1 *et seq.* of this code;

29 (2) “Deficiency” means a statement of the rule and the
30 fact that compliance has not been established and the
31 reasons therefor;

32 (3) “Department” means the state Department of Health
33 and Human Resources;

34 (4) “Director” means the Director of the Office of
35 Health Facility Licensure and Certification within the
36 Office of the Inspector General.

37 (5) “Division” means the Office of Health Facility
38 Licensure and Certification within the Office of the
39 Inspector General of the state Department of Health and
40 Human Resources;

41 (6) “Limited and intermittent nursing care” means direct
42 hands-on nursing care of an individual who needs no more
43 than two hours of nursing care per day for a period of time
44 no longer than 90 consecutive days per episode: *Provided,*
45 That such time limitations shall not apply to an individual
46 who, after having established a residence in an assisted
47 living residence, subsequently qualifies for and receives
48 services coordinated by a licensed hospice and such time
49 limitations shall not apply to home health services provided
50 by a Medicare-certified home health agency. Limited and
51 intermittent nursing care may only be provided by or under
52 the supervision of a registered professional nurse and in
53 accordance with rules proposed by the secretary for
54 legislative approval in accordance with the provisions of
55 §29A-3-1 *et seq.* of this code;

56 (7) “Nursing care” means those procedures commonly
57 employed in providing for the physical, emotional, and
58 rehabilitational needs of the ill or otherwise incapacitated
59 which require technical skills and knowledge beyond that
60 which the untrained person possesses, including, but not
61 limited to, such procedures as: Irrigations, catheterization,
62 special procedures contributing to rehabilitation, and
63 administration of medication by any method which involves

64 a level of complexity and skill in administration not
65 possessed by the untrained person;

66 (8) “Person” means an individual and every form of
67 organization, whether incorporated or unincorporated,
68 including any partnership, corporation, trust, association, or
69 political subdivision of the state;

70 (9) “Personal assistance” means personal services,
71 including, but not limited to, the following: Help in walking,
72 bathing, dressing, feeding, or getting in or out of bed, or
73 supervision required because of the age or mental
74 impairment of the resident;

75 (10) “Resident” means an individual living in an assisted
76 living residence for the purpose of receiving personal
77 assistance or limited and intermittent nursing services;

78 (11) “Secretary” means the secretary of the state
79 Department of Health and Human Resources or his or her
80 designee; and

81 (12) “Substantial compliance” means a level of
82 compliance with the rules such that identified deficiencies
83 pose no greater risk to resident health or safety than the
84 potential for causing minimal harm.

85 (b) The secretary may define in rules any term used
86 herein which is not expressly defined.

§16-5D-3. Powers, duties, and rights of secretary.

1 In the administration of this article, the secretary has the
2 following powers, duties, and rights:

3 (a) To enforce rules and standards for assisted living
4 residences which are adopted, promulgated, amended, or
5 modified by the secretary;

6 (b) To exercise as sole authority all powers relating to
7 the issuance, suspension, and revocation of licenses of
8 assisted living residences;

9 (c) To enforce rules adopted, promulgated, amended, or
10 modified by the secretary governing the qualification of
11 applicants for assisted living residences, including, but not
12 limited to, educational requirements, financial
13 requirements, personal, and ethical requirements;

14 (d) To receive and disburse federal funds and to take
15 whatever action not contrary to law as may be proper and
16 necessary to comply with the requirements and conditions
17 for the receipt of federal funds;

18 (e) To receive and disburse for authorized purposes any
19 moneys appropriated for the division by the Legislature;

20 (f) To receive and disburse for purposes authorized by
21 this article, any funds that may come to the division by gift,
22 grant, donation, bequest, or devise, according to the terms
23 thereof, as well as funds derived from the division's
24 operation or otherwise;

25 (g) To make contracts and to execute all instruments
26 necessary or convenient in carrying out the secretary's
27 functions and duties; and all such contracts, agreements, and
28 instruments will be executed by the secretary;

29 (h) To appoint officers, agents, employees, and other
30 personnel and fix their compensation;

31 (i) To offer and sponsor educational and training
32 programs for assisted living residences' administrative,
33 management, and operational personnel;

34 (j) To undertake survey, research and planning projects,
35 and programs relating to administration and operation of
36 assisted living residences and to the health, care, treatment,
37 and service in general of residents of assisted living
38 residences;

39 (k) To assess civil penalties for violations of assisted
40 living residence standards in accordance with §16-5D-10 of
41 this code;

42 (l) To inspect any assisted living residence and any
43 records maintained therein subject to the provisions of §16-
44 5D-9 and §16-5D-10 of this code;

45 (m) To establish and implement procedures, including
46 informal conferences, investigations and hearings, subject
47 to applicable provisions of §29A-3-1 *et seq.* of this code,
48 and to enforce compliance with the provisions of this article
49 and with rules issued hereunder by the secretary;

50 (n) To subpoena witnesses and documents, administer
51 oaths and affirmations, and to examine witnesses under oath
52 for the conduct of any investigation or hearing. Upon failure
53 of a person without lawful excuse to obey a subpoena to
54 give testimony, and upon reasonable notice to all persons
55 affected thereby, the secretary may apply to the circuit court
56 of the county in which the hearing is to be held or to the
57 Circuit Court of Kanawha County for an order compelling
58 compliance;

59 (o) To make complaint or cause proceedings to be
60 instituted against any person for the violation of the
61 provisions of this article or of rules issued hereunder by the
62 secretary. Such action may be taken by the secretary without
63 the sanction of the prosecuting attorney of the county in
64 which proceedings are instituted if the prosecuting attorney
65 fails or refuses to discharge his or her duty. The Circuit
66 Court of Kanawha County or the circuit court of the county
67 in which the conduct has occurred shall have jurisdiction in
68 all civil enforcement actions brought under this article and
69 may order equitable relief without bond. In no such case
70 may the secretary or any person acting under the secretary's
71 direction be required to give security for costs;

72 (p) To delegate authority to the secretary's employees
73 and agents to perform all functions of the secretary except
74 the making of final decisions in adjudications; and

75 (q) To make available to the Governor, the Legislature
76 and the public at all times online access through the Office

77 of Health Facility Licensure and Certification website the
78 following information. The online information will describe
79 the assisted living residence licensing and investigatory
80 activities of the division. The online information will
81 include a list of all assisted living residences in the state and
82 such of the following information as the secretary
83 determines to apply: Whether the assisted living residences
84 are proprietary or nonproprietary; the classification of each
85 assisted living residence; the name of the administrator or
86 administrators; the total number of beds; license type;
87 license number; license expiration date; health
88 investigations information and reports; life safety
89 investigations information and reports; and whether or not
90 those assisted living residences listed accept Medicare and
91 Medicaid residents.

§16-5D-4. Administrative and inspection staff.

1 The secretary may, as he or she determines necessary,
2 employ administrative employees, inspectors, or other
3 persons as may be necessary to properly carry out the
4 provisions of this article. All employees of the division will
5 be members of the state civil service system. Inspectors and
6 other employees as may be duly designated by the secretary
7 will act as the secretary's representatives and, under the
8 direction of the secretary, will enforce the provisions of this
9 article and all duly promulgated rules of the secretary and,
10 in the discharge of official duties, will have the right of entry
11 into any place maintained as an assisted living residence at
12 any time.

§16-5D-5. Rules; minimum standards for assisted living residences.

1 (a) The secretary will propose rules for legislative
2 approval in accordance with the provisions of §29A-3-1 *et*
3 *seq.* of this code to carry out the purposes and intent of this
4 article and to enable the secretary to exercise the powers and
5 perform the duties conferred upon the secretary by this
6 article.

7 (b) The secretary will propose rules establishing
8 minimum standards of operation of assisted living
9 residences, including, but not limited to, the following:

10 (1) Administrative policies, including:

11 (A) An affirmative statement of the right of access to
12 assisted living residences by members of recognized
13 community organizations and community legal services
14 programs whose purposes include rendering assistance
15 without charge to residents, consistent with the right of
16 residents to privacy;

17 (B) A statement of the rights and responsibilities of
18 residents;

19 (C) The process to be followed by applicants seeking a
20 license;

21 (D) The clinical, medical, resident, and business records
22 to be kept by the assisted living residence;

23 (E) The procedures for inspections and for the review of
24 utilization and quality of resident care; and

25 (F) The procedures for informal dispute resolution and
26 administrative due process and when such remedies are
27 available.

28 (2) Minimum numbers and qualifications of personnel,
29 including management, medical and nursing, aides,
30 orderlies, and support personnel, according to the size and
31 classification of the assisted living residence;

32 (3) Safety requirements;

33 (4) Sanitation requirements;

34 (5) Protective and personal services to be provided;

35 (6) Dietary services to be provided;

- 36 (7) Maintenance of health records;
- 37 (8) Social and recreational activities to be made
38 available;
- 39 (9) Physical facilities;
- 40 (10) Requirements related to provision of limited and
41 intermittent nursing;
- 42 (11) Visitation privileges governing access to a resident
43 by immediate family or other relatives of the resident and
44 by other persons who are visiting with the consent of the
45 resident; and
- 46 (12) Such other categories as the secretary determines
47 to be appropriate to ensure resident's health, safety, and
48 welfare.
- 49 (c) The secretary will include in rules detailed standards
50 for each of the categories of standards established pursuant
51 to §16-5D-5(b) and §16-5D-5(d) of this code and will
52 classify such standards as follows:
- 53 (1) Class I standards are standards the violation of
54 which, as the secretary determines, would present either an
55 imminent danger to the health, safety, or welfare of any
56 resident or a substantial probability that death or serious
57 physical harm would result;
- 58 (2) Class II standards are standards which the secretary
59 determines have a direct or immediate relationship to the
60 health, safety, or welfare of any resident, but which do not
61 create imminent danger;
- 62 (3) Class III standards are standards which the secretary
63 determines have an indirect or a potential impact on the
64 health, safety, or welfare of any resident.
- 65 (d) An assisted living residence shall attain substantial
66 compliance with standards established pursuant to this

67 section and such other requirements for a license as may be
68 established by rule under this article.

§16-5D-6. License required; application; fees; duration; renewal.

1 (a) There shall be one assisted living residence license
2 for each assisted living residence. No person may establish,
3 operate, maintain, offer, or advertise an assisted living
4 residence within this state unless and until he or she obtains
5 a valid license therefor as provided in this article, which
6 license remains unsuspended, unrevoked, and unexpired.
7 No public official or employee may place any person in, or
8 recommend that any person be placed in, or directly or
9 indirectly cause any person to be placed in any assisted
10 living residence, as defined in §16-5D-2 of this code, which
11 is being operated without a valid license from the secretary.
12 The licensee shall be responsible for, and shall have
13 complete control of, the operation and premises of the
14 assisted living residence and the personal assistance and
15 supervision provided to the residents: *Provided*, That the
16 secretary may review any leases or any contracts,
17 subcontracts, agreements, or arrangements for the provision
18 of on-site services to the residents of an assisted living
19 residence to ensure the proper care, safety, and welfare of
20 current or potential residents. Nothing in this article shall be
21 construed to prevent or prohibit the ability of a resident of
22 an assisted living residence to contract or arrange for, and
23 to receive, privately paid nursing care or personal assistance
24 in addition to those services provided by the licensee,
25 subject to the consent and cooperation of the licensee and
26 consistent with the duties and responsibilities imposed by
27 this section.

28 (b) Nothing in this article shall be construed to require
29 the licensing of landlords or property owners who are not
30 involved in the provision of supervision, personal
31 assistance, limited and intermittent nursing care, or other
32 on-site professional services for the residents of an assisted
33 living residence or in the advertising, recruitment of

34 residents, transportation of residents, or other substantial
35 and ongoing services for the operation or maintenance of
36 the assisted living residence.

37 (c) The procedure for obtaining a license shall be as
38 follows:

39 The applicant shall submit an application to the
40 secretary on a form to be prescribed by the secretary,
41 containing such information as may be necessary to show
42 that the applicant is in compliance with the standards for
43 assisted living residences as established by this article and
44 the rules lawfully promulgated by the secretary hereunder.
45 The application and any exhibits thereto shall provide the
46 following information:

47 (A) The name and address of the applicant;

48 (B) The name, address, and principal occupation:

49 (i) Of each person who, as a stockholder or otherwise,
50 has a proprietary interest of 10 percent or more in the
51 applicant;

52 (ii) Of each officer and director of a corporate applicant;

53 (iii) Of each trustee and beneficiary of an applicant
54 which is a trust; and

55 (iv) Where a corporation has a proprietary interest of 25
56 percent or more in an applicant, the name, address, and
57 principal occupation of each officer and director of the
58 corporation;

59 (C) The name and address of the owner of the premises
60 of the assisted living residence or proposed assisted living
61 residence, if he or she is a different person from the
62 applicant, and in such case, the name and address:

63 (i) Of each person who, as a stockholder or otherwise,
64 has a proprietary interest of 10 percent or more in the owner;

- 65 (ii) Of each officer and director of a corporate applicant;
- 66 (iii) Of each trustee and beneficiary of the owner if it is
67 a trust; and
- 68 (iv) Where a corporation has a proprietary interest of 25
69 percent or more in the owner, the name and address of each
70 officer and director of the corporation;
- 71 (D) Where the applicant is the lessee or the assignee of
72 the assisted living residence or the premises of the proposed
73 assisted living residence, a signed copy of the lease and any
74 assignment thereof;
- 75 (E) The name and address of the assisted living
76 residence or the premises of the proposed assisted living
77 residence;
- 78 (F) The proposed bed quota of the assisted living
79 residence and the proposed bed quota of each unit thereof;
- 80 (G) An organizational plan for the assisted living
81 residence indicating the number of persons employed or to
82 be employed, the positions and duties of all employees;
- 83 (H) The name and address of the individual who is to
84 serve as administrator;
- 85 (I) Such evidence of compliance with applicable laws
86 and rules governing zoning, buildings, safety, fire
87 prevention, and sanitation as the secretary may require; and
- 88 (J) Such additional information as the secretary may
89 require.
- 90 (d) Upon receipt and review of an application for license
91 made pursuant to §16-5D-6(a) of this code and inspection
92 of the applicant assisted living residence pursuant to §16-
93 5D-9 and §16-5D-10 of this code, the secretary will issue a
94 license if he or she finds:

95 (1) That an individual applicant, and every partner,
96 trustee, officer, secretary, and controlling person of an
97 applicant which is not an individual, is a person responsible
98 and suitable to operate or to direct or participate in the
99 operation of an assisted living residence by virtue of
100 financial capacity, appropriate business or professional
101 experience, a record of compliance with lawful orders of the
102 department, if any, and lack of revocation of a license during
103 the previous five years;

104 (2) That the assisted living residence is under the
105 supervision of an administrator who is qualified by training
106 and experience; or

107 (3) That the assisted living residence is in substantial
108 compliance with standards established pursuant to §16-5D-
109 5 of this code and such other requirements for a license as
110 the secretary may establish by rule under this article.

111 (e) The secretary may deny an initial or renewal license
112 if the information provided in an application or report is
113 known by the applicant to be false or the applicant fails to
114 report required information or for any other reason
115 permitted by law or rules promulgated pursuant to this
116 article.

117 (f) Any license granted by the secretary will state the
118 maximum bed capacity for which it is granted, the date the
119 license was issued, and the expiration date. Licenses will be
120 issued for a period not to exceed one year for assisted living
121 residences: *Provided*, That any such license in effect for
122 which timely application for renewal, together with
123 payment of the proper fee has been made to the department
124 in conformance with the provisions of this article and the
125 rules issued thereunder and prior to the expiration date of
126 the license, shall continue in effect until: (1) One year
127 following the expiration date of the license; or (2) the date
128 of the revocation or suspension of the license pursuant to the
129 provisions of this article; or (3) the date of issuance of a new
130 license, whichever date first occurs. Each license will be

131 issued only for the premises and persons named in the
132 application and is not transferable or assignable: *Provided,*
133 *however,* That in the case of the transfer of ownership of an
134 assisted living residence with an unexpired license, the
135 application of the new owner for a license shall have the
136 effect of a license for a period of three months when filed
137 with the secretary. Every license shall be posted in a
138 conspicuous place in the assisted living residence for which
139 it is issued so as to be accessible to and in plain view of all
140 residents and visitors of the assisted living residence.

141 (g) An original license shall be renewable, conditioned
142 upon the licensee filing timely application for the extension
143 of the term of the license accompanied by the fee and
144 contingent upon evidence of compliance with the provisions
145 of this article and rules promulgated by the secretary
146 hereunder; the application shall be accompanied by:

147 (1) The information required in §16-5D-6(c)(A) through
148 §16-5D-6(c)(C) of this code.

149 (2) A balance sheet of the assisted living residence as of
150 the end of its fiscal year, setting forth assets and liabilities
151 at such date, including all capital, surplus, reserve,
152 depreciation, and similar accounts;

153 (3) A statement of operations of the assisted living
154 residence as of the end of its fiscal year, setting forth all
155 revenues, expenses, taxes, extraordinary items, and other
156 credits or charges; and

157 (4) A statement of any changes in the name, address,
158 management, or ownership information on file with the
159 secretary.

160 (h) In the case of an application for a renewal license, if
161 all requirements of §16-5D-5 and §16-5D-6 of this code are
162 not met, the secretary may in his or her discretion issue a
163 provisional license, provided that care given in the assisted
164 living residence is adequate for resident needs and the

165 assisted living residence has demonstrated improvement
166 and evidences potential for substantial compliance within
167 the term of the license: *Provided*, That a provisional renewal
168 may not be issued for a period greater than one year, may
169 not be renewed, and may not be issued to any assisted living
170 residence with uncorrected violations of any Class I
171 standard, as defined in §16-5D-5(c) of this code.

172 (i) A nonrefundable application fee in the amount of \$65
173 for an original assisted living residence license shall be paid
174 at the time application is made for the license. An average
175 cost of all direct costs for the initial licensure for the
176 preceding 10 facilities based on the size of the facility's
177 licensed bed capacity shall be borne by the applicant and
178 shall be received by the secretary prior to the issuance of an
179 initial or amended license. The license fee for renewal of a
180 license shall be at the rate of \$6 per bed per year for assisted
181 living residences except the annual rate per bed may be
182 assessed for licenses issued for less than one year. The
183 secretary may annually adjust the licensure fees for inflation
184 based upon the consumer price index. The bed capacity for
185 the holder of each license will be determined by the
186 secretary. All license fees shall be due and payable to the
187 secretary annually, and in the manner set forth in the rules
188 promulgated by the secretary. The fee and application shall
189 be submitted to the secretary who will retain both the
190 application and fee pending final action on the application.
191 All fees received by the secretary under the provisions of
192 this article will be deposited in accordance with §16-1-13 of
193 this code.

§16-5D-7. Cost disclosure; surety for residents' funds.

1 (a) Each assisted living residence shall disclose in
2 writing to all prospective residents a complete and accurate
3 list of all costs which may be incurred by them. Residents
4 are not liable for any cost not so disclosed.

5 (b) If the assisted living residence handles any money
6 for residents within the assisted living residence, the

7 licensee or his or her authorized representative shall give a
8 bond in an amount consistent with this subsection and with
9 such surety as the secretary will approve. The bond shall be
10 upon condition that the licensee shall hold separately and in
11 trust all residents' funds deposited with the licensee, shall
12 administer the funds on behalf of the resident in the manner
13 directed by the depositor, shall render a true and complete
14 account to the depositor and the secretary when requested,
15 and at least quarterly to the resident, and upon termination
16 of the deposit, shall account for all funds received,
17 expended, and held on hand. The licensee shall file a bond
18 in a sum to be fixed by the secretary based upon the
19 magnitude of the operations of the applicant, but which sum
20 may not be less than \$2,500.

21 (c) Every person injured as a result of any improper or
22 unlawful handling of the money of a resident of an assisted
23 living residence may bring an action in a proper court on the
24 bond required to be posted by the licensee pursuant to this
25 subsection for the amount of damage suffered as a result
26 thereof to the extent covered by the bond. Whenever the
27 secretary determines that the amount of any bond which is
28 filed pursuant to this subsection is insufficient to adequately
29 protect the money of residents which is being handled, or
30 whenever the amount of any bond is impaired by any
31 recovery against the bond, the secretary may require the
32 licensee to file an additional bond in such amount as
33 necessary to adequately protect the money of residents
34 being handled.

35 (d) The provisions of §16-5D-7(b) of this code do not
36 apply if the licensee handles less than \$25 per resident and
37 less than \$500 for all residents in any month.

§16-5D-8. Investigation of complaints.

1 (a) The secretary will establish, by rule, procedures for
2 prompt investigation of all complaints of alleged violations
3 by assisted living residences of applicable requirements of
4 state law or rules, except for such complaints that the

5 secretary determines are willfully intended to harass a
6 licensee or are without any reasonable basis. Such
7 procedures will include provisions for ensuring the
8 confidentiality of the complainant and of any other person
9 so named in the complaint and for promptly informing the
10 complainant and the assisted living residence involved of
11 the results of the investigation.

12 (b) If, after its investigation, the secretary determines
13 that the complaint has merit, the secretary will take
14 appropriate disciplinary action and will advise any injured
15 party of the possibility of a civil remedy under this article.

16 (c) No assisted living residence may discharge or in any
17 manner discriminate against any resident or employee for
18 the reason that the resident or employee has filed a
19 complaint or participated in any proceeding specified in this
20 article. Violation of this prohibition by any assisted living
21 residence constitutes grounds for the suspension or
22 revocation of the license of the assisted living residence as
23 provided in §16-5D-11 and §16-5D-12 of this code. Any
24 type of discriminatory treatment of a resident or employee
25 by whom, or upon whose behalf, a complaint has been
26 submitted to the secretary, or any proceeding instituted
27 under this article, within 120 days of the filing of the
28 complaint or the institution of the action, shall raise a
29 rebuttable presumption that the action was taken by the
30 assisted living residence in retaliation for the complaint or
31 action.

§16-5D-9. Inspections.

1 (a) The secretary and any duly designated employee or
2 agent thereof will have the right to enter upon and into the
3 premises of any assisted living residence at any time for
4 which a license has been issued, for which an application
5 for license has been filed with the secretary, or which the
6 secretary has reason to believe is being operated or
7 maintained as an assisted living residence without a license.
8 If entry is refused by the owner or person in charge of the

9 assisted living residence, the secretary will apply to the
10 circuit court of the county in which the assisted living
11 residence is located or the Circuit Court of Kanawha County
12 for an administrative inspection warrant.

13 (b) The secretary, by the secretary's authorized
14 employees or agents, will conduct at least one inspection
15 prior to issuance of a license pursuant to §16-5D-6 of this
16 code and will conduct periodic unannounced inspections
17 thereafter to determine compliance by the assisted living
18 residence with applicable statutes and rules promulgated
19 thereunder. All assisted living residences shall comply with
20 rules of the State Fire Commission. The State Fire Marshal,
21 by his or her employees or authorized agents, shall make all
22 fire, safety, and like inspections. The secretary may provide
23 for such other inspections as the secretary may deem
24 necessary to carry out the intent and purpose of this article.
25 If after investigating a complaint the secretary determines
26 that the complaint is substantiated and that an immediate
27 and serious threat to a resident's health or safety exists, the
28 secretary may invoke any remedies available pursuant to
29 §16-5D-11 and §16-5D-12 of this code. Any assisted living
30 residence aggrieved by a determination or assessment made
31 pursuant to this section shall have the right to an
32 administrative appeal as set forth in §16-5D-12 of this code.

**§16-5D-10. Reports of inspections; plans of correction;
assessment of penalties and use of funds derived
therefrom; hearings.**

1 (a) Reports of all inspections made pursuant to §16-5D-
2 9 of this code will be in writing and will list all deficiencies
3 in the assisted living residence's compliance with the
4 provisions of this article and the rules adopted by the
5 secretary hereunder. The director will send a copy of the
6 report to the assisted living residence by physical or
7 electronic method with verifiable delivery, and will specify
8 a time within which the assisted living residence shall
9 submit a plan for correction of deficiencies, which plan will
10 be approved, rejected, or modified by the secretary. The

11 inspectors will allow audio taping of the exit conference for
12 licensure inspections with all costs directly associated with
13 the taping to be paid by the assisted living residence,
14 provided that an original tape is provided to inspectors at the
15 end of taping.

16 (b) Upon an assisted living residence's failure to submit
17 a plan of correction which is approved by the secretary, or
18 to correct any deficiency within the time specified in an
19 approved plan of correction, the secretary may assess civil
20 penalties as hereinafter provided or may initiate any other
21 legal or disciplinary action as provided by this article.

22 (c) Nothing in this section may be construed to prohibit
23 the secretary from enforcing a rule, administratively or in
24 court, without first affording formal opportunity to make
25 correction under this section, where, in the opinion of the
26 secretary, the violation of the rule jeopardizes the health or
27 safety of residents or where the violation of the rule is the
28 second or subsequent violation occurring during a period of
29 12 full months.

30 (d) Civil penalties assessed against assisted living
31 residences will be classified according to the nature of the
32 violation as defined in §16-5D-5(c) of this code and rules
33 promulgated thereunder by the secretary, as follows: For
34 each violation of a Class I standard, a civil penalty of not
35 less than \$50 nor more than \$500 will be imposed; for each
36 violation of a Class II standard, a civil penalty of not less
37 than \$25 nor more than \$50 will be imposed; for each
38 violation of a Class III standard, a civil penalty of not less
39 than \$10 nor more than \$25 will be imposed. Each day a
40 violation continues, after the date of citation, shall constitute
41 a separate violation. The date of citation is the date the
42 facility receives the written statement of deficiencies.

43 (e) The secretary will assess a civil penalty not to exceed
44 \$2,000 against any individual who notifies, or causes to be
45 notified, an assisted living residence of the time or date on

46 which an inspection is scheduled to be conducted under this
47 article.

48 (f) If the secretary assesses a penalty under this section,
49 the secretary will cause delivery of notice of the penalty by
50 personal service or by certified mail. The notice will state
51 the amount of the penalty, the action or circumstance for
52 which the penalty is assessed, the requirement that the
53 action or circumstance violates, and the basis upon which
54 the secretary assessed the penalty and selected the amount
55 of the penalty.

56 (g) The secretary will, in a civil judicial proceeding,
57 recover any unpaid assessment which has not been
58 contested under §16-5D-12 of this code within 30 days of
59 receipt of notice of the assessment or which has been
60 affirmed under the provisions of that section and not
61 appealed within 30 days of receipt of the Board of Review's
62 final order or which has been affirmed on judicial review,
63 as provided in §16-5D-13 of this code. All money collected
64 by assessments of civil penalties or interest will be paid into
65 a special resident benefit account and will be applied by the
66 secretary only for the protection of the health or property of
67 residents of assisted living residences operated within the
68 state that the secretary finds to be deficient, including
69 payment for the costs of relocation of residents to other
70 facilities, operation of an assisted living residence pending
71 correction of deficiencies, or closure and reimbursement of
72 residents for personal funds lost.

73 (h) The opportunity for a hearing on an action taken
74 under this section shall be as provided in §16-5D-12 of this
75 code. In addition to any other rights of appeal conferred
76 upon an assisted living residence pursuant to this section, an
77 assisted living residence shall have the right to request a
78 hearing and seek judicial review pursuant to §16-5D-12 and
79 §16-5D-13 of this code to contest the citing by the secretary
80 of a deficiency on an inspection report, irrespective of
81 whether the deficiency results in the imposition of a civil
82 penalty.

§16-5D-11. Enforcement actions; assessment of interest; collection of assessments; hearings.

1 (a) The secretary will, by order, impose a ban on the
2 admission of residents or reduce the bed quota of the
3 assisted living residence, or any combination thereof, where
4 he or she finds upon inspection of the assisted living
5 residence that the licensee is not providing adequate care
6 under the assisted living residence's existing bed quota and
7 that reduction in quota or imposition of a ban on admissions,
8 or any combination thereof, would place the licensee in a
9 position to render adequate care. Any notice to a licensee of
10 reduction in quota or ban on new admissions will include
11 the terms of the order, the reasons therefor, and the date set
12 for compliance.

13 (b) The secretary may suspend or revoke a license
14 issued under this article or take other action as set forth in
15 this section if he or she finds upon inspection that there has
16 been a substantial failure to comply with the provisions of
17 this article or the standards or rules promulgated pursuant
18 hereto.

19 (c) The suspension, expiration, forfeiture, or
20 cancellation by operation of law or order of the secretary of
21 a license issued by the secretary or the withdrawal of an
22 application for a license after it has been filed with the
23 secretary, may not deprive the secretary of the secretary's
24 authority to institute or continue an enforcement action or a
25 proceeding for the denial of a license application against the
26 licensee or applicant upon any ground provided by law or to
27 deny the license application or suspend or revoke the license
28 or otherwise take enforcement action on any such ground.

29 (d) In addition to other remedies provided in this article,
30 upon petition from the secretary, the circuit court of the
31 county in which the conduct has occurred or is occurring or
32 the Circuit Court of Kanawha County may determine that
33 an assisted living residence's deficiencies under this article
34 constitute an emergency immediately jeopardizing the

35 health, safety, welfare, or rights of its residents and issue an
36 order to:

37 (1) Close the assisted living residence;

38 (2) Transfer residents in the assisted living residence to
39 other facilities; or

40 (3) Appoint temporary management to oversee the
41 operation of the assisted living residence and to assure the
42 health, safety, welfare, and rights of the assisted living
43 residence's residents where there is a need for temporary
44 management while:

45 (A) There is an orderly closure of the assisted living
46 residence; or

47 (B) Improvements are made to bring the assisted living
48 residence into compliance with all the applicable
49 requirements of this article.

50 (e) If the secretary petitions a circuit court for the
51 closure of an assisted living residence, the transfer of
52 residents, or the appointment of a temporary management,
53 the circuit court shall hold a hearing no later than seven days
54 thereafter, at which time the secretary and the licensee or
55 operator of the assisted living residence may participate and
56 present evidence.

57 (f) A circuit court may divest the licensee or operator of
58 possession and control of an assisted living residence in
59 favor of temporary management. The temporary
60 management shall be responsible to the court and shall have
61 such powers and duties as the court may grant to direct all
62 acts necessary or appropriate to conserve the property and
63 promote the health, safety, welfare, and rights of the
64 residents of the assisted living residence, including, but not
65 limited to, the replacement of management and staff, the
66 hiring of consultants, the making of any necessary
67 expenditures to close the assisted living residence, or to
68 repair or improve the assisted living residence so as to return

69 it to compliance with applicable requirements and the power
70 to receive, conserve, and expend funds, including payments
71 on behalf of the licensee or operator of the assisted living
72 residence. Priority shall be given to expenditures for current
73 direct resident care or the transfer of residents.

74 (g) The person charged with temporary management:

75 (1) Shall be an officer of the court;

76 (2) Shall be paid by the licensee;

77 (3) Is not liable for conditions at the assisted living
78 residence which existed or originated prior to his or her
79 appointment; and

80 (4) Is not personally liable, except for his or her own
81 gross negligence and intentional acts which result in injuries
82 to persons or damage to property at the assisted living
83 residence during his or her temporary management.

84 (h) No person may impede the operation of temporary
85 management. There shall be an automatic stay for a 90-day
86 period subsequent to the establishment of temporary
87 management of any action that would interfere with the
88 functioning of the assisted living residence, including, but
89 not limited to, cancellation of insurance policies,
90 termination of utility services, attachments to working
91 capital accounts, foreclosures, evictions, and repossessions
92 of equipment used in the assisted living residence.

93 (i) A temporary management established for the purpose
94 of making improvements to bring the assisted living
95 residence into compliance with applicable requirements
96 may not be terminated until the court has determined that
97 the assisted living residence has the management capability
98 to ensure continued compliance with all applicable
99 requirements; except if the court has not made such
100 determination within six months of the establishment of the
101 temporary management, the temporary management
102 terminates by operation of law at that time, and the assisted

103 living residence shall be closed. After the termination of the
104 temporary management, the person who was responsible for
105 the temporary management shall make an accounting to the
106 court and after deducting from receipts the costs of the
107 temporary management, expenditures, and civil penalties
108 and interest no longer subject to appeal, in that order, any
109 excess shall be paid to the licensee or operator of the
110 assisted living residence.

111 (j) The assessments for penalties and for costs of actions
112 taken under this article shall have interest assessed at five
113 percent per year beginning 30 days after receipt of notice of
114 the assessment or 30 days after receipt of the Board of
115 Review's final order following a hearing, whichever is later.
116 All assessments against an assisted living residence that are
117 unpaid shall be added to the assisted living residence's
118 licensure fee and may be filed as a lien against the property
119 of the licensee or operator of the assisted living residence.
120 Funds received from assessments shall be deposited as
121 funds received as provided in §16-5D-10 of this code.

122 (k) The opportunity for a hearing on an action by the
123 secretary taken under this section shall be as provided in
124 §16-5D-12 of this code.

§16-5D-12. License denial; limitation, suspension, or revocation.

1 (a) The secretary shall issue an order denying, limiting,
2 suspending, or revoking a license issued pursuant to this
3 article if the provisions of this article or of the rules
4 promulgated pursuant to this article are violated. The
5 secretary may issue an order revoking a program's license
6 and prohibit all licensed disciplines associated with the
7 assisted living residence from practicing at the assisted
8 living residence based upon an annual, periodic, complaint,
9 verification, or other inspection and evaluation.

10 (b) Before any order is issued by the secretary denying,
11 limiting, suspending, or revoking a license, written notice

12 will be given to the licensee, stating the grounds for such
13 denial, limitation, suspension, or revocation.

14 (c) An applicant or licensee has 10 working days after
15 receipt of the secretary's order denying, limiting,
16 suspending, or revoking a license to request a formal
17 hearing contesting the denial, limitation, suspension, or
18 revocation under this article. If a formal hearing is
19 requested, the applicant or licensee and the secretary shall
20 proceed in accordance with the provisions of §29A-5-1 *et*
21 *seq.* of this code.

22 (d) If a license is denied or revoked as herein provided,
23 a new application for license will be considered by the
24 secretary if, when, and after the conditions upon which the
25 denial was based have been corrected and evidence of this
26 fact has been furnished. A new license will then be granted
27 after proper inspection, if applicable, has been made and all
28 provisions of this article and rules promulgated pursuant to
29 this article have been satisfied.

30 (e) Any applicant or licensee who is dissatisfied with the
31 decision as a result of the formal hearing provided in this
32 section may, within 30 days after receiving notice of the
33 decision, petition the Circuit Court of Kanawha County, in
34 term or in vacation, for judicial review of the decision.

35 (f) If the license of an assisted living residence is denied,
36 limited, suspended, or revoked, the administrator, any
37 owner of the assisted living residence, or owner or lessor of
38 the assisted living residence property shall cease to operate
39 the facility as an assisted living residence as of the effective
40 date of the denial, limitation, suspension, or revocation. The
41 owner or lessor of the assisted living residence property is
42 responsible for removing all signs and symbols identifying
43 the premises as an assisted living residence within 30 days.
44 Any administrative appeal of such denial, limitation,
45 suspension, or revocation shall not stay the denial,
46 limitation, suspension, or revocation.

47 (g) Upon the effective date of the denial, limitation,
48 suspension, or revocation, the administrator of the assisted
49 living residence shall advise the secretary and the Board of
50 Pharmacy of the disposition of all medications located on
51 the premises. The disposition is subject to the supervision
52 and approval of the secretary. Medications that are
53 purchased or held by an assisted living residence that is not
54 licensed may be deemed adulterated.

55 (h) If the license of an assisted living residence is
56 suspended or revoked, any person named in the licensing
57 documents of the assisted living residence, including
58 persons owning or operating the assisted living residence,
59 may not, as an individual or as part of a group, apply to
60 operate another assisted living residence for up to five years
61 after the date of suspension or revocation.

62 (i) The period of suspension for the license of an
63 assisted living residence will be prescribed by the secretary,
64 but may not exceed one year.

§16-5D-13. Judicial review.

1 (a) Any applicant or licensee or the secretary who is
2 adversely affected by the decision as a result of the formal
3 hearing provided for in §16-5D-12 of this code may, within
4 30 days after receiving notice of the decision, petition the
5 Circuit Court of Kanawha County, in term or in vacation,
6 for judicial review of the decision.

7 (b) The court may affirm, modify, or reverse the
8 decision of the Board of Review and either the applicant,
9 licensee, or the secretary may appeal from the court's
10 decision to the Supreme Court of Appeals.

11 (c) The judgment of the circuit court shall be final unless
12 reversed, vacated, or modified on appeal to the Supreme
13 Court of Appeals in accordance with the provisions of
14 §29A-6-1 *et seq.* of this code.

§16-5D-15. Unlawful acts; penalties; injunctions; private right of action.

1 (a) Whoever advertises, announces, establishes or
2 maintains or is engaged in establishing or maintaining an
3 assisted living residence without a license granted under
4 §16-5D-6 of this code, or who prevents, interferes with or
5 impedes in any way the lawful enforcement of this article
6 shall be guilty of a misdemeanor and, upon conviction
7 thereof, shall be punished for the first offense by a fine of
8 not more than \$100 or by imprisonment in jail for a period
9 of not more than 90 days, or by both such fine and
10 imprisonment, at the discretion of the court. For each
11 subsequent offense, the fine may be increased to not more
12 than \$250, with imprisonment in jail for a period of not more
13 than 90 days, or both such fine and imprisonment at the
14 discretion of the court. Each day of a continuing violation
15 after conviction shall be considered a separate offense.

16 (b) The secretary may in his or her discretion bring an
17 action to enforce compliance with this article or any rule, or
18 order hereunder, whenever it appears to the secretary that
19 any person has engaged in, or is engaging in, an act or
20 practice in violation of this article or any rule or order
21 hereunder, or whenever it appears to the secretary that any
22 person has aided, abetted, or caused or is aiding, abetting,
23 or causing such an act or practice. Upon application by the
24 secretary, the circuit court of the county in which the
25 conduct has occurred or is occurring, or the Circuit Court of
26 Kanawha County shall have jurisdiction to grant without
27 bond a permanent or temporary injunction, decree, or
28 restraining order.

29 (c) Whenever the secretary refuses to grant or renew
30 a license or revokes a license required by law to operate
31 or conduct an assisted living residence or orders a person
32 to refrain from conduct violating the rules of the
33 secretary, and the person deeming himself or herself
34 aggrieved by the refusal, revocation, or order appeals the
35 action of the secretary, the court may, during pendency of

36 the appeal, issue a restraining order or injunction upon
37 proof that the operation of the assisted living residence or
38 its failure to comply with the order of the secretary
39 adversely affects the well-being or safety of the residents
40 of the assisted living residence. Should a person who is
41 refused a license or the renewal of a license to operate or
42 conduct an assisted living residence or whose license to
43 operate is revoked or who has been ordered to refrain
44 from conduct or activity which violates the rules of the
45 secretary, fails to appeal or should such appeal be decided
46 favorably to the secretary, then the court shall issue a
47 permanent injunction upon proof that the person is
48 operating or conducting an assisted living residence
49 without a license as required by law or has continued to
50 violate the rules of the secretary.

51 (d) Any assisted living residence that deprives a
52 resident of any right or benefit created or established for
53 the well-being of the resident by the terms of any
54 contract, by any state statute or rule, or by any applicable
55 federal statute or regulation shall be liable to the resident
56 for injuries suffered as a result of the deprivation. Upon a
57 finding that a resident has been deprived of such a right
58 or benefit and that the resident has been injured as a result
59 of the deprivation and unless there is a finding that the
60 assisted living residence exercised all care reasonably
61 necessary to prevent and limit the deprivation and injury
62 to the resident, compensatory damages shall be assessed
63 in an amount sufficient to compensate the resident for the
64 injury. In addition, where the deprivation of any right or
65 benefit is found to have been willful or in reckless
66 disregard of the lawful rights of the resident, punitive
67 damages may be assessed. A resident may also maintain
68 an action pursuant to this section for any other type of
69 relief, including injunctive and declaratory relief,
70 permitted by law. Exhaustion of any available
71 administrative remedies may not be required prior to
72 commencement of suit hereunder.

73 (e) The amount of damages recovered by a resident, in
74 an action brought pursuant to this section, are exempt for
75 purposes of determining initial or continuing eligibility for
76 medical assistance pursuant to §9-5-1 *et seq.* of this code
77 and may neither be taken into consideration nor required to
78 be applied toward the payment or part payment of the cost
79 of medical care or services available pursuant to §9-5-1 *et*
80 *seq.* of this code.

81 (f) Any waiver by a resident or his or her legal
82 representative of the right to commence an action under this
83 section, whether oral or in writing, shall be null and void as
84 contrary to public policy.

85 (g) The penalties and remedies provided in this section
86 are cumulative and shall be in addition to all other penalties
87 and remedies provided by law.

§16-5D-16. Availability of reports and records.

1 [Repealed.]

§16-5D-17. Licenses and rules in force.

1 [Repealed.]

CHAPTER 197

**(S. B. 463 - By Senators Sypolt, Rucker, Clements,
Cline, Mann, Maynard, Smith, Baldwin, Beach,
Ojeda and Woelfel)**

[Passed March 10, 2018; in effect 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 §16-7-5a, relating

to authorizing the establishment of a Joint Task Force on Milk Rules and Regulations; providing for the appointment of certain members by the Governor; authorizing the task force to study milk rules and regulations; providing for reimbursement of actual expenses for members; providing task force members may receive no compensation; requiring the task force to propose legislation; and providing for the sunset of the task force.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-5a. Joint Task Force on Milk Rules and Regulations.

1 (a) The Legislature finds that it is in the public interest
2 to examine the potential benefit and economies of scale by
3 transferring some or all authority to promulgate milk rules
4 and regulations from the Department of Health and Human
5 Resources to the Department of Agriculture.

6 (b) On or before June 1, 2018, the Governor shall
7 appoint a Joint Task Force on Milk Rules and Regulations
8 composed of the following 15 members:

9 (1) One representative from the Department of
10 Agriculture;

11 (2) One representative from the Bureau for Public
12 Health;

13 (3) One representative of the West Virginia University
14 Extension Service;

15 (4) One representative from local health departments in
16 the state;

17 (5) Two representatives from a trade or industry group
18 representing the farming and agriculture industry in the
19 state, at least one of whom shall be a dairy farmer;

20 (6) Three citizen members;

21 (7) Three senators as recommended by the President of
22 the Senate, no more than two of whom shall be from the
23 same political party; and

24 (8) Three delegates as recommended by the Speaker of
25 the House of Delegates, no more than two of whom shall be
26 from the same political party.

27 (c) The representative from the Department of
28 Agriculture shall preside over the work group and shall
29 provide staff to facilitate meetings of the joint task
30 force. The joint task force shall examine the potential
31 benefit and economies of scale of transferring some or all
32 authority to promulgate milk rules and regulations from
33 the Department of Health and Human Resources to the
34 Department of Agriculture. The task force shall
35 recommend legislation to the Governor and to the Joint
36 Committee on Government and Finance no later than
37 December 31, 2018.

38 (d) The expenses of the members on the task force shall
39 be paid equally from the funds of the Department of
40 Agriculture, the Bureau for Public Health, and the West
41 Virginia University Extension Service: *Provided*, That the
42 members of the joint task force may receive no
43 compensation for their services other than actual expenses
44 incurred in the discharge of their duties as members of the
45 joint task force.

46 (e) The authority of the Joint Task Force on Milk Rules
47 and Regulations shall sunset and expire and is of no force
48 and effect after December 31, 2018, or upon submission of
49 any recommendations or draft legislation, whichever comes
50 first.

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CHAPTER 198

**(Com. Sub. for S. B. 510 - By Senators Maynard,
Takubo, Stollings, Cline, Boso and Plymale)**

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

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

AN ACT to amend and reenact §16-5B-18 of the Code of West Virginia, 1931, as amended, relating to designation of hospitals for stroke treatment; adding a designation as a thrombectomy-capable stroke center; modifying the makeup of the advisory committee; providing certain functions to the advisory committee; permitting the advisory committee to make recommendations to the Office of Emergency Medical Services; staggering the terms of the advisory committee members; providing for a database; and prohibiting certain inspections of hospitals conducted by the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-18. Designation of comprehensive, primary, acute, and thrombectomy capable stroke-ready hospitals; reporting requirements; rulemaking.

1 (a) A hospital, as that term is defined in §16-5B-1 of this
2 code, shall be recognized by the Office of Emergency
3 Medical Services as a comprehensive stroke center (CSC),
4 thrombectomy-capable stroke center (TSC), primary stroke
5 center (PSC), or an acute stroke-ready hospital (ASRH),
6 upon submitting verification of certification as granted by
7 the American Heart Association, the joint commission, or
8 other nationally recognized organization to the Office of

9 Emergency Medical Services. A hospital shall immediately
10 notify the Office of Emergency Medical Services of any
11 change in its certification status.

12 (b) The Office of Emergency Medical Services shall
13 gain access to, and utilize, a nationally recognized stroke
14 database that compiles information and statistics on stroke
15 care that align with the stroke consensus metrics developed
16 and approved by the American Heart Association and the
17 American Stroke Association, for the purpose of improving
18 stroke care and access across the State of West Virginia. The
19 Office of Emergency Medical Services shall, upon request,
20 provide the data accessed and utilized relating to
21 comprehensive stroke centers, thrombectomy-capable
22 stroke centers, primary stroke centers, and acute stroke-
23 ready hospitals to the advisory committee in §16-5B-18(d)
24 of this code.

25 (c) The Office of Emergency Medical Services shall
26 provide annually, by June 1, a list of all hospitals recognized
27 pursuant to the provisions of §16-5B-18(a) of this code to
28 the medical director of each licensed emergency medical
29 services agency in this state. This list shall be maintained by
30 the Office of Emergency Medical Services and shall be
31 updated annually on its website.

32 (d) No later than July 1, 2018, the Secretary of the
33 Department of Health and Human Resources shall establish
34 and appoint a stroke advisory committee which shall
35 function as an advisory body to the secretary and report no
36 less than biannually at regularly scheduled meetings. Its
37 functions shall include:

38 (1) Increasing stroke awareness;

39 (2) Promoting stroke prevention and health policy
40 recommendations relating to stroke care;

41 (3) Advising the Office of Emergency Medical Services
42 on the development of stroke networks;

43 (4) Utilizing stroke care data to provide
44 recommendations to the Office of Emergency Medical
45 Services to improve stroke care throughout the state;

46 (5) Identifying and making recommendations to
47 overcome barriers relating to stroke care; and

48 (6) Review and make recommendations to the State
49 Medical Director of the Office of Emergency Medical
50 Services regarding prehospital care protocols including:

51 (A) The assessment, treatment, and transport of stroke
52 patients by licensed emergency medical services agencies;
53 and

54 (B) Plans for the triage and transport, within specified
55 time frames of onset symptoms, of acute stroke patients to
56 the nearest comprehensive stroke center, thrombectomy-
57 capable stroke center, primary stroke center, or acute stroke-
58 ready hospital.

59 (e) The advisory committee as set forth §16-5B-18(d) of
60 this code shall consist of no more than 14 members.
61 Membership of the advisory committee shall include:

62 (1) A representative of the Department of Health and
63 Human Resources;

64 (2) A representative of an association with the primary
65 purpose of promoting better heart health;

66 (3) A registered emergency medical technician;

67 (4) Either an administrator or physician representing a
68 critical access hospital;

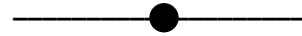
69 (5) Either an administrator or physician representing a
70 teaching or academic hospital;

71 (6) A representative of an association with the primary
72 purpose of representing the interests of all hospitals
73 throughout the state; and

74 (7) A clinical and administrative representative of
75 hospitals from each level of stroke center certification by a
76 national certifying body (CSC, TSC, PSC, and ASRH).

77 (f) Of the members first appointed, three shall be
78 appointed for a term of one year, three shall be appointed
79 for a term of two years, and the remaining members shall be
80 appointed for a term of three years. The terms of subsequent
81 appointees shall be three years. Members may be
82 reappointed for additional terms.

83 (g) Nothing in this section may permit the Office of
84 Emergency Medical Services to conduct inspections of
85 hospitals in relation to recognition as a stroke center as set
86 forth in this section: *Provided*, That nothing in this section
87 may preclude inspections of hospitals by the Office of
88 Emergency Medical Services which are otherwise
89 authorized by this code.



CHAPTER 199

**(Com. Sub. for S. B. 543 - By Senators Trump 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 §27-3-1 of the Code of West Virginia, 1931, as amended, relating generally to confidentiality of certain medical records; eliminating disclosure exception for treatment or internal review purposes; eliminating 30-day requirement; eliminating requirement that provider make good faith effort to obtain consent from the patient or legal representative; eliminating requirement that the minimum information necessary is released for a specifically stated purpose; eliminating

requirement that prompt notice of the disclosure, the recipient of the information, and the purpose of the disclosure is given to the patient or legal representative; and adopting provisions of federal law which pertain to disclosure of protected health information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CONFIDENTIALITY.

§27-3-1. Definition of confidential information; disclosure.

1 (a) Communications and information obtained in the
2 course of treatment or evaluation of any client or patient are
3 confidential information. Such confidential information
4 includes the fact that a person is or has been a client or
5 patient, information transmitted by a patient or client or
6 family thereof for purposes relating to diagnosis or
7 treatment, information transmitted by persons participating
8 in the accomplishment of the objectives of diagnosis or
9 treatment, all diagnoses or opinions formed regarding a
10 client's or patient's physical, mental, or emotional
11 condition, any advice, instructions, or prescriptions issued
12 in the course of diagnosis or treatment, and any record or
13 characterization of the matters hereinbefore described. It
14 does not include information which does not identify a
15 client or patient, information from which a person
16 acquainted with a client or patient would not recognize such
17 client or patient, and de-identified information from which
18 there is no possible means to identify a client or patient.

19 (b) Confidential information shall not be disclosed,
20 except:

21 (1) In a proceeding under §27-5-4 of this code to
22 disclose the results of an involuntary examination made
23 pursuant to §27-5-2, §27-5-3, or §27-5-4 of this code;

24 (2) In a proceeding under §27-6A-1 *et seq.* of this code
25 to disclose the results of an involuntary examination made
26 pursuant thereto;

27 (3) Pursuant to an order of any court based upon a
28 finding that the information is sufficiently relevant to a
29 proceeding before the court to outweigh the importance of
30 maintaining the confidentiality established by this section;

31 (4) To provide notice to the federal National Instant
32 Criminal Background Check System, established pursuant
33 to section 103(d) of the Brady Handgun Violence
34 Prevention Act, 18 U.S.C. § 922, in accordance with §61-
35 7A-1 *et seq.* of this code;

36 (5) To protect against a clear and substantial danger of
37 imminent injury by a patient or client to himself, herself, or
38 another;

39 (6) Pursuant to and as provided for under the federal
40 privacy rule of the Health Insurance Portability and
41 Accountability Act of 1996 in 45 CFR §164, as amended
42 under the Health Information Technology for Economic and
43 Clinical Health Act of the American and the Omnibus Final
44 Rule, 78 FR 5566; or

45 (7) In a proceeding held under §44A-3-17 of this code
46 or as required by §44A-3-18 of this code.



CHAPTER 200

**(Com. Sub. for S. B. 575 - By Senators Takubo,
Arvon, Azinger, Boley, Boso, Clements, Cline,
Drennan, Maroney, Maynard, Rucker, Sypolt,
Stollings and Plymale)**

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

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

AN ACT to amend and reenact §16-2D-8 and §16-2D-9 of the
Code of West Virginia, 1931, as amended, all relating to the

approval of additional beds for intermediate care facilities; providing that persons in more restrictive setting will be given an option to move; excluding persons currently on the intellectual and developmental disabilities waiver; placing these persons on an enrollment list; developing a monitoring committee; setting out membership of the committee; providing purpose of the monitoring committee; requiring reinvestment of savings; providing that all other relevant regulatory laws apply; and providing that additional beds may be developed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-8. Proposed health services that require a certificate of need.

1 (a) Except as provided in §16-2D-9, §16-2D-10, and
2 §16-2D-11 of this code, the following proposed health
3 services may not be acquired, offered, or developed within
4 this state except upon approval of and receipt of a certificate
5 of need as provided by this article:

6 (1) The construction, development, acquisition, or other
7 establishment of a health care facility;

8 (2) The partial or total closure of a health care facility
9 with which a capital expenditure is associated;

10 (3) (A) An obligation for a capital expenditure incurred
11 by or on behalf of a health care facility in excess of the
12 expenditure minimum; or

13 (B) An obligation for a capital expenditure incurred by
14 a person to acquire a health care facility.

15 (4) An obligation for a capital expenditure is considered
16 to be incurred by or on behalf of a health care facility:

17 (A) When a valid contract is entered into by or on behalf
18 of the health care facility for the construction, acquisition,
19 lease, or financing of a capital asset;

20 (B) When the health care facility takes formal action to
21 commit its own funds for a construction project undertaken
22 by the health care facility as its own contractor; or

23 (C) In the case of donated property, on the date on which
24 the gift is completed under state law.

25 (5) A substantial change to the bed capacity of a health
26 care facility with which a capital expenditure is associated;

27 (6) The addition of ventilator services by a hospital;

28 (7) The elimination of health services previously offered
29 on a regular basis by or on behalf of a health care facility
30 which is associated with a capital expenditure;

31 (8) (A) A substantial change to the bed capacity or
32 health services offered by or on behalf of a health care
33 facility, whether or not the change is associated with a
34 proposed capital expenditure;

35 (B) If the change is associated with a previous capital
36 expenditure for which a certificate of need was issued; and

37 (C) If the change will occur within two years after the
38 date the activity which was associated with the previously
39 approved capital expenditure was undertaken.

40 (9) The acquisition of major medical equipment;

41 (10) A substantial change in an approved health service
42 for which a certificate of need is in effect;

43 (11) An expansion of the service area for hospice or
44 home health agency regardless of the time period in which
45 the expansion is contemplated or made; and

46 (12) The addition of health services offered by or on
47 behalf of a health care facility which were not offered on a
48 regular basis by or on behalf of the health care facility
49 within the 12-month period prior to the time the services
50 would be offered.

51 (b) The following health services are required to obtain
52 a certificate of need regardless of the minimum expenditure:

53 (1) Constructing, developing, acquiring, or establishing
54 a birthing center;

55 (2) Providing radiation therapy;

56 (3) Providing computed tomography;

57 (4) Providing positron emission tomography;

58 (5) Providing cardiac surgery;

59 (6) Providing fixed magnetic resonance imaging;

60 (7) Providing comprehensive medical rehabilitation;

61 (8) Establishing an ambulatory care center;

62 (9) Establishing an ambulatory surgical center;

63 (10) Providing diagnostic imaging;

64 (11) Providing cardiac catheterization services;

65 (12) Constructing, developing, acquiring, or
66 establishing kidney disease treatment centers, including
67 freestanding hemodialysis units;

68 (13) Providing megavoltage radiation therapy;

69 (14) Providing surgical services;

70 (15) Establishing operating rooms;

71 (16) Adding acute care beds;

72 (17) Providing intellectual developmental disabilities
73 services;

74 (18) Providing organ and tissue transplants;

75 (19) Establishing an intermediate care facility for
76 individuals with intellectual disabilities;

77 (20) Providing inpatient services;

78 (21) Providing hospice services;

79 (22) Establishing a home health agency;

80 (23) Providing personal care services; and

81 (24) (A) Establishing no more than six four-bed
82 transitional intermediate care facilities: *Provided*, That none
83 of the four-bed sites shall be within five miles of another or
84 adjacent to another behavioral health facility. This
85 subdivision terminates upon the approval of the sixth four-
86 bed intermediate care facility.

87 (B) Only individuals living in more restrictive
88 institutional settings, in similar settings covered by state-
89 only dollars, or at risk of being institutionalized will be
90 given the choice to move, and they will be placed on the
91 Individuals with Intellectual and Developmental
92 Disabilities (IDD) Waiver Managed Enrollment List.
93 Individuals already on the IDD Waiver Managed
94 Enrollment List who live in a hospital or are in an out-of-
95 state placement will continue to progress toward home- and
96 community-based waiver status and will also be considered
97 for all other community-based options, including, but not
98 limited to, specialized family care and personal care.

99 (C) The department shall work to find the most
100 integrated placement based upon an individualized
101 assessment. Individuals already on the IDD waiver will not
102 be considered for placement in the 24 new intermediate care
103 beds.

104 (D) A monitoring committee of not more than 10
105 members, including a designee of Mountain State Justice, a
106 designee of Disability Rights of West Virginia, a designee
107 of the Statewide Independent Living Council, two members
108 or family of members of the IDD waiver, the
109 Developmental Disabilities Council, the Commissioner of
110 the Bureau of Health and Health Facilities, the
111 Commissioner of the Bureau for Medical Services, and the
112 Commissioner of the Bureau for Children and Families. The
113 secretary of the department shall chair the first meeting of
114 the committee at which time the members shall elect a
115 chairperson. The monitoring committee shall provide
116 guidance on the department's transitional plans for residents
117 in the 24 intermediate care facility beds and monitor
118 progress toward home- and community-based waiver status
119 and/or utilizing other community-based options and
120 securing the most integrated setting for each individual.

121 (E) Any savings resulting from individuals moving
122 from more expensive institutional care or out-of-state
123 placements shall be reinvested into home- and community-
124 based services for individuals with intellectual
125 developmental disabilities.

126 (c) A certificate of need previously approved under this
127 article remains in effect unless revoked by the authority.

§16-2D-9. Health services that cannot be developed.

1 Notwithstanding §16-2D-8 and §16-2D-11 of this code,
2 these health services require a certificate of need but the
3 authority may not issue a certificate of need to:

4 (1) A health care facility adding intermediate care or
5 skilled nursing beds to its current licensed bed complement,
6 except as provided in §16-2D-11(c)(23) of this code;

7 (2) A person developing, constructing, or replacing a
8 skilled nursing facility except in the case of facilities
9 designed to replace existing beds in existing facilities that
10 may soon be deemed unsafe or facilities utilizing existing

11 licensed beds from existing facilities which are designed to
12 meet the changing health care delivery system; and

13 (3) Add beds in an intermediate care facility for
14 individuals with an intellectual disability, except that
15 prohibition does not apply to an intermediate care facility
16 for individuals with intellectual disabilities beds approved
17 under the Kanawha County circuit court order of August 3,
18 1989, civil action number MISC-81-585 issued in the case
19 of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981)
20 including the 24 beds provided in §16-2D-8(b)(24) of this
21 code; and

22 (4) An opioid treatment program.

CHAPTER 201

**(Com. Sub. for S. B. 603 - By Senators Drennan,
Blair, Gaunch, Maroney, Maynard, Plymale and
Trump)**

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

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

AN ACT to amend and reenact §27-5-2 and §27-5-3 of the Code of West Virginia, 1931, as amended, all relating to proceedings for involuntary custody for examination; adding licensed professional counselors to the list of professionals that may examine an individual by order of a circuit court, mental hygiene commissioner, or magistrate; providing that a licensed professional counselor may only perform the examination if he or she has been previously authorized by an order of the circuit court to do so; and removing redundant language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.**

1 (a) Any adult person may make an application for
2 involuntary hospitalization for examination of an individual
3 when the person making the application has reason to
4 believe that the individual to be examined is addicted, as
5 defined in §27-1-11 of this code, or is mentally ill and,
6 because of his or her addiction or mental illness, the
7 individual is likely to cause serious harm to himself, herself,
8 or to others if allowed to remain at liberty while awaiting an
9 examination and certification by a physician or
10 psychologist.

11 Notwithstanding any language in this subsection to the
12 contrary, if the individual to be examined under the
13 provisions of this section is incarcerated in a jail, prison, or
14 other correctional facility, then only the chief administrative
15 officer of the facility holding the individual may file the
16 application and the application must include the additional
17 statement that the correctional facility itself cannot
18 reasonably provide treatment and other services for the
19 individual's mental illness or addiction.

20 (b) The person making the application shall make the
21 application under oath.

22 (c) Application for involuntary custody for examination
23 may be made to the circuit court or a mental hygiene
24 commissioner of the county in which the individual resides
25 or of the county in which he or she may be found. When no
26 circuit court judge or mental hygiene commissioner is
27 available for immediate presentation of the application, the
28 application may be made to a magistrate designated by the
29 chief judge of the judicial circuit to accept applications and
30 hold probable cause hearings. A designated magistrate
31 before whom an application or matter is pending may, upon

32 the availability of a mental hygiene commissioner or circuit
33 court judge for immediate presentation of an application or
34 pending matter, transfer the pending matter or application to
35 the mental hygiene commissioner or circuit court judge for
36 further proceedings unless otherwise ordered by the chief
37 judge of the judicial circuit.

38 (d) The person making the application shall give
39 information and state facts in the application as may be
40 required by the form provided for this purpose by the
41 Supreme Court of Appeals.

42 (e) The circuit court, mental hygiene commissioner, or
43 designated magistrate may enter an order for the individual
44 named in the application to be detained and taken into
45 custody for the purpose of holding a probable cause hearing
46 as provided in §27-5-2(g) of this code for the purpose of an
47 examination of the individual by a physician, psychologist,
48 a licensed professional counselor practicing in compliance
49 with §30-31-1 *et seq.* of this code, a licensed independent
50 clinical social worker practicing in compliance with §30-30-
51 1 *et seq.* of this code, an advanced nurse practitioner with
52 psychiatric certification practicing in compliance with §30-
53 7-1 *et seq.* of this code, a physician assistant practicing in
54 compliance with §30-3-1 *et seq.* of this code, or a physician
55 assistant practicing in compliance with §30-3E-1 *et seq.* of
56 this code: *Provided*, That a licensed professional counselor,
57 a licensed independent clinical social worker, a physician
58 assistant or an advanced nurse practitioner with psychiatric
59 certification may only perform the examination if he or she
60 has previously been authorized by an order of the circuit
61 court to do so, the order having found that the licensed
62 professional counselor, the licensed independent clinical
63 social worker, physician assistant, or advanced nurse
64 practitioner with psychiatric certification has particularized
65 expertise in the areas of mental health and mental hygiene
66 or addiction sufficient to make the determinations as are
67 required by the provisions of this section. The examination
68 is to be provided or arranged by a community mental health

69 center designated by the Secretary of the Department of
70 Health and Human Resources to serve the county in which
71 the action takes place. The order is to specify that the
72 hearing be held forthwith and is to provide for the
73 appointment of counsel for the individual: *Provided,*
74 *however,* That the order may allow the hearing to be held up
75 to 24 hours after the person to be examined is taken into
76 custody rather than forthwith if the circuit court of the
77 county in which the person is found has previously entered
78 a standing order which establishes within that jurisdiction a
79 program for placement of persons awaiting a hearing which
80 assures the safety and humane treatment of persons:
81 *Provided further,* That the time requirements set forth in this
82 subsection only apply to persons who are not in need of
83 medical care for a physical condition or disease for which
84 the need for treatment precludes the ability to comply with
85 the time requirements. During periods of holding and
86 detention authorized by this subsection, upon consent of the
87 individual or in the event of a medical or psychiatric
88 emergency, the individual may receive treatment. The
89 medical provider shall exercise due diligence in determining
90 the individual's existing medical needs and provide
91 treatment the individual requires, including previously
92 prescribed medications. As used in this section, "psychiatric
93 emergency" means an incident during which an individual
94 loses control and behaves in a manner that poses substantial
95 likelihood of physical harm to himself, herself, or others.
96 Where a physician, psychologist, licensed professional
97 counselor, licensed independent clinical social worker,
98 physician assistant, or advanced nurse practitioner with
99 psychiatric certification has within the preceding 72 hours
100 performed the examination required by the provisions of
101 this subsection, the community mental health center may
102 waive the duty to perform or arrange another examination
103 upon approving the previously performed examination.
104 Notwithstanding the provisions of this subsection, §27-5-
105 4(r) of this code applies regarding payment by the county
106 commission for examinations at hearings. If the
107 examination reveals that the individual is not mentally ill or

108 addicted or is determined to be mentally ill or addicted but
109 not likely to cause harm to himself, herself, or others, the
110 individual shall be immediately released without the need
111 for a probable cause hearing and the examiner is not civilly
112 liable for the rendering of the opinion absent a finding of
113 professional negligence. The examiner shall immediately
114 provide the mental hygiene commissioner, circuit court, or
115 designated magistrate before whom the matter is pending
116 the results of the examination on the form provided for this
117 purpose by the Supreme Court of Appeals for entry of an
118 order reflecting the lack of probable cause.

119 (f) A probable cause hearing is to be held before a
120 magistrate designated by the chief judge of the judicial
121 circuit, the mental hygiene commissioner, or circuit judge
122 of the county of which the individual is a resident or where
123 he or she was found. If requested by the individual or his or
124 her counsel, the hearing may be postponed for a period not
125 to exceed 48 hours.

126 The individual must be present at the hearing and has
127 the right to present evidence, confront all witnesses and
128 other evidence against him or her, and to examine testimony
129 offered, including testimony by representatives of the
130 community mental health center serving the area. Expert
131 testimony at the hearing may be taken telephonically or via
132 videoconferencing. The individual has the right to remain
133 silent and to be proceeded against in accordance with the
134 Rules of Evidence of the Supreme Court of Appeals, except
135 as provided in §27-1-12 of this code. At the conclusion of
136 the hearing, the magistrate, mental hygiene commissioner,
137 or circuit court judge shall find and enter an order stating
138 whether or not there is probable cause to believe that the
139 individual, as a result of mental illness or addiction, is likely
140 to cause serious harm to himself or herself or to others.

141 (g) Probable cause hearings may occur in the county
142 where a person is hospitalized. The judicial hearing officer
143 may: Use videoconferencing and telephonic technology;
144 permit persons hospitalized for addiction to be involuntarily

145 hospitalized only until detoxification is accomplished; and
146 specify other alternative or modified procedures that are
147 consistent with the purposes and provisions of this article.
148 The alternative or modified procedures shall fully and
149 effectively guarantee to the person who is the subject of the
150 involuntary commitment proceeding and other interested
151 parties due process of the law and access to the least
152 restrictive available treatment needed to prevent serious
153 harm to self or others.

154 (h) If the magistrate, mental hygiene commissioner, or
155 circuit court judge at a probable cause hearing or at a final
156 commitment hearing held pursuant to the provisions of §27-
157 5-4 of this code finds that the individual, as a result of
158 mental illness or addiction, is likely to cause serious harm
159 to himself, herself, or others and because of mental illness
160 or addiction requires treatment, the magistrate, mental
161 hygiene commissioner, or circuit court judge may consider
162 evidence on the question of whether the individual's
163 circumstances make him or her amenable to outpatient
164 treatment in a nonresidential or nonhospital setting pursuant
165 to a voluntary treatment agreement. The agreement is to be
166 in writing and approved by the individual, his or her
167 counsel, and the magistrate, mental hygiene commissioner,
168 or circuit court judge. If the magistrate, mental hygiene
169 commissioner, or circuit court judge determines that
170 appropriate outpatient treatment is available in a
171 nonresidential or nonhospital setting, the individual may be
172 released to outpatient treatment upon the terms and
173 conditions of the voluntary treatment agreement. The failure
174 of an individual released to outpatient treatment pursuant to
175 a voluntary treatment agreement to comply with the terms
176 of the voluntary treatment agreement constitutes evidence
177 that outpatient treatment is insufficient and, after a hearing
178 before a magistrate, mental hygiene commissioner, or
179 circuit judge on the issue of whether or not the individual
180 failed or refused to comply with the terms and conditions of
181 the voluntary treatment agreement and whether the
182 individual as a result of mental illness or addiction remains

183 likely to cause serious harm to himself, herself, or others,
184 the entry of an order requiring admission under involuntary
185 hospitalization pursuant to the provisions of §27-5-3 of this
186 code may be entered. In the event a person released pursuant
187 to a voluntary treatment agreement is unable to pay for the
188 outpatient treatment and has no applicable insurance
189 coverage, including, but not limited to, private insurance or
190 Medicaid, the Secretary of the Department of Health and
191 Human Resources may transfer funds for the purpose of
192 reimbursing community providers for services provided on
193 an outpatient basis for individuals for whom payment for
194 treatment is the responsibility of the department: *Provided,*
195 That the department may not authorize payment of
196 outpatient services for an individual subject to a voluntary
197 treatment agreement in an amount in excess of the cost of
198 involuntary hospitalization of the individual. The secretary
199 shall establish and maintain fee schedules for outpatient
200 treatment provided in lieu of involuntary hospitalization.
201 Nothing in the provisions of this article regarding release
202 pursuant to a voluntary treatment agreement or convalescent
203 status may be construed as creating a right to receive
204 outpatient mental health services or treatment or as
205 obligating any person or agency to provide outpatient
206 services or treatment. Time limitations set forth in this
207 article relating to periods of involuntary commitment to a
208 mental health facility for hospitalization do not apply to
209 release pursuant to the terms of a voluntary treatment
210 agreement: *Provided, however,* That release pursuant to a
211 voluntary treatment agreement may not be for a period of
212 more than six months if the individual has not been found
213 to be involuntarily committed during the previous two years
214 and for a period of no more than two years if the individual
215 has been involuntarily committed during the preceding two
216 years. If in any proceeding held pursuant to this article the
217 individual objects to the issuance or conditions and terms of
218 an order adopting a voluntary treatment agreement, then the
219 circuit judge, magistrate, or mental hygiene commissioner
220 may not enter an order directing treatment pursuant to a
221 voluntary treatment agreement. If involuntary commitment

222 with release pursuant to a voluntary treatment agreement is
223 ordered, the individual subject to the order may, upon
224 request during the period the order is in effect, have a
225 hearing before a mental hygiene commissioner or circuit
226 judge where the individual may seek to have the order
227 canceled or modified. Nothing in this section affects the
228 appellate and habeas corpus rights of any individual subject
229 to any commitment order.

230 (i) If the certifying physician or psychologist determines
231 that a person requires involuntary hospitalization for an
232 addiction to a substance which, due to the degree of
233 addiction, creates a reasonable likelihood that withdrawal or
234 detoxification from the substance of addiction will cause
235 significant medical complications, the person certifying the
236 individual shall recommend that the individual be closely
237 monitored for possible medical complications. If the
238 magistrate, mental hygiene commissioner, or circuit court
239 judge presiding orders involuntary hospitalization, he or she
240 shall include a recommendation that the individual be
241 closely monitored in the order of commitment.

242 (j) The Supreme Court of Appeals and the Secretary of the
243 Department of Health and Human Resources shall specifically
244 develop and propose a statewide system for evaluation and
245 adjudication of mental hygiene petitions which shall include
246 payment schedules and recommendations regarding funding
247 sources. Additionally, the Secretary of the Department of
248 Health and Human Resources shall also immediately seek
249 reciprocal agreements with officials in contiguous states to
250 develop interstate/intergovernmental agreements to provide
251 efficient and efficacious services to out-of-state residents
252 found in West Virginia and who are in need of mental hygiene
253 services.

**§27-5-3. Admission under involuntary hospitalization for
examination; hearing; release.**

1 (a) *Admission to a mental health facility for*
2 *examination.* — Any individual may be admitted to a mental

3 health facility for examination and treatment upon entry of
4 an order finding probable cause as provided in §27-5-2 of
5 this code and upon certification by a physician,
6 psychologist, licensed professional counselor, licensed
7 independent clinical social worker practicing in compliance
8 with the provisions of §30-30-1 *et seq.* of this code or an
9 advanced nurse practitioner with psychiatric certification
10 practicing in compliance with §30-7-1 *et seq.* of this code
11 that he or she has examined the individual and is of the
12 opinion that the individual is mentally ill or addicted and,
13 because of such mental illness or addiction, is likely to cause
14 serious harm to himself, herself, or to others if not
15 immediately restrained: *Provided*, That the opinions offered
16 by an independent clinical social worker or an advanced
17 nurse practitioner with psychiatric certification must be
18 within their particular areas of expertise, as recognized by
19 the order of the authorizing court.

20 (b) *Three-day time limitation on examination.* — If the
21 examination does not take place within three days from the
22 date the individual is taken into custody, the individual shall
23 be released. If the examination reveals that the individual is
24 not mentally ill or addicted, the individual shall be released.

25 (c) *Three-day time limitation on certification.* — The
26 certification required in §27-5-3(a) of this code shall be
27 valid for three days. Any individual with respect to whom
28 the certification has been issued may not be admitted on the
29 basis of the certification at any time after the expiration of
30 three days from the date of the examination.

31 (d) *Findings and conclusions required for certification.* —
32 A certification under this section must include findings and
33 conclusions of the mental examination, the date, time and
34 place of the examination, and the facts upon which the
35 conclusion that involuntary commitment is necessary is based.

36 (e) *Notice requirements.* — When an individual is
37 admitted to a mental health facility pursuant to the
38 provisions of this section, the chief medical officer of the

39 facility shall immediately give notice of the individual's
40 admission to the individual's spouse, if any, and one of the
41 individual's parents or guardians or if there is no spouse and
42 are no parents or guardians, to one of the individual's adult
43 next of kin if the next of kin is not the applicant. Notice shall
44 also be given to the community mental health facility, if any,
45 having jurisdiction in the county of the individual's
46 residence. The notices other than to the community mental
47 health facility shall be in writing and shall be transmitted to
48 the person or persons at his, her, or their last known address
49 by certified mail, return receipt requested.

50 (f) *Five-day time limitation for examination and*
51 *certification at mental health facility.* — After the
52 individual's admission to a mental health facility, he or she
53 may not be detained more than five days, excluding
54 Sundays and holidays, unless, within the period, the
55 individual is examined by a staff physician and the
56 physician certifies that in his or her opinion the patient is
57 mentally ill or addicted and is likely to injure himself,
58 herself, or others if allowed to be at liberty.

59 (g) *Fifteen-day time limitation for institution of final*
60 *commitment proceedings.* — If, in the opinion of the
61 examining physician, the patient is mentally ill or addicted and
62 because of the mental illness or addiction is likely to injure
63 himself, herself, or others if allowed to be at liberty, the chief
64 medical officer shall, within 15 days from the date of
65 admission, institute final commitment proceedings as provided
66 in §27-5-4 of this code. If the proceedings are not instituted
67 within such 15-day period, the patient shall be immediately
68 released. After the request for hearing is filed, the hearing may
69 not be canceled on the basis that the individual has become a
70 voluntary patient unless the mental hygiene commissioner
71 concurs in the motion for cancellation of the hearing.

72 (h) *Thirty-day time limitation for conclusion of all*
73 *proceedings.* — If all proceedings as provided in §27-3-1 *et*
74 *seq.* and §27-4-1 *et seq.* of this code are not completed
75 within 30 days from the date of institution of the
76 proceedings, the patient shall be immediately released.

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CHAPTER 202

**(Com. Sub. for H. B. 4035 - By Delegates Summers,
Ellington, Householder, Rohrbach, Byrd, Capito,
Hollen, Dean, Butler, Frich and Rowan)**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-55-1, §16-55-2, §16-55-3, §16-55-4, §16-55-5, §16-55-6, and §16-55-7, all relating to palliative care; creating a state advisory coalition to improve palliative care in West Virginia; providing definitions; designating members of the coalition; providing for the powers and duties of the coalition; establishing that certain and other state agencies shall cooperate with the coalition; and establishing a termination date for the coalition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 55. STATE ADVISORY COALLITION ON PALLIATIVE CARE.

§16-55-1. Purpose.

- 1 The purpose of the coalition created under this article is
- 2 to improve quality and delivery of patient centered and
- 3 family focused palliative care in West Virginia.

§16-55-2. Definitions.

- 1 As used in this article:
- 2 “Appropriate” means consistent with applicable legal,
- 3 health, and professional standards; the patient’s clinical and

4 other circumstances; and the patient's reasonably known
5 wishes and beliefs.

6 "Medical care" means services provided, requested, or
7 supervised by a physician or advanced practice nurse.

8 "Palliative care" means patient and family centered
9 medical care that optimizes quality of life by anticipating,
10 preventing, and treating suffering caused by serious illness
11 throughout the continuum of illness, involves addressing
12 physical, emotional, social, and spiritual needs, and
13 facilitates patient autonomy, access to information, and
14 choice.

15 "Serious Illness" means any medical illness or physical
16 injury or condition that substantially impacts quality of life
17 for more than a short time.

§16-55-3. Creation of the State Advisory Coalition on Palliative Care.

1 There is created the State Advisory Coalition on
2 Palliative Care. The administrative functions of the
3 coalition are the responsibility of staff assigned to the Joint
4 Committee on Health.

§16-55-4. Members of the Advisory Coalition on Palliative Care.

1 (a) The Advisory Coalition on Palliative Care consists
2 of the individuals appointed by the President of the Senate
3 and the Speaker of the House of Delegates who are health
4 professionals having palliative care work experience and/or
5 expertise in palliative care delivery models in a variety of
6 inpatient, outpatient, and community settings and with a
7 variety of populations, including pediatric, youth, and
8 adults.

9 (b) The members include:

10 (1) A physician who practices palliative care in this state
11 and is licensed pursuant to the provisions of §30-3-1 *et seq.*
12 of this code, who shall serve as chair of the coalition for the
13 first meeting until a chairman is selected by the Advisory
14 Coalition;

15 (2) A physician;

16 (3) A registered professional nurse;

17 (4) A social worker;

18 (5) A pharmacist;

19 (6) A spiritual advisor;

20 (7) A patient advocate;

21 (8) A family caregiver advocate;

22 (9) One additional palliative care practitioner; and

23 (10) The Executive Director of the Center for End of
24 Life Care, or his or her designee.

25 (c) The co-chairs of the Joint Committee on Health
26 serve as nonvoting members, *ex-officio*.

27 (d) Membership on the coalition shall be distributed
28 among the congressional districts of the state, and each
29 congressional district shall be represented in the
30 membership of the coalition.

§16-55-5. Powers and duties.

1 (a) The coalition shall consult with and advise the
2 Legislature on matters related to the establishment,
3 maintenance, operation, and outcomes evaluation of
4 palliative care initiatives in the state. The coalition may:

5 (1) Meet at least quarterly or at the call of the chairman.
6 A quorum is a simple majority of the coalition;

7 (2) Keep accurate records of the actions of the coalition;

8 (3) Make recommendations to the Legislature as
9 required by this article;

10 (4) Provide guidance to the Legislature on potential
11 statutory solutions relative to regulation of palliative care;

12 (5) Establish workgroups and clinical advisory
13 committees as the coalition considers necessary to address
14 pertinent issues related to palliative care and to provide
15 consistency in the development of further regulation;

16 (6) Consult with entities and persons with expertise as
17 the coalition considers necessary in the fulfillment of its
18 duties. This can include public and private sector
19 partnerships;

20 (7) Establish a system for identifying patients or
21 residents who could benefit from palliative care;

22 (8) Provide information about and facilitate access to
23 appropriate palliative care; and

24 (9) Offer any additional guidance to the Legislature
25 which the coalition sees is within its scope which would
26 further enhance the palliative care.

27 (b) The coalition shall report its findings to the Joint
28 Committee on Health by December 31, 2019, and annually
29 after that until the coalition terminates pursuant to the
30 provisions of this article. The report shall include, at a
31 minimum, the following:

32 (1) Conclusions and recommendations to promote a
33 better means for palliative care;

34 (2) Recommendations for statutory and regulatory
35 modifications;

36 (3) Identification of any action which may be taken by
37 the Legislature to better foster awareness of palliative care
38 issues in this state;

39 (4) A means to raise palliative care awareness; and

40 (5) Any other ancillary issues relative to palliative care.

§16-55-6. Cooperation with the coalition.

1 The Department of Health and Human Resources, the
2 West Virginia Insurance Commission, the Public
3 Employees Insurance Agency, the Center for End of Life
4 Care, and all other entities of state government shall
5 cooperate with the coalition in the exchange of data,
6 information, and expertise if so requested by the coalition,
7 including, but not limited to:

8 (1) Providing the entity's plans to improve palliative
9 care in West Virginia;

10 (2) Sharing information on the financial impact of
11 palliative care on the State of West Virginia;

12 (3) Providing an assessment of the benefits of
13 implemented programs and activities aimed at bettering
14 palliative care;

15 (4) Assisting in the development or revision of detailed
16 action plans to improve palliative care; and

17 (5) Providing resources required to implement the plan.

§16-55-7. Sunset.

1 The coalition terminates on December 31, 2021, unless
2 continued by act of the Legislature.

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CHAPTER 203

(H. B. 4178 - By Delegates Summers, Longstreth, Ellington, Espinosa and Householder)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §16-5C-2 and §16-5C-5 of the Code of West Virginia, 1931, as amended, all relating to permitting certain portions of certified nurse aide training to be provided through distance learning technologies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5C. NURSING HOMES.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 “Deficiency” means a nursing home’s failure to meet
4 the requirements specified in §16-5C-1 *et seq.* of this code
5 and rules promulgated thereunder.

6 “Director” means the secretary of the Department of
7 Health and Human Resources or his or her designee.

8 “Distance learning technologies” means computer-
9 centered technologies delivered over the internet,
10 broadcasts, recordings, instructional videos, or
11 videoconferencing.

12 “Household” means a private home or residence which
13 is separate from or unattached to a nursing home.

14 “Immediate jeopardy” means a situation in which the
15 nursing home’s noncompliance with one or more of the
16 provisions of this article or rules promulgated thereunder
17 has caused or is likely to cause serious harm, impairment or
18 death to a resident.

19 “Nursing home” or “facility” means any institution,
20 residence or place, or any part or unit thereof, however
21 named, in this state which is advertised, offered, maintained
22 or operated by the ownership or management, whether for a
23 consideration or not, for the express or implied purpose of
24 providing accommodations and care, for a period of more
25 than twenty-four hours, for four or more persons who are ill
26 or otherwise incapacitated and in need of extensive, ongoing
27 nursing care due to physical or mental impairment or which
28 provides services for the rehabilitation of persons who are
29 convalescing from illness or incapacitation.

30 The care or treatment in a household, whether for
31 compensation or not, of any person related by blood or
32 marriage, within the degree of consanguinity of second
33 cousin to the head of the household, or his or her spouse,
34 may not be deemed to constitute a nursing home within the
35 meaning of this article. Nothing contained in this article
36 applies to nursing homes operated by the federal
37 government; or extended care facilities operated in
38 conjunction with a hospital; or institutions operated for the
39 treatment and care of alcoholic patients; or offices of
40 physicians; or hotels, boarding homes or other similar
41 places that furnish to their guests only room and board; or
42 to homes or asylums operated by fraternal orders pursuant
43 to §35-3-1 *et seq.* of this code.

44 “Nursing care” means those procedures commonly
45 employed in providing for the physical, emotional and
46 rehabilitational needs of the ill or otherwise incapacitated
47 which require technical skills and knowledge beyond that
48 which the untrained person possesses, including, but not
49 limited to, such procedures as: Irrigations, catheterization,
50 special procedure contributing to rehabilitation, and

51 administration of medication by any method which involves
52 a level of complexity and skill in administration not
53 possessed by the untrained person.

54 “Resident” means an individual living in a nursing
55 home.

56 “Review organization” means any committee or
57 organization engaging in peer review or quality assurance,
58 including, but not limited to, a medical audit committee, a
59 health insurance review committee, a professional health
60 service plan review committee or organization, a dental
61 review committee, a physician’s advisory committee, a
62 podiatry advisory committee, a nursing advisory committee,
63 any committee or organization established pursuant to a
64 medical assistance program, any committee or organization
65 established or required under state or federal statutes, rules
66 or regulations, and any committee established by one or
67 more state or local professional societies or institutes, to
68 gather and review information relating to the care and
69 treatment of residents for the purposes of:

70 Evaluating and improving the quality of health care
71 rendered; reducing morbidity or mortality; or establishing
72 and enforcing guidelines designed to keep within reasonable
73 bounds the cost of health care.

74 “Sponsor” means the person or agency legally
75 responsible for the welfare and support of a resident.

76 “Person” means an individual and every form of
77 organization, whether incorporated or unincorporated,
78 including any partnership, corporation, trust, association or
79 political subdivision of the state.

80 “Substantial compliance” means a level of compliance
81 with the rules such that no deficiencies exist or such that
82 identified deficiencies pose no greater risk to resident health
83 or safety than the potential for causing minimal harm.

84 The director may define in the rules any term used
85 herein which is not expressly defined.

§16-5C-5. Rules; minimum standards for nursing homes.

1 (a) All rules shall be proposed for legislative approval
2 in accordance with the provisions of §29A-3-1 *et seq.* of this
3 code. The director shall recommend the adoption,
4 amendment or repeal of such rules as may be necessary or
5 proper to carry out the purposes and intent of this article.

6 (b) The director shall recommend rules establishing
7 minimum standards of operation of nursing homes
8 including, but not limited to, the following:

9 (1) Administrative policies, including: (A) An
10 affirmative statement of the right of access to nursing homes
11 by members of recognized community organizations and
12 community legal services programs whose purposes include
13 rendering assistance without charge to residents, consistent
14 with the right of residents to privacy; and (B) a statement of
15 the rights and responsibilities of residents in nursing homes
16 which prescribe, as a minimum, such a statement of
17 residents' rights as included in the United States
18 Department of Health and Human Services regulations, in
19 force on the effective date of this article, governing
20 participation of nursing homes in the Medicare and
21 Medicaid programs pursuant to titles eighteen and nineteen
22 of the Social Security Act;

23 (2) Minimum numbers of administrators, medical
24 directors, nurses, aides and other personnel according to the
25 occupancy of the facility;

26 (3) Qualifications of facility's administrators, medical
27 directors, nurses, aides, and other personnel;

28 (4) Safety requirements;

29 (5) Sanitation requirements;

- 30 (6) Personal services to be provided;
- 31 (7) Dietary services to be provided;
- 32 (8) Medical records;
- 33 (9) Social and recreational activities to be made
34 available;
- 35 (10) Pharmacy services;
- 36 (11) Nursing services;
- 37 (12) Medical services;
- 38 (13) Physical facility;
- 39 (14) Resident rights;
- 40 (15) Visitation privileges that:
- 41 (A) Permit immediate access to a resident, subject to the
42 resident's right to deny or withdraw consent at any time, by
43 immediate family or other relatives of the resident;
- 44 (B) Permit immediate access to a resident, subject to
45 reasonable restrictions and the resident's right to deny or
46 withdraw consent at any time, by others who are visiting
47 with the consent of the resident; and
- 48 (C) Permit access to other specific persons or classes of
49 persons consistent with state and federal law.
- 50 (16) Admission, transfer and discharge rights.
- 51 (c) The director shall permit the nonclinical instruction
52 portions of a nurse aide training program approved by the
53 Office of Health Facility Licensure and Certification to be
54 provided through distance learning technologies.

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CHAPTER 204

**(Com. Sub. for H. B. 4509 - By Delegates Pushkin,
Sobonya, Robinson, Summers, Fleischauer,
Kessinger, Longstreth and Frich)**

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

AN ACT to amend and reenact §16-53-1 of the Code of West Virginia, 1931, as amended, relating to the establishment of substance abuse treatment and recovery facilities; and permitting the Department of Health and Human Resources to provide funding to facilities that provide peer-support services which follow specified standards.

Be it enacted by the Legislature of West Virginia:

ARTICLE 53. ESTABLISHING ADDITIONAL SUBSTANCE ABUSE TREATMENT FACILITIES.

§16-53-1. Establishment of substance abuse treatment facilities.

1 (a) The Secretary of the Department of Health and
2 Human Resources shall ensure that beds for purposes of
3 providing substance abuse treatment and/or recovery
4 services in existing or newly constructed facilities are made
5 available in locations throughout the state which the
6 department determines to be the highest priority for serving
7 the needs of the citizens of the state.

8 (b) The secretary shall identify and allocate the beds to
9 privately owned facilities to provide substance abuse
10 treatment services.

11 (c) These facilities shall:

- 12 (1) Give preference to West Virginia residents;
- 13 (2) Accept payment from private pay patients, third
14 person payors or patients covered by Medicaid;
- 15 (3) Offer long-term treatment, based upon need, of up
16 to one year; and
- 17 (4) Work closely with the Adult Drug Court Program,
18 provided for in §62-15-1 *et seq.* of this code.
- 19 (d) Any facility subject to the provisions of this article
20 must:
- 21 (1) Be licensed by this state to provide addiction and
22 substance abuse services; or
- 23 (2) Be a peer-led facility that follows standards set forth
24 by the National Alliance for Recovery Residences and
25 offers access to peer support services.



CHAPTER 205

(S. B. 468 - By Senators Gaunch 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 §12-4-7 of the Code of West Virginia, 1931, as amended, relating to changing the date for submission of the Auditor's annual report; adding the President of the Senate and the Speaker of the House of Delegates as recipients of the annual report; and adding requirement that certain salary information be included in the report for the prior calendar year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.**§12-4-7. Annual state dollar report of Auditor.**

1 The Auditor shall furnish annually to the Governor,
2 the President of the Senate, and the Speaker of the House
3 of Delegates on or before January 15, a report detailing
4 financial information for the prior calendar and fiscal
5 year. It shall contain a statement of the receipts and
6 disbursements, under the proper general heads, during the
7 preceding fiscal year, and show the balance in the
8 Treasury at the beginning and end of that year. It shall
9 also contain an estimate of the revenue and expenditures
10 for the current year, with similar statements and estimates
11 respecting the school fund. It shall show the indebtedness
12 of the state and the balances standing at the end of the
13 year to the credit of the several unexpired appropriations,
14 specifying in each case the date when the appropriation
15 was made. It shall also contain information relating to the
16 salaries of state employees, including notation of salaries
17 greater than \$80,000 paid during the prior calendar year.
18 The report shall be accompanied with an explanation of
19 the amounts of receipts and disbursements and the
20 balances and estimates reported. In it the Auditor shall
21 point out any defects which may occur to him or her in
22 the revenue laws. Furthermore, the Auditor shall suggest
23 the remedies for those deficits. If the Auditor is of the
24 opinion that the future revenue is likely to prove
25 insufficient, then the Auditor shall recommend plans for
26 increasing the revenue and suggest new subjects of
27 taxation, or additional taxes on the old, as he or she may
28 deem proper.

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CHAPTER 206

**(Com. Sub. for H. B. 4016 - By Delegates Atkinson,
Frich, Dean, Shott, Sypolt, Graves, Hamrick, White,
Ward and Capito)**

[Passed March 8, 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 §6-9B-1, §6-9B-2, §6-9B-3 and §6-9B-4, all relating directing the West Virginia Auditor to develop and maintain a searchable financial transparency website; enumerating certain legislative findings; defining certain terms; setting forth the necessary contents of the website; setting forth the date by which the website is to be developed and made publicly available; requiring that certain governmental agencies provide the Auditor with certain information to be made publicly available on the website; and requiring the Auditor to publicly identify any governmental agency that fails to comply with certain requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9B. OPEN GOVERNMENTAL FINANCES.

§6-9B-1. Legislative findings.

- 1 (a) The Legislature finds that taxpayers should be able
- 2 to easily access the details of how the state is spending their
- 3 tax dollars and what performance results are achieved for
- 4 those expenditures. It is the intent of the Legislature,
- 5 therefore, to direct the State Auditor to create and maintain

6 a searchable financial transparency website detailing where,
7 how much, and for what purpose taxpayer moneys in state
8 government are expended.

9 (b) It is also the intent of the Legislature that the
10 searchable website be made compatible for future inclusion
11 of counties or municipalities that desire to have their own
12 searchable financial transparency website.

§6-9B-2. Definitions.

1 For the purpose of this article:

2 (a) “Auditor” means the State Auditor of West Virginia,
3 by himself or herself, or by any person appointed,
4 designated or approved by the State Auditor to perform the
5 service.

6 (b) “Funding action or expenditure” includes details on
7 the type of spending (grant, contract, appropriations, etc.).
8 This includes, but is not limited to, tax exemptions, tax
9 credits or any expenditure from any civil contingency or
10 similar fund. Where possible, a hyperlink to the actual
11 grants or contracts shall be provided.

12 (c) “Funding source” means the state account from
13 which the funding action or expenditure is appropriated.

14 (d) “Governmental Agency” means a state department,
15 office, board, commission, bureau, division, institution or
16 institution of higher education under the direction and
17 control of the Executive Branch, Legislative Branch or
18 Judicial Branch of state government. This includes
19 individual state agencies and programs, elected offices, as
20 well as those programs and activities that cross agency lines.

21 (e) “Recipients” means any individual, person,
22 corporation, association, union, limited liability
23 corporation, limited liability partnership, legal business
24 entity including nonprofit organizations, grantee, contractor
25 or any county, municipal or other local government entity

26 that directly receives the benefit of a funding action or
27 expenditure.

28 (f) “Searchable financial transparency website” means a
29 website that allows the public at no cost to search and
30 aggregate information regarding the state’s budget and
31 spending.

§6-9B-3. Searchable financial transparency website created.

1 No later than July 1, 2018, the State Auditor shall
2 develop and make publicly available a searchable financial
3 transparency website containing the information specified
4 in §6-9B-4 of this code.

§6-9B-4. Contents of the searchable website.

1 (a) The Auditor shall include as part of the searchable
2 financial transparency website the following content for a
3 given fiscal year and the 3 immediately preceding fiscal
4 years:

5 (1) The name and the address, principal location or
6 residence of the recipients of a given funding action or
7 expenditure: *Provided*, That all federal and state laws and
8 regulations and rules regarding the confidentiality of
9 information and privacy apply;

10 (2) The amount of funds expended in a given funding
11 action or expenditure;

12 (3) The governmental agency making a given funding
13 action or expenditure;

14 (4) The funding source a given funding action or
15 expenditure;

16 (5) The budget program or activity related to a given
17 funding action or expenditure; and

18 (6) Additional information as to the funding action or
19 expenditure the Auditor deems valuable for the public.

20 (b) The searchable financial transparency website shall
21 be updated periodically as new data becomes available. All
22 governmental agencies shall provide to the Auditor, in a
23 format specified by the Auditor, all data that is required to
24 be included in the searchable financial database website no
25 later than 30 days after the data becomes available to the
26 agency. The Auditor shall provide guidance and
27 specifications to governmental agencies to promote
28 compliance with this section.

29 (c) The Auditor shall make publicly known those
30 governmental agencies that have failed to comply with the
31 requirements of this article.



CHAPTER 207

**(Com. Sub. for S. B. 36 - By Senators Woelfel and
Plymale)**

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

AN ACT to amend and reenact §15-2B-2, §15-2B-5, §15-2B-6, and §15-2B-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-9B-4, all relating generally to DNA testing; allowing the West Virginia State Police Forensic Laboratory to use qualified outside entities for DNA testing; clarifying that the State Police shall attempt to contract with the Marshall University Forensic Science Center for certain DNA testing when outsourcing such testing; granting legislative and emergency rule-making authority to the Sexual Assault Forensic Examination Commission; directing the commission to promulgate time frames for DNA sample submission; expanding types of testing the West Virginia State Police Forensic Laboratory may outsource; authorizing

law-enforcement and correctional officers to use reasonable force to obtain DNA samples; providing that DNA samples taken by law-enforcement and corrections personnel in compliance with this article are deemed to be in good faith; exempting law-enforcement and correctional officers from civil and criminal liability for good faith collection of samples done in a reasonable manner consistent with generally accepted practices; directing that erroneously obtained DNA samples be removed from database and samples destroyed; and clarifying that judicial expungement proceedings proceed by petition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. DNA DATA.

§15-2B-2. Policy.

1 It is the policy of this state to assist federal, state, and
2 local criminal justice and law-enforcement agencies in the
3 identification, detection, and exclusion of individuals who
4 are subjects of the investigation or prosecution of violent
5 crimes, sex-related crimes, and other crimes against the
6 person. In furtherance of such assistance, the Legislature
7 finds:

8 That the analysis of DNA contained in biological
9 evidence that may be recovered from a crime scene
10 facilitates such identification, detection, and exclusion;

11 That the comparison of DNA data recovered from a
12 crime scene with existing DNA records maintained in a
13 central DNA database further facilitates such identification,
14 detection, and exclusion; and

15 That requiring individuals convicted of certain crimes
16 to provide a sample for DNA analysis with the resulting
17 eligible DNA records maintained in a central DNA database
18 will likewise further facilitate the aforementioned
19 identification, detection, and exclusion and may serve to
20 discourage recidivism.

21 Therefore, the Legislature finds that assisting federal,
22 state, and local criminal justice and law-enforcement
23 agencies through the use and development of DNA analysis
24 is of the utmost importance and urgency in this state and that
25 a DNA identification system shall be established as
26 described in this article.

§15-2B-5. Authority of division to enter into cooperative agreements.

1 The division may enter into cooperative agreements
2 with public or private agencies or entities to provide a
3 service or facility associated with the administration of the
4 DNA database and databank. In the event the division enters
5 into any agreements for the purposes of: (1) Testing of
6 offender samples for CODIS; (2) criminal paternity cases;
7 (3) criminal casework; or (4) identification of human
8 remains, it shall first attempt to contract with the Marshall
9 University Forensic Science Center for such service or
10 services.

§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required for certain prisoners.

1 (a) Any person convicted of an offense described in
2 §61-2-1, §61-2-4, §61-2-7, §61-2-9, §61-2-9a (when that
3 offense constitutes a felony), §61-2-10, §61-2-10a, §61-2-
4 10b, §61-2-12, §61-2-14, or §61-2-14a of this code, or §61-
5 8-12 of this code (when that offense constitutes a felony),
6 shall provide a DNA sample to be used for DNA analysis as
7 described in this article. Further, any person convicted of
8 any offense described in §61-8B-1 *et seq.* of this code or
9 §61-8D-1 *et seq.* of this code shall provide a DNA sample
10 to be used for DNA analysis as described in this article.

11 (b) Any person presently incarcerated in a state
12 correctional facility or in jail in this state after conviction of
13 any offense listed in this section shall provide a DNA
14 sample to be used for purposes of DNA analysis as
15 described in this article.

16 (c) Any person convicted of a violation of §61-2-5 or
17 §61-2-13 of this code, §61-3-1, §61-3-2, §61-3-3, §61-3-4,
18 §61-3-5, §61-3-7, §61-3-11, §61-3-12 (when that offense
19 constitutes a felony), or §61-3-13(a) of this code, §61-3E-3,
20 §61-3E-4, §61-3E-5, or §61-3E-10 of this code, or §61-4-3
21 of this code shall provide a DNA sample to be used for DNA
22 analysis as described in this article.

23 (d) Any person convicted of an offense which
24 constitutes a felony violation of the provisions of §60A-4-
25 401 *et seq.* of this code; or of an attempt to commit a
26 violation of §61-2-1 or §61-2-14a of this code; or an attempt
27 to commit a violation of §61-8B-1 *et seq.* of this code shall
28 provide a DNA sample to be used for DNA analysis as
29 described in this article.

30 (e) The method of taking the DNA sample is subject to
31 the testing methods used by the West Virginia State Police
32 Crime Lab. The DNA sample will be collected using a
33 postage paid DNA collection kit provided by the West
34 Virginia State Police.

35 (f) When a person required to provide a DNA sample
36 pursuant to this section refuses to comply, the state shall
37 apply to a circuit court for an order requiring the person to
38 provide a DNA sample. Upon a finding of failure to comply,
39 the circuit court shall order the person to submit to DNA
40 testing in conformity with the provisions of this article.

41 (g) The West Virginia State Police may, where not
42 otherwise mandated, require any person convicted of a
43 felony offense under the provisions of this code to provide
44 a DNA sample to be used for the sole purpose of criminal
45 identification of the convicted person who provided the
46 sample: *Provided*, That the person is under the supervision
47 of the criminal justice system at the time the request for the
48 sample is made. Supervision includes prison, the regional
49 jail system, parole, probation, home confinement,
50 community corrections program, and work release.

51 (h) On the effective date of the amendments to this
52 section enacted during the regular session of the Legislature
53 in 2011, any person required to register as a sex offender in
54 this state and who has not already provided a DNA sample
55 in accordance with this article shall provide a DNA sample
56 as determined by the registration agency in consultation
57 with the West Virginia State Police Laboratory. The
58 registering agency is responsible for the collection and
59 submission of the sample under this article.

60 (i) When this state accepts a person from another state
61 under any interstate compact, or under any other reciprocal
62 agreement with any county, state, or federal agency or any
63 other provision of law whether or not the person is confined
64 or released, the transferred person must submit a DNA
65 sample, if the person was convicted of an offense in any
66 other jurisdiction which would be considered a qualifying
67 offense as defined in this section if committed in this state,
68 or if the person was convicted of an equivalent offense in
69 any other jurisdiction. The person shall provide the DNA
70 sample in accordance with the rules of the custodial
71 institution or supervising agency. If the transferred person
72 has already submitted a DNA sample that can be found in
73 the national database, the accepting agency is not required
74 to draw a second DNA sample.

75 (j) If a person convicted of a qualifying offense is
76 released without giving a DNA sample due to an oversight
77 or error or because of the person's transfer from another
78 jurisdiction, the person shall give a DNA sample for
79 inclusion in the state DNA database after being notified of
80 this obligation. Any such person may request a copy of the
81 court order requiring the sample prior to the collection of
82 the DNA sample.

83 (k) Duly authorized law-enforcement employees,
84 Regional Jail Authority employees, and Division of
85 Corrections employees may use reasonable force in cases
86 where an individual refuses to provide a DNA sample
87 required under this article, and the employees are not civilly

88 or criminally liable for the use of reasonable force in the
89 collection of the required DNA sample.

90 (l) A DNA sample obtained in accordance with the
91 requirements of this article and its use in accordance with
92 this chapter shall be considered to have been obtained in
93 good faith. Should an error be determined to have occurred
94 which caused a person's DNA to be obtained or submitted
95 improperly, the DNA record shall be removed from CODIS
96 and the DNA sample destroyed unless the individual has
97 another qualifying offense or offenses.

98 (m) Persons authorized to collect DNA samples shall
99 not be civilly or criminally liable for the collection of a
100 DNA sample pursuant to this article if they perform these
101 duties in good faith and in a reasonable manner according
102 to generally accepted medical or other professional
103 practices.

§15-2B-11. Expungement.

1 (a) Any person convicted of a qualifying offense whose
2 DNA record or profile has been included in the state
3 database and whose DNA sample is stored in the state
4 databank or the state's designated DNA typing, testing, and
5 research laboratory may apply for expungement on the
6 grounds that the qualifying conviction that resulted in the
7 inclusion of the person's DNA record or profile in the state
8 database or the inclusion of the person's DNA sample in the
9 state databank has been reversed and the case dismissed.
10 The person seeking expungement, either individually or
11 through an attorney, may petition the court for expungement
12 of the record. A copy of the petition for expungement shall
13 be served on the prosecuting attorney for the judicial district
14 in which the qualifying conviction was obtained not less
15 than 20 days prior to the date of the hearing on the petition.
16 A certified copy of the order reversing and dismissing the
17 conviction shall be attached to an order of expungement.

18 (b) Upon receipt of an order of expungement, the
19 division shall purge the DNA record and all other
20 identifiable information from the state database and the
21 DNA sample stored in the state databank covered by the
22 order. If the individual has more than one entry in the state
23 database and databank, then only the entry covered by the
24 expungement order shall be deleted from the state database
25 or databank.

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.

§15-9B-4. Submission, testing, and retention of sexual assault forensic examination kits.

1 (a) The Sexual Assault Forensic Examination
2 Commission created by §15-9B-1 of this code shall
3 establish a subgroup of persons with subject matter
4 expertise to establish best-practice protocols for the
5 submission, retention, and disposition of sexual assault
6 forensic examination kits collected by health care providers.
7 The commission shall propose rules for legislative approval,
8 in accordance with §29A-3-1 *et seq.* of this code, detailing
9 best-practice protocols. Upon approval of the legislative
10 rules, local sexual assault forensic examination boards shall
11 follow the rules.

12 (b) Rules promulgated pursuant to §15-9B-4(a) of this
13 code shall include:

14 (1) Time frames for submission of sexual assault
15 forensic examination kits in the possession of law
16 enforcement; and

17 (2) Protocols for storage of DNA samples and sexual
18 assault forensic examination kits.

19 (c) The commission may promulgate emergency rules
20 pursuant to the provisions of §29A-3-15 of this code in order
21 to implement this section: *Provided*, That no emergency
22 rule may permit the destruction of any DNA evidence.

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CHAPTER 208

(Com. Sub. for S. B. 110 - By Senator Trump)

[Passed March 6, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §60-7-13 of the Code of West Virginia, 1931, as amended, relating generally to private club licensees; continuing Alcohol Beverage Control Enforcement Fund; requiring a private club licensee to timely notify emergency medical services or law enforcement of a life-threatening medical emergency occurring on the licensee's premises; authorizing sanctions against licensees' failing to notify such personnel as required; requiring a licensee to notify the Alcohol Beverage Control Administration within 48 hours of the occurrence of a life-threatening emergency; permitting the commissioner to sanction a licensee for failing to comply with the 48-hour notification requirement; and providing examples of life-threatening medical emergencies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

- 1 (a) Upon a determination by the commissioner that a
- 2 licensee has: (i) Violated the provisions of §11-16-1 *et seq.*
- 3 of this code or of this chapter; (ii) acted in such a way as
- 4 would have precluded initial or renewal licensure; or (iii)
- 5 violated any rule or order promulgated by the
- 6 commissioner, the commissioner may impose any one or a
- 7 combination of the following sanctions:

8 (1) Revoke the licensee's license;

9 (2) Suspend the licensee's license;

10 (3) Place the licensee on probationary status for a period
11 not to exceed 12 months; and

12 (4) Impose a monetary penalty not to exceed \$1,000 for
13 each violation where revocation is not imposed.

14 (b) Any monetary penalty assessed and collected by
15 the commissioner shall be transmitted to the State
16 Treasurer for deposit into the State Treasury to the credit
17 of a special revenue fund designated the Alcohol
18 Beverage Control Enforcement Fund, which is hereby
19 continued. All moneys collected, received, and deposited
20 in the Alcohol Beverage Control Enforcement Fund shall
21 be kept and maintained for expenditures by the
22 commissioner for the purpose of enforcement of the
23 statutes and rules pertaining to alcoholic liquor, and shall
24 not be treated by the State Treasurer or State Auditor as
25 any part of the general revenue of the state. At the end of
26 each fiscal year all funds in the Alcohol Beverage Control
27 Enforcement Fund in excess of \$20,000 shall be
28 transferred to the General Revenue Fund.

29 (c) In addition to the grounds for revocation,
30 suspension, or other sanction of a license set forth in §60-7-
31 13(a) of this code, conviction of the licensee of any offense
32 constituting a violation of the laws of this state or of the
33 United States relating to alcoholic liquor, nonintoxicating
34 beer, or gambling shall be mandatory grounds for such
35 sanctioning of a license. Conviction of the licensee of any
36 violation of the laws of this state or of the United States
37 relating to prostitution, or the sale, possession, or
38 distribution of narcotics or controlled substances, shall be
39 mandatory grounds for revocation of the licensee's license
40 for a period of at least one year.

41 (d) A licensee shall notify, in a timely manner,
42 emergency medical services or law enforcement if a
43 licensee knows, or has reason to know, of a life-threatening
44 medical emergency occurring on the licensed premises. In
45 addition to the grounds for revocation, suspension, or other
46 sanction of a license set forth in this section, the
47 commissioner may, in his or her discretion, revoke,
48 suspend, or otherwise sanction a licensee for failing to
49 comply with the provisions of this subsection.

50 (e) If a life-threatening medical emergency occurs on a
51 licensee's private premises requiring notification of
52 emergency medical services or law enforcement under §60-
53 7-13(d) of this code, the licensee shall notify the Alcohol
54 Beverage Control Administration within 48 hours of the
55 emergency's occurrence. The commissioner may, in his or
56 her discretion, revoke, suspend, or otherwise sanction a
57 licensee for failing to comply with the 48-hour notification
58 requirement.

59 (f) As used in this section, a life-threatening medical
60 emergency includes, but is not limited to, respiratory
61 distress or cessation of breathing, severe chest pains, shock,
62 uncontrolled bleeding, poisoning, prolonged
63 unconsciousness, overdose, any complaint or observation
64 which indicates significant head or spinal injury, and life-
65 threatening physical injury caused by a crime of violence
66 against the person occupying or emanating from the
67 licensed premises.

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CHAPTER 209

**(Com. Sub. for S. B. 134 - By Senators Gaunch, Blair,
Swope, Baldwin, Jeffries, Ojeda, Cline and Maroney)**

[Passed March 5, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §15-5-3 of the Code of West Virginia, 1931, as amended, relating to authorizing the Division of Homeland Security and Emergency Management to contract with or employ individuals and contract for goods for the purpose of emergency response and recovery; and providing requirements for such contracts or employment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-3. Division of Homeland Security and Emergency Management created.

1 (a) The Office of Emergency Services is continued as
2 the Division of Homeland Security and Emergency
3 Management within the Department of Military Affairs
4 and Public Safety. All of the allied, advisory, affiliated or
5 related entities, and funds associated with the Office of
6 Emergency Services and all its functions, personnel, and
7 property, are transferred to, incorporated in, and
8 administered as a part of the Division of Homeland
9 Security and Emergency Management. Wherever the
10 words “Office of Emergency Services” appear in this
11 code, they shall mean the Division of Homeland Security
12 and Emergency Management.

13 (b) A Director of the Division of Homeland Security and
14 Emergency Management shall be appointed by the
15 Governor, by and with the advice and consent of the Senate.
16 The Governor shall consider applicants for director who at
17 a minimum: (1) Have at least five years managerial or
18 strategic planning experience; (2) are knowledgeable in
19 matters relating to public safety, homeland security,
20 emergency management and emergency response; and (3)
21 have, at a minimum, a federally issued secret level security
22 clearance or have submitted to or will submit to a security
23 clearance investigation for the purpose of obtaining, at a
24 minimum, a federally issued secret level security clearance.

25 (c) The director may employ such technical, clerical,
26 stenographic, and other personnel, fix their compensation
27 and make expenditures within the appropriation to the
28 division or from other funds made available for the purpose
29 of providing homeland security and emergency
30 management services to carry out the purpose of this article.
31 Employees of the Division of Homeland Security and
32 Emergency Management shall be members of the state Civil
33 Service System and all appointments of the office, except
34 those required by law to be exempt, shall be a part of the
35 classified service under the Civil Service System: *Provided*,
36 That the director may employ personnel that are not
37 members of the Civil Service System for purposes provided
38 in §15-5-3(g) of this code.

39 (d) The director and other personnel of the Division of
40 Homeland Security and Emergency Management shall be
41 provided with appropriate office space, furniture,
42 equipment, supplies, stationery, and printing in the same
43 manner as provided for personnel of other state agencies.

44 (e) The director, subject to the direction and control of
45 the Governor through the Secretary of the Department of
46 Military Affairs and Public Safety, shall be the executive
47 head of the Division of Homeland Security and Emergency
48 Management and shall be responsible to the Governor and
49 the Secretary of the Department of Military Affairs and

50 Public Safety for carrying out the program for homeland
51 security and emergency management in this state. The
52 director, in consultation with the Secretary of the
53 Department of Military Affairs and Public Safety, shall
54 coordinate the activities of all organizations for homeland
55 security and emergency management within the state and
56 maintain liaison with and cooperate with homeland security,
57 emergency management and other emergency service and
58 civil defense agencies and organizations of other states and
59 of the federal government, and shall have additional
60 authority, duties, and responsibilities authorized by §15-5-1
61 *et seq.* of this code as may be prescribed by the Governor or
62 the Secretary of the Department of Military Affairs and
63 Public Safety.

64 (f) The director shall have the power to acquire in the
65 name of the state by purchase, lease, or gift, real property
66 and rights or easements necessary or convenient to construct
67 thereon the necessary building or buildings for housing and
68 homeland security and emergency management control
69 center.

70 (g) The director may, for the purposes of responding to
71 a declared state of emergency or for the recovery from a
72 declared state of emergency following the termination of the
73 declaration, employ personnel or enter into contracts and
74 subcontracts for goods or specialized technical services,
75 subject to the following provisions:

76 (1) Employee positions shall be contingent on the
77 receipt of the necessary federal and/or state funds.

78 (2) All employees employed pursuant to this subsection
79 shall be exempt from both the classified services category
80 and the classified exempt services category provided in §29-
81 6-4 of this code.

82 (3) Each employee hired shall be deemed an at-will
83 employee who may be discharged or released from his or
84 her respective position without cause or reason.

85 (4) Employees may participate in the PEIA, PERS,
86 workers' compensation, unemployment compensation
87 programs, or their equivalents.

88 (5) The director shall set appropriate salary rates for
89 employees equivalent to a rate commensurate with industry
90 standards.

91 (6) Contracts may be entered into pursuant to this
92 subsection with the federal government, its instrumentalities
93 and agencies, any state, territory or the District of Columbia
94 and its agencies and instrumentalities, municipalities,
95 foreign governments, public bodies, private corporations,
96 partnerships, associations and individuals for specialized
97 technical services at a rate commensurate with industry
98 standards as determined by the director to support specific
99 activities related to the response to or the recovery from a
100 declared state of emergency.



CHAPTER 210

**(Com. Sub. for S. B. 404 - 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 and reenact §15-12-2 and §15-12-4 of the Code of West Virginia, 1931, as amended, all relating generally to the sex offender registry; adding required information to be provided to the registry by offenders; and clarifying the duration of registration for qualifying offenders as related to offenses involving perceived minors is life.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.**§15-12-2. Registration.**

1 (a) The provisions of this article apply both retroactively
2 and prospectively.

3 (b) Any person who has been convicted of an offense or
4 an attempted offense or has been found not guilty by reason
5 of mental illness, mental retardation, or addiction of an
6 offense under any of the following provisions of this code
7 or under a statutory provision of another state, the United
8 States Code or the Uniform Code of Military Justice which
9 requires proof of the same essential elements shall register
10 as set forth in §15-12-2(d) of this code and according to the
11 internal management rules promulgated by the
12 superintendent under authority of §15-2-25 of this code:

13 (1) §61-8A-1 *et seq.* of this code;

14 (2) §61-8B-1 *et seq.* of this code, including the
15 provisions of former §61-8B-6 of this code, relating to the
16 offense of sexual assault of a spouse, which was repealed by
17 an act of the Legislature during the 2000 legislative session;

18 (3) §61-8C-1 *et seq.* of this code;

19 (4) §61-8D-5 and §61-8D-6 of this code;

20 (5) §61-2-14(a) of this code;

21 (6) §61-8-6, §61-8-7, §61-8-12, and §61-8-13 of this
22 code;

23 (7) §61-3C-14b of this code, as it relates to violations of
24 those provisions of chapter 61 listed in this subsection; or

25 (8) §61-14-2, §61-14-5, and §61-14-6 of this code:
26 *Provided*, That as to §61-14-2 of this code only those
27 violations involving human trafficking for purposes of
28 sexual servitude require registration pursuant to this
29 subdivision.

30 (c) Any person who has been convicted of a criminal
31 offense where the sentencing judge made a written finding
32 that the offense was sexually motivated shall also register as
33 set forth in this article.

34 (d) A person required to register under the provisions of
35 this article shall register in person at the West Virginia State
36 Police detachment responsible for covering the county of
37 his or her residence, and in doing so, provide or cooperate
38 in providing, at a minimum, the following when registering:

39 (1) The full name of the registrant, including any aliases,
40 nicknames, or other names used by the registrant;

41 (2) The address where the registrant intends to reside or
42 resides at the time of registration, the address of any
43 habitable real property owned or leased by the registrant that
44 he or she regularly visits: *Provided*, That a post office box
45 may not be provided in lieu of a physical residential address,
46 the name and address of the registrant's employer or place
47 of occupation at the time of registration, the names and
48 addresses of any anticipated future employers or places of
49 occupation, the name and address of any school or training
50 facility the registrant is attending at the time of registration
51 and the names and addresses of any schools or training
52 facilities the registrant expects to attend;

53 (3) The registrant's Social Security number;

54 (4) A full-face photograph of the registrant at the time
55 of registration;

56 (5) A brief description of the crime or crimes for which
57 the registrant was convicted;

58 (6) The registrant's fingerprints and palm prints;

59 (7) Information related to any motor vehicle, trailer, or
60 motor home owned or regularly operated by a registrant,
61 including vehicle make, model, color, and license plate
62 number: *Provided*, That for the purposes of this article, the

63 term “trailer” means travel trailer, fold-down camping
64 trailer, and house trailer as those terms are defined in §17A-
65 1-1 of this code;

66 (8) Information relating to any Internet accounts the
67 registrant has and the screen names, user names, or aliases
68 the registrant uses on the Internet;

69 (9) Information related to any telephone or electronic
70 paging device numbers that the registrant has or uses,
71 including, but not limited to, residential, work, and mobile
72 telephone numbers;

73 (10) A photocopy of a valid driver’s license or
74 government-issued identification card, including a tribal
75 identification card;

76 (11) A photocopy of any passport and immigration
77 documents;

78 (12) A photocopy of any professional licensing
79 information that authorizes the registrant to engage in an
80 occupation or carry out a trade or business; and

81 (13) Any identifying information, including make,
82 model, serial number, and photograph, regarding any
83 unmanned aerial vehicle owned or operated by a registrant.

84 (e) (1) On the date that any person convicted or found
85 not guilty by reason of mental illness, mental retardation, or
86 addiction of any of the crimes listed in §15-12-2(b) of this
87 code, hereinafter referred to as a “qualifying offense”,
88 including those persons who are continuing under some
89 post-conviction supervisory status, are released, granted
90 probation or a suspended sentence, released on parole,
91 probation, home detention, work release, conditional release
92 or any other release from confinement, the Commissioner
93 of Corrections, regional jail administrator, city official, or
94 sheriff operating a jail or Secretary of the Department of
95 Health and Human Resources who releases the person and
96 any parole or probation officer who releases the person or

97 supervises the person following the release shall obtain all
98 information required by §15-12-2(d) of this code prior to the
99 release of the person, inform the person of his or her duty to
100 register, and send written notice of the release of the person
101 to the State Police within three business days of receiving
102 the information. The notice must include the information
103 required by §15-12-2(d) of this code. Any person having a
104 duty to register for a qualifying offense shall register upon
105 conviction, unless that person is confined or incarcerated, in
106 which case he or she shall register within three business
107 days of release, transfer, or other change in disposition
108 status. Any person currently registered who is incarcerated
109 for any offense shall re-register within three business days
110 of his or her release.

111 (2) Notwithstanding any provision of this article to the
112 contrary, a court of this state shall, upon presiding over a
113 criminal matter resulting in conviction or a finding of not
114 guilty by reason of mental illness, mental retardation, or
115 addiction of a qualifying offense, cause, within 72 hours of
116 entry of the commitment or sentencing order, the transmittal
117 to the sex offender registry for inclusion in the registry all
118 information required for registration by a registrant as well
119 as the following nonidentifying information regarding the
120 victim or victims:

121 (A) His or her sex;

122 (B) His or her age at the time of the offense; and

123 (C) The relationship between the victim and the
124 perpetrator.

125 The provisions of this subdivision do not relieve a
126 person required to register pursuant to this section from
127 complying with any provision of this article.

128 (f) For any person determined to be a sexually violent
129 predator, the notice required by §15-12-2(d) of this code
130 must also include:

131 (1) Identifying factors, including physical
132 characteristics;

133 (2) History of the offense; and

134 (3) Documentation of any treatment received for the
135 mental abnormality or personality disorder.

136 (g) At the time the person is convicted or found not
137 guilty by reason of mental illness, mental retardation, or
138 addiction in a court of this state of the crimes set forth in
139 §15-12-2(b) of this code, the person shall sign in open court
140 a statement acknowledging that he or she understands the
141 requirements imposed by this article. The court shall inform
142 the person so convicted of the requirements to register
143 imposed by this article and shall further satisfy itself by
144 interrogation of the defendant or his or her counsel that the
145 defendant has received notice of the provisions of this
146 article and that the defendant understands the provisions.
147 The statement, when signed and witnessed, constitutes
148 prima facie evidence that the person had knowledge of the
149 requirements of this article. Upon completion of the
150 statement, the court shall provide a copy to the registry.
151 Persons who have not signed a statement under the
152 provisions of this subsection and who are subject to the
153 registration requirements of this article must be informed of
154 the requirement by the State Police whenever the State
155 Police obtain information that the person is subject to
156 registration requirements.

157 (h) The State Police shall maintain a central registry of
158 all persons who register under this article and shall release
159 information only as provided in this article. The information
160 required to be made public by the State Police by §15-12-
161 5(b)(2) of this code is to be accessible through the Internet.
162 Information relating to telephone or electronic paging
163 device numbers a registrant has or uses may not be released
164 through the Internet.

165 (i) For the purpose of this article, “sexually violent
166 offense” means:

167 (1) Sexual assault in the first degree as set forth in §61-
168 8B-3 of this code, or of a similar provision in another state,
169 federal, or military jurisdiction;

170 (2) Sexual assault in the second degree as set forth §61-
171 8B-4 of this code, or of a similar provision in another state,
172 federal, or military jurisdiction;

173 (3) Sexual assault of a spouse as set forth in the former
174 provisions of §61-8B-6 of this code, which was repealed by
175 an act of the Legislature during the 2000 legislative session,
176 or of a similar provision in another state, federal, or military
177 jurisdiction;

178 (4) Sexual abuse in the first degree as set forth in §61-
179 8B-7 of this code, or of a similar provision in another state,
180 federal, or military jurisdiction;

181 (j) For purposes of this article, the term “sexually
182 motivated” means that one of the purposes for which a
183 person committed the crime was for any person’s sexual
184 gratification.

185 (k) For purposes of this article, the term “sexually
186 violent predator” means a person who has been convicted or
187 found not guilty by reason of mental illness, mental
188 retardation, or addiction of a sexually violent offense and
189 who suffers from a mental abnormality or personality
190 disorder that makes the person likely to engage in predatory
191 sexually violent offenses.

192 (l) For purposes of this article, the term “mental
193 abnormality” means a congenital or acquired condition of a
194 person that affects the emotional or volitional capacity of
195 the person in a manner that predisposes that person to the
196 commission of criminal sexual acts to a degree that makes
197 the person a menace to the health and safety of other
198 persons.

199 (m) For purposes of this article, the term “predatory act”
200 means an act directed at a stranger or at a person with whom
201 a relationship has been established or promoted for the
202 primary purpose of victimization.

203 (n) For the purposes of this article, the term “business
204 days” means days exclusive of Saturdays, Sundays, and
205 legal holidays as defined in §2-2-1 of this code.

§15-12-4. Duration.

1 (a) A person required to register under the terms of this
2 article shall continue to comply with this section, except
3 during ensuing periods of incarceration or confinement,
4 until:

5 (1) Ten years have elapsed since the person was released
6 from prison, jail, or a mental health facility or 10 years have
7 elapsed since the person was placed on probation, parole, or
8 supervised or conditional release. The 10-year registration
9 period may not be reduced by the sex offender’s release
10 from probation, parole, or supervised or conditional release;
11 or

12 (2) For the life of that person, if that person: (A) Has
13 one or more prior convictions or has previously been found
14 not guilty by reason of mental illness, mental retardation, or
15 addiction for any qualifying offense referred to in this
16 article; (B) has been convicted or has been found not guilty
17 by reason of mental illness, mental retardation, or addiction
18 of a qualifying offense as referred to in this article, and upon
19 motion of the prosecuting attorney, the court finds by clear
20 and convincing evidence that the qualifying offense
21 involved multiple victims or multiple violations of the
22 qualifying offense; (C) has been convicted or has been
23 found not guilty by reason of mental illness, mental
24 retardation, or addiction of a sexually violent offense; (D)
25 has been determined pursuant to §15-12-2a of this code to
26 be a sexually violent predator; or (E) has been convicted or
27 has been found not guilty by reason of mental illness, mental

28 retardation, or addiction of a qualifying offense as referred
29 to in this article, involving a minor or a person believed or
30 perceived by the registrant to be a minor.

31 (b) A person whose conviction is overturned for the
32 offense which required him or her to register under this
33 article shall, upon petition to the court, have his or her name
34 removed from the registry.

CHAPTER 211

**(Com. Sub. for S. B. 625 - By Senators Gaunch,
Maynard, Boso, Clements, Jeffries, Palumbo, Smith,
Sypolt and Weld)**

[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-3-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5A-3-8a; to amend and reenact §5H-1-2 of said code; to amend and reenact §7-1-3d of said code; to amend and reenact §16-4C-6 and §16-4C-8 of said code; to amend said code by adding thereto two new sections, designated §16-4C-8a and §16-4C-24; to amend said code by adding thereto a new section, designated §17-2A-8d; to amend said code by adding thereto three new sections, designated §29-3-5e, §29-3-5f, and §29-3-8; to amend and reenact §29-3-12 of said code; and to amend said code by adding thereto a new section, designated §33-3-33b, all relating to creating the West Virginia Volunteer Fire and Rescue Act of 2018; requiring Director of Purchasing Division make facilities and services of the division available to fire departments and companies and certain emergency medical services agencies; authorizing director to provide for implementation by legislative rules or other agreement;

authorizing payment of death benefits to survivors of firefighter, emergency medical services, or law-enforcement provider who dies as a proximate result of the performance of his or her duties; increasing death benefits to be paid; providing for written designation of beneficiary to be made on forms prescribed by State Fire Marshal or Commissioner of the Bureau for Public Health; requiring any county fire prevention units to be formed and recognized under the regulations of the State Fire Commission for local fire departments; increasing authorized reimbursement rate amount; providing exception for incidents or accidents involving hazardous materials or extended search and rescue and water rescue incidents; requiring payment of amounts owed as reimbursement within 75 days; authorizing written agreements between fire department or company and responsible party; permitting fire company or department to proceed to recover costs if payment or agreement not reached within 90 days; authorizing Commissioner of the Bureau for Public Health to establish one or more statewide contracts for equipment and supplies utilized by emergency medical services agencies; requiring statewide contracts be made available to certain emergency medical services agencies; authorizing development of uniform standards for equipment and supplies used by emergency medical services agencies; giving legislative rule-making authority to Commissioner of the Bureau for Public Health to implement provisions; requiring Commissioner of the Bureau for Public Health to recognize and give full credit for all continuing education credits approved or recognized by state or nationally recognized accrediting body; establishing courtesy certification program for certified emergency medical services personnel in states bordering West Virginia; relieving courtesy certification applicants from requirement to comply with state certification standards; authorizing rulemaking to implement courtesy certification program; providing for biennial renewal of courtesy certification; authorizing revocation of courtesy certification under certain conditions; establishing special revenue fund known as Emergency Medical Services Equipment and Training Fund; authorizing

use of fund for grants to equip emergency medical services providers and train emergency medical services personnel; requiring Commissioner of the Bureau for Public Health establish grant program for equipment and training of emergency medical services providers and personnel; setting eligibility and certain priorities for grant program; granting rule-making authority to implement grant program; authorizing Commissioner of Division of Highways enter into reimbursement agreements with certain fire departments for services provided relating to tree or debris removal from state highways and rights-of-way; setting conditions for and defining scope of reimbursement; retaining authority of commissioner to properly remove and dispose of cleared trees, debris, or other obstacles; granting legislative rule-making authority to implement reimbursement program; setting minimum provisions for legislative rule; authorizing State Fire Marshal establish one or more statewide contracts for equipment and supplies utilized by fire companies and departments; requiring statewide contracts be made available to certain fire companies and departments as well as any other agency or subdivision with a need for those equipment or supplies; authorizing development of uniform standards for equipment and supplies used by fire companies and departments; giving legislative rule-making authority to State Fire Commission to implement provisions; establishing courtesy certification program for certified firefighters in states bordering West Virginia to serve as volunteer firefighters; relieving courtesy certification applicants from requirement to comply with state certification standards for volunteer firefighters; authorizing rulemaking to implement courtesy certification program; providing for biennial renewal of courtesy certification; authorizing revocation of courtesy certification under certain conditions; establishing special revenue fund known as Fire Service Equipment and Training Fund; authorizing use of fund for grants to equip volunteer and part-volunteer fire companies and departments and their members, and train volunteer and part-volunteer firefighters; requiring State Fire Marshal establish grant program for equipment and training of volunteer and part-volunteer fire

companies and departments and volunteer firefighters; setting eligibility and certain factors for State Fire Marshal to consider in making grants; granting rule-making authority to implement grant program; requiring State Fire Marshal prepare certain reports and make certain recommendations; requiring study and report from Insurance Commissioner regarding issues related to workers' compensation for volunteer and part-volunteer fire departments; eliminating obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-8. Facilities of division available to local governmental bodies.

1 The director shall make available the facilities and
2 services of his or her division to counties, county schools,
3 municipalities, urban mass transportation authorities,
4 created pursuant to §8-27-1 *et seq.* of this code, mass
5 transportation divisions of county and municipal
6 governments, fire departments, and other local
7 governmental bodies within this state. The actual expenses
8 incurred thereby shall be paid by the local governmental
9 body.

§5A-3-8a. Facilities of division available to volunteer fire departments and emergency medical services.

1 The director shall make available the facilities and
2 services of his or her division to fire departments and
3 companies, including volunteer and part-volunteer
4 departments and companies, as well as to emergency
5 medical services agencies that are designated to provide
6 emergency response by one or more county emergency
7 dispatch centers. The director shall provide, whether by
8 legislative rule proposed pursuant to §29-3-1 *et seq.* of this
9 code or other agreement entered into between the director

10 and another governmental body or agency of the state, for
11 the implementation of this section.

CHAPTER 5H. SURVIVOR BENEFITS.

ARTICLE 1. WEST VIRGINIA FIRE, EMS, AND LAW- ENFORCEMENT OFFICER SURVIVOR BENEFIT ACT.

§5H-1-2. Death benefit for survivors.

1 (a) In the event a firefighter, EMS, or law-enforcement
2 provider dies as a proximate result of the performance of,
3 his or her duties, the department chief, within 30 days from
4 the date of death shall submit certification of the death to
5 the Governor's Office.

6 (b) This act includes both paid and volunteer fire, EMS,
7 and law-enforcement personnel acting in the performance
8 of his or her duties of any fire, EMS, or law-enforcement
9 department certified by the State of West Virginia.

10 (c) A firefighter, EMS, or law-enforcement provider is
11 considered to be acting in the performance of his or her
12 duties for the purposes of this act when he or she is
13 participating in any role of a fire, EMS, or law-enforcement
14 department function. This includes training, administration
15 meetings, fire, EMS, or law-enforcement incidents, service
16 calls, apparatus, equipment or station maintenance,
17 fundraisers, and travel to or from such functions.

18 (d) Travel includes riding upon or in any apparatus or
19 vehicle which is owned or used by the fire, EMS, or law-
20 enforcement department, or any other vehicle going to or
21 directly returning from a firefighter's home, place of
22 business, or other place where he or she shall have been
23 prior to participating in a fire, EMS, or law-enforcement
24 department function, or upon the authorization of the chief
25 of the department, agency head, or other person in charge.

26 (e) Certification shall include the name of the certified
27 fire, EMS, or law-enforcement program, the name of the

28 deceased firefighter, EMS, or law-enforcement provider,
29 the name and address of the beneficiary, any documentation
30 designating a beneficiary or beneficiaries, and setting forth
31 the circumstances that qualify the deceased individual for
32 death benefits under this act. Upon receipt of the
33 certification from the certified fire, EMS, or law-
34 enforcement program, the state shall, from moneys from the
35 State Treasury, General Fund, pay to the certified fire, EMS,
36 or law-enforcement program the sum of \$100,000 in the
37 name of the beneficiary of the death benefit. Within five
38 days of receipt of this sum from the state, the fire, EMS, or
39 law-enforcement program certified by the state shall pay the
40 sum as a benefit to the surviving spouse or designated
41 beneficiary. If there is no surviving spouse or designated
42 beneficiary, then to the minor children of the firefighter,
43 EMS, or law-enforcement provider who died as a proximate
44 result of the performance of his or her duties. When no
45 spouse, designated beneficiary, or minor children survive,
46 the benefit shall be paid to the parent or parents of the
47 firefighter, EMS, or law-enforcement provider. It is the
48 responsibility of the certified fire or EMS program to
49 document the surviving spouse or beneficiary for purposes
50 of reporting to the Governor's Office.

51 (f) Any death ruled by a physician to be a result of an
52 injury sustained during any of the above mentioned
53 performance of fire department, EMS, or law-enforcement
54 duties will be eligible for this benefit, even if this death
55 occurs at a later time.

56 (g) Those individuals who are covered by this article are
57 eligible for only one death benefit payment.

58 (h) Every department or agency head employing
59 persons to which this article applies shall provide notice of
60 the benefit provided hereby to such employees and
61 encourage covered employees to provide a written
62 designation of beneficiary to be maintained in the
63 employee's personnel file.

64 (i) Any person making application for certification as a
65 firefighter to which this section applies shall provide a
66 written designation of beneficiary using forms and
67 procedures prescribed by the State Fire Marshal. Any
68 person making application for emergency medical services
69 personnel certification to which this section applies shall
70 provide a written designation of beneficiary using forms and
71 procedures prescribed by the Commissioner of the Bureau
72 for Public Health.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3d. Levy for, establishment, and operation of fire prevention units; financial aid.

1 (a) The county commission in any county may:

2 (1) Levy for and erect, maintain, and operate fire
3 stations; and

4 (2) Form county fire prevention units, and supply
5 equipment therefor in the county: *Provided*, That if a county
6 commission establishes a separate county fire prevention
7 unit in any city in West Virginia that is now operating under
8 the provisions of the state civil service act for paid fire
9 departments, then the new unit shall be operated in
10 accordance with the provisions of the civil service act. Any
11 such unit shall be formed and recognized under the
12 regulations of the State Fire Commission for local fire
13 departments.

14 (b) Any county commission may render financial aid to
15 any one or more public fire protection facilities in operation
16 in the county for the general benefit of the public in the
17 prevention of fires.

18 (c) Any county commission may also authorize
19 volunteer fire companies or paid fire departments to charge
20 reasonable reimbursement fees for personnel and equipment

21 used in performing firefighting services, victim rescue, or
22 cleanup of debris or hazardous materials by department
23 personnel.

24 (1) The rate for any such fees to be charged to property
25 owners or other persons responsible or liable for payment
26 for such services must be approved by the county
27 commission and must be reasonable: *Provided*, That no fee
28 for any single incident or accident shall exceed \$1,500,
29 except that the fee for an incident or accident involving
30 hazardous materials or extended search and rescue and
31 water rescue incidents may exceed this amount based on the
32 necessary and reasonable costs incurred.

33 (2) The county commission shall require that any fees
34 charged pursuant to the authority conferred by this section
35 must be in writing and be itemized by specific services
36 rendered and the rate for each service.

37 (3) Unless exempt by law, any person, partnership,
38 corporation, or governmental agency shall be fully
39 responsible for all charges levied by this section within 75
40 days of the date of the response resulting in such charge.
41 Payment to the fire department or company rendering the
42 services shall be in full, unless a written agreement has been
43 reached between the fire department or company and the
44 responsible party to establish a payment schedule to satisfy
45 all charges.

46 (4) If payment for services rendered has not been
47 received within 90 days from the date of response, and if a
48 payment schedule has not been established, a fire
49 department or company may proceed in magistrate court or
50 in other appropriate court action to recover from the
51 responsible party all fees associated with the response,
52 including attorney fees and court costs.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6. Powers and duties of commissioner.

1 The commissioner has the following powers and duties:

2 (a) To propose rules for legislative approval in
3 accordance with the provisions of §29A-3-1 *et seq.* of this
4 code: *Provided*, That the rules have been submitted at least
5 30 days in advance for review by the Emergency Medical
6 Services Advisory Council, who may act only in the
7 presence of a quorum. The rules may include:

8 (1) Standards and requirements for certification and
9 recertification of emergency medical service personnel,
10 including, but not limited to:

11 (A) Age, training, testing, and continuing education;

12 (B) Procedures for certification and recertification, and
13 for denying, suspending, revoking, reinstating, and limiting
14 a certification or recertification;

15 (C) Levels of certification and the scopes of practice for
16 each level;

17 (D) Standards of conduct; and

18 (E) Causes for disciplinary action and sanctions which
19 may be imposed.

20 (2) Standards and requirements for licensure and
21 licensure renewals of emergency medical service agencies,
22 including:

23 (A) Operational standards, levels of service, personnel
24 qualifications and training, communications, public access,
25 records management, reporting requirements, medical
26 direction, quality assurance and review, and other
27 requirements necessary for safe and efficient operation;

28 (B) Inspection standards and establishment of
29 improvement periods to ensure maintenance of the
30 standards;

31 (C) Fee schedules for licensure, renewal of licensure,
32 and other necessary costs;

33 (D) Procedures for denying, suspending, revoking,
34 reinstating, or limiting an agency licensure;

35 (E) Causes for disciplinary action against agencies; and

36 (F) Administrative penalties, fines, and other
37 disciplinary sanctions which may be imposed on agencies;

38 (3) Standards and requirements for emergency medical
39 services vehicles, including classifications and
40 specifications;

41 (4) Standards and requirements for training institutions,
42 including approval or accreditation of sponsors of
43 continuing education, course curricula, and personnel;

44 (5) Standards and requirements for a State Medical
45 Direction System, including qualifications for a state
46 emergency medical services medical director and regional
47 medical directors, the establishment of a State Medical
48 Policy and Care Committee, and the designation of regional
49 medical command centers;

50 (6) Provision of services by emergency medical services
51 personnel in hospital emergency rooms;

52 (7) Authorization to temporarily suspend the
53 certification of an individual emergency medical services
54 provider prior to a hearing or notice if the commissioner
55 finds there is probable cause that the conduct or continued
56 service or practice of any individual certificate holder has or
57 may create a danger to public health or safety: *Provided,*
58 That the commissioner may rely on information received
59 from a physician that serves as a medical director in finding
60 that probable cause exists to temporarily suspend the
61 certification; and

62 (8) Any other rules necessary to carry out the provisions
63 of this article;

64 (b) To apply for, receive, and expend advances, grants,
65 contributions, and other forms of assistance from the state
66 or federal government or from any private or public
67 agencies or foundations to carry out the provisions of this
68 article;

69 (c) To design, develop, and review a Statewide
70 Emergency Medical Services Implementation Plan. The
71 plan shall recommend aid and assistance and all other acts
72 necessary to carry out the purposes of this article:

73 (1) To encourage local participation by area, county,
74 and community officials, and regional emergency medical
75 services boards of directors; and

76 (2) To develop a system for monitoring and evaluating
77 emergency medical services programs throughout the state;

78 (d) To provide professional and technical assistance and
79 to make information available to regional emergency
80 medical services boards of directors and other potential
81 applicants or program sponsors of emergency medical
82 services for purposes of developing and maintaining a
83 statewide system of services;

84 (e) To assist local government agencies, regional
85 emergency medical services boards of directors, and other
86 public or private entities in obtaining federal, state, or other
87 available funds and services;

88 (f) To cooperate and work with federal, state, and local
89 governmental agencies, private organizations, and other
90 entities as may be necessary to carry out the purposes of this
91 article;

92 (g) To acquire in the name of the state by grant,
93 purchase, gift, devise, or any other methods appropriate,

94 real and personal property as may be reasonable and
95 necessary to carry out the purposes of this article;

96 (h) To make grants and allocations of funds and
97 property so acquired or which may have been appropriated
98 to the agency to other agencies of state and local
99 government as may be appropriate to carry out the purposes
100 of this article;

101 (i) To expend and distribute by grant or bailment funds
102 and property to all state and local agencies for the purpose
103 of performing the duties and responsibilities of the agency
104 all funds which it may have so acquired or which may have
105 been appropriated by the Legislature of this state;

106 (j) To develop a program to inform the public
107 concerning emergency medical services;

108 (k) To review and disseminate information regarding
109 federal grant assistance relating to emergency medical
110 services;

111 (l) To prepare and submit to the Governor and
112 Legislature recommendations for legislation in the area of
113 emergency medical services;

114 (m) To review, make recommendations for, and assist
115 in all projects and programs that provide for emergency
116 medical services whether or not the projects or programs are
117 funded through the Office of Emergency Medical Services.
118 A review and approval shall be required for all emergency
119 medical services projects, programs, or services for which
120 application is made to receive state or federal funds for their
121 operation after the effective date of this act;

122 (n) To cooperate with the Department of
123 Administration, Purchasing Division to establish one or
124 more statewide contracts for equipment and supplies
125 utilized by emergency medical services agencies in
126 accordance with §5A-3-1 *et seq.* of this code:

127 (1) Any statewide contract established hereunder shall
128 be made available to any emergency medical services
129 agency licensed under §16-4C-6a of this code that is
130 designated to provide emergency response by one or more
131 county emergency dispatch centers.

132 (2) The office may develop uniform standards for
133 equipment and supplies used by emergency medical
134 services agencies in accordance with §5A-3-1 *et seq.* of this
135 code.

136 (3) The office shall propose legislative rules for
137 promulgation in accordance with §29A-3-1 *et seq.* of this
138 code to effectuate the provisions of this subsection; and

139 (o) To take all necessary and appropriate action to
140 encourage and foster the cooperation of all emergency
141 medical service providers and facilities within this state.

§16-4C-8. Standards for emergency medical services personnel.

1 (a) Every ambulance operated by an emergency medical
2 services agency shall carry at least two personnel. At least
3 one person shall be certified in cardiopulmonary
4 resuscitation or first aid and the person in the patient
5 compartment shall be certified as an emergency medical
6 technician-basic at a minimum except that in the case of a
7 specialized multipatient medical transport, only one staff
8 person is required and that person shall be certified, at a
9 minimum, at the level of an emergency medical technician-
10 basic. The requirements of this subsection will remain in
11 effect until revised by the legislative rule to be promulgated
12 pursuant to §16-4C-8(b) of this code.

13 (b) On or before May 28, 2010, the commissioner shall
14 submit a proposed legislative rule to the Emergency
15 Medical Services Advisory Council for review, and on or
16 before June 30, 2010, shall file the proposed legislative rule
17 with the Office of the Secretary of State, in accordance with
18 the provisions of §29A-3-1 *et seq.* of this code, to establish
19 certification standards for emergency medical vehicle

20 operators and to revise the requirements for emergency
21 medical services personnel.

22 (c) As of the effective date of the legislative rule to be
23 promulgated pursuant to §16-4C-8(b), emergency medical
24 services personnel who operate ambulances shall meet the
25 requirements set forth in the legislative rule.

26 (d) Any person desiring emergency medical services
27 personnel certification shall apply to the commissioner
28 using forms and procedures prescribed by the
29 commissioner. Upon receipt of the application, the
30 commissioner shall determine whether the applicant meets
31 the certification requirements and may examine the
32 applicant if necessary to make that determination.

33 (e) The applicant shall submit to a national criminal
34 background check, the requirement of which is declared to
35 be not against public policy.

36 (1) The applicant shall meet all requirements necessary
37 to accomplish the national criminal background check,
38 including submitting fingerprints, and authorizing the West
39 Virginia Office of Emergency Medical Services, the West
40 Virginia State Police, and the Federal Bureau of
41 Investigation to use all records submitted and produced for
42 the purpose of screening the applicant for certification.

43 (2) The results of the national criminal background
44 check may not be released to or by a private entity.

45 (3) The applicant shall submit a fee of \$75 for initial
46 certification and a fee of \$50 for recertification. The fees set
47 forth in this subsection remain in effect until modified by
48 legislative rule.

49 (f) An application for an original, renewal, or temporary
50 emergency medical service personnel certificate or
51 emergency medical services agency license, shall be acted
52 upon by the commissioner and the certificate or license
53 delivered or mailed, or a copy of any order of the

54 commissioner denying any such application delivered or
55 mailed to the applicant, within 15 days after the date upon
56 which the complete application including test scores and
57 background checks, if applicable, was received by the
58 commissioner.

59 (g) Any person may report to the commissioner or the
60 Director of the Office of Emergency Medical Services
61 information he or she may have that appears to show that a
62 person certified by the commissioner may have violated the
63 provisions of this article or legislative rules promulgated
64 pursuant to this article. A person who is certified by the
65 commissioner, who knows of or observes another person
66 certified by the commissioner violating the provisions of
67 this article or legislative rules promulgated pursuant to this
68 article, has a duty to report the violation to the commissioner
69 or director. Any person who reports or provides information
70 in good faith is immune from civil liability.

71 (h) The commissioner may issue a temporary
72 emergency medical services personnel certificate to an
73 applicant, with or without examination of the applicant,
74 when he or she finds that issuance to be in the public
75 interest. Unless suspended or revoked, a temporary
76 certificate shall be valid initially for a period not exceeding
77 120 and may not be renewed unless the commissioner finds
78 the renewal to be in the public interest.

79 (i) For purposes of certification or recertification of
80 emergency medical services personnel, the commissioner
81 shall recognize and give full credit for all continuing
82 education credits that have been approved or recognized by
83 any state or nationally recognized accrediting body.

**§16-4C-8a. Courtesy certification of emergency medical
services personnel in surrounding states.**

1 (a) It is the intention of the Legislature to permit
2 individuals who have been certified as emergency medical
3 services personnel in a state bordering West Virginia to

4 serve as emergency medical services personnel in West
5 Virginia.

6 (b) Beginning July 1, 2018, the Commissioner of the
7 Bureau for Public Health shall establish a process by which
8 a courtesy certification to serve as an emergency medical
9 responder or emergency medical technician in this state may
10 be issued to any person who satisfies the following
11 requirements:

12 (1) Is certified as an emergency medical responder or
13 emergency medical technician, or a similar certification, in
14 good standing in a state bordering West Virginia;

15 (2) Complies with the application process and
16 procedures established by the Commissioner of the Bureau
17 for Public Health; and

18 (3) Submits any required fee.

19 (c) Issuance of a courtesy certification shall not be
20 withheld by the Commissioner of the Bureau for Public
21 Health based on an individual's failure to satisfy the
22 minimum eligibility requirements for emergency medical
23 services personnel set forth in legislative rules promulgated
24 pursuant to §16-4C-6 of this code.

25 (d) The Commissioner of the Bureau for Public Health
26 shall propose rules for legislative approval in accordance
27 with the provisions of §29A-3-1 *et seq.* of this code to
28 implement the provisions of this section.

29 (e) Any courtesy certification issued pursuant to this
30 section may be revoked at any time if the individual's
31 certification in the bordering state is restricted, revoked, or
32 otherwise expires.

33 (f) Any courtesy certification issued pursuant to this
34 section must be renewed biennially.

§16-4C-24. Emergency Medical Services Equipment and Training Fund; establishment of grant program for equipment and training of emergency medical service providers and personnel.

1 (a) There is hereby created in the State Treasury a
2 special revenue fund to be known as the Emergency
3 Medical Services Equipment and Training Fund.
4 Expenditures from the fund by the Office of Emergency
5 Medical Services, Bureau for Public Health, Department of
6 Health and Human Resources are authorized from
7 collections. The fund may only be used for the purpose of
8 providing grants to equip emergency medical services
9 providers and train emergency medical services personnel,
10 as defined in §16-4C-3 of this code. Any balance remaining
11 in the fund at the end of any fiscal year does not revert to
12 the General Revenue Fund but remains in the special
13 revenue fund.

14 (b) The Commissioner of the Bureau for Public Health
15 shall establish a grant program for equipment and training
16 of emergency medical services providers and personnel.
17 Such grant program shall be open to all emergency medical
18 services personnel and providers, but priority shall be given
19 to rural and volunteer emergency medical services
20 providers.

21 (c) The Commissioner of the Bureau for Public Health
22 shall propose legislative rules for promulgation in
23 accordance with §29A-3-1 *et seq.* of this code to implement
24 the grant program established pursuant to this section.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8d. Reimbursement for volunteer fire departments.

1 (a) In addition to the other powers given and assigned to
2 him or her in this chapter, the Commissioner of the Division
3 of Highways may enter into reimbursement agreements,
4 based upon reasonable actual costs incurred, with volunteer
5 or part-volunteer fire departments for services provided by
6 volunteer or part-volunteer fire departments relating to tree
7 or debris removal from state highways and rights-of-way
8 when the commissioner requests such services.

9 (b) A volunteer or part-volunteer fire department may
10 be reimbursed without a prior request by the commissioner
11 when the traveled way of a state highway is obstructed by a
12 fallen tree or other debris and the volunteer or part-volunteer
13 fire department is the first responder: *Provided*, That the
14 volunteer or part-volunteer fire department subsequently
15 enters into a reimbursement agreement with the
16 commissioner to recoup only the costs actually incurred to
17 clear the traveled way of the state highway to permit the
18 public to safely travel upon it.

19 (c) The commissioner shall retain authority to properly
20 remove and dispose of any cleared trees, debris, or other
21 obstructions cleared from the traveled way by a volunteer or
22 part-volunteer fire department, and the commissioner shall
23 not reimburse a volunteer or part-volunteer fire department
24 for any final disposal of any cleared debris or obstruction.

25 (d) The commissioner shall not reimburse a volunteer or
26 part-volunteer fire department for services contracted out by
27 the volunteer or part-volunteer fire department.

28 (e) The commissioner may propose rules for legislative
29 approval in accordance with the provisions of §29A-3-1 *et*
30 *seq.* of this code to effectuate the purposes of the section.
31 Any rule promulgated pursuant to this section shall include
32 provisions establishing minimum reporting, auditing, and
33 other necessary documentation requirements to approve
34 reimbursement requests submitted to the commissioner.

**CHAPTER 29. MISCELLANEOUS BOARDS AND
OFFICERS.**

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

**§29-3-5e. Courtesy certification of firefighters in surrounding
states to serve as volunteer firefighter.**

1 (a) It is the intention of the Legislature to permit
2 individuals who have been certified as professional or
3 volunteer firefighters in a state bordering West Virginia to
4 serve as volunteer firefighters in West Virginia.

5 (b) Beginning July 1, 2018, the State Fire Marshal shall
6 establish a process by which a courtesy certification to serve
7 as a volunteer firefighter in this state may be issued to any
8 person who satisfies the following requirements:

9 (1) Is a certified professional or volunteer firefighter in
10 good standing in a state bordering West Virginia;

11 (2) Complies with the application process and
12 procedures established by the State Fire Marshal; and

13 (3) Submits any required fee.

14 (c) Issuance of a courtesy certification shall not be
15 withheld by the State Fire Marshal based on an individual's
16 failure to satisfy the training requirements for volunteer
17 firefighters set forth in legislative rules promulgated
18 pursuant to §29-3-5d of this code.

19 (d) The State Fire Marshal shall propose rules for
20 legislative approval in accordance with the provisions of
21 §29A-3-1 *et seq.* of this code to implement the provisions of
22 this section.

23 (e) Any courtesy certification issued pursuant to this
24 section may be revoked at any time if the individual's
25 certification in the bordering state is restricted, revoked, or
26 otherwise expires.

27 (f) Any courtesy certification issued pursuant to this
28 section must be renewed biennially.

**§29-3-5f. Fire Service Equipment and Training Fund;
creation of fire service equipment and training grant.**

1 (a) There is hereby created in the State Treasury a
2 special revenue fund to be known as the Fire Service
3 Equipment and Training Fund. Expenditures from the fund
4 by the State Fire Marshal are authorized from collections.
5 The fund may only be used for the purpose of providing
6 grants to equip volunteer and part-volunteer fire companies
7 and departments and their members, and train volunteer and
8 part-volunteer firefighters. Any balance remaining in the
9 fund at the end of any fiscal year does not revert to the
10 General Revenue Fund but remains in the Special Revenue
11 Fund. The State Fire Marshal shall propose legislative rules
12 for promulgation in accordance with §29A-3-1 *et seq.* of
13 this code to implement the grant program established
14 pursuant to this section.

15 (b) The State Fire Marshal shall establish a grant
16 program for equipment and training for volunteer and part-
17 volunteer fire companies and departments. Such grant
18 program shall be open to all volunteer and part-volunteer
19 fire companies and departments. In making grants pursuant
20 to this section, the State Fire Marshal shall consider:

21 (1) The number of emergency and nonemergency calls
22 responded to by the department;

23 (2) The activities and responses of the department;

24 (3) The revenues received by the department from
25 federal, state, county, municipal, local, and other sources;
26 and

27 (4) The department's assets, expenditures, and other
28 liabilities, including whether the fire company or
29 department has availed itself of available statewide
30 contracts.

31 (c) The State Fire Commission shall propose legislative
32 rules for promulgation in accordance with §29A-3-1 *et seq.*
33 of this code to implement the grant program established
34 pursuant to this section.

§29-3-8. Comprehensive report by State Fire Marshal.

1 (a) On or before July 1, 2019, the State Fire Marshal
2 shall submit a comprehensive report to the Joint Committee
3 on Government and Finance containing a recommended
4 plan for transferring authority and responsibility for
5 providing fire services to the counties. Such report shall
6 include, but not be limited to, recommendations regarding
7 recommended state oversight of such fire services; financial
8 support for fire services, a plan and timeline for
9 transitioning responsibility and oversight to the counties;
10 and county authority, oversight, and accountability of
11 operations, fiscal planning, financial accountability, and
12 risk management planning. The State Fire Marshal shall
13 solicit input from appropriate state agencies, county
14 officials, and other interested parties, which shall provide
15 requested information to the State Fire Marshal to assist in
16 preparation of the report and recommendation.

17 (b) On or before July 1, 2019, the State Fire Marshal
18 shall study, prepare, and submit a report to the Joint
19 Committee on Government and Finance regarding
20 reciprocity of firefighter and fire officer certification with
21 other states. Such report shall include recommendations
22 regarding ways to increase availability of reciprocal
23 certification, including any necessary changes to state code
24 or regulation necessary to facilitate additional reciprocity.

§29-3-12. Powers and duties of State Fire Marshal.

1 (a) *Enforcement of laws.* — The State Fire Marshal and
2 any other person authorized to enforce the provisions of this
3 article under the supervision and direction of the State Fire
4 Marshal has the authority to enforce all laws of the state
5 having to do with:

6 (1) Prevention of fire;

7 (2) The storage, sale, and use of any explosive,
8 combustible, or other dangerous article or articles in solid,
9 flammable liquid, or gas form;

10 (3) The installation and maintenance of equipment of all
11 sorts intended to extinguish, detect, and control fires;

12 (4) The means and adequacy of exit, in case of fire, from
13 buildings and all other places in which persons work, live,
14 or congregate, from time to time, for any purpose, except
15 buildings used wholly as dwelling houses for no more than
16 two families;

17 (5) The suppression of arson; and

18 (6) Any other thing necessary to carry into effect the
19 provisions of this article including, but not limited to,
20 confiscating any materials, chemicals, items, or personal
21 property owned, possessed, or used in direct violation of the
22 State Fire Code.

23 (b) *Assistance upon request.* — Upon request, the State
24 Fire Marshal shall assist any chief of any recognized fire
25 company or department. Upon the request of any federal
26 law-enforcement officer, state police officer, natural
27 resources police officer, or any county or municipal law-
28 enforcement officer, the State Fire Marshal, any deputy
29 state fire marshal, or assistant state fire marshal employed
30 pursuant to §29-3-11 of this code and any person deputized
31 pursuant to §29-3-12(j) of this code may assist in the lawful
32 execution of the requesting officer's official duties:
33 *Provided*, That the State Fire Marshal, or other person
34 authorized to act under this subsection, shall at all times
35 work under the direct supervision of the requesting officer.

36 (c) *Enforcement of rules.* — The State Fire Marshal shall
37 enforce the rules promulgated by the State Fire Commission
38 as authorized by this article.

39 (d) *Inspections generally.* — The State Fire Marshal
40 shall inspect all structures and facilities, other than one- and
41 two-family dwelling houses, subject to the State Fire Code
42 and this article, including, but not limited to, state, county,
43 and municipally owned institutions, all public and private
44 schools, health care facilities, theaters, churches, and other
45 places of public assembly to determine whether the
46 structures or facilities are in compliance with the State Fire
47 Code.

48 (e) *Right of entry.* — The State Fire Marshal may, at all
49 reasonable hours, enter any building or premises, other than
50 dwelling houses, for the purpose of making an inspection
51 which he or she may consider necessary under the
52 provisions of this article. The State Fire Marshal and any
53 deputy state fire marshal or assistant state fire marshal
54 approved by the State Fire Marshal may enter upon any
55 property, or enter any building, structure or premises,
56 including dwelling houses during construction and prior to
57 occupancy, for the purpose of ascertaining compliance with
58 the conditions set forth in any permit or license issued by
59 the office of the State Fire Marshal pursuant to §29-3-
60 12b(A)(1) of this code or of §29-3B-1 *et seq.* of this code.

61 (f) *Investigations.* — The State Fire Marshal may, at any
62 time, investigate as to the origin or circumstances of any fire
63 or explosion or attempt to cause fire or explosion occurring
64 in the state. The State Fire Marshal has the authority at all
65 times of the day or night, in performance of the duties
66 imposed by the provisions of this article, to investigate
67 where any fires or explosions or attempt to cause fires or
68 explosions may have occurred, or which at the time may be
69 burning. Notwithstanding the above provisions of this
70 subsection, prior to entering any building or premises for the
71 purposes of the investigation, the State Fire Marshal shall
72 obtain a proper search warrant: *Provided,* That a search
73 warrant is not necessary where there is permissive waiver or
74 the State Fire Marshal is an invitee of the individual having

75 legal custody and control of the property, building or
76 premises to be searched.

77 (g) *Testimony.* — The State Fire Marshal, in making an
78 inspection or investigation when in his or her judgment the
79 proceedings are necessary, may take the statements or
80 testimony under oath of all persons who may be cognizant
81 of any facts or have any knowledge about the matter to be
82 examined and inquired into and may have the statements or
83 testimony reduced to writing; and shall transmit a copy of
84 the statements or testimony so taken to the prosecuting
85 attorney for the county wherein the fire or explosion or
86 attempt to cause a fire or explosion occurred.
87 Notwithstanding the above, no person may be compelled to
88 testify or give any statement under this subsection.

89 (h) *Arrests; warrants.* — The State Fire Marshal, any
90 full-time deputy fire marshal, or any full-time assistant fire
91 marshal employed by the State Fire Marshal pursuant to
92 §29-3-11 of this code is hereby authorized and empowered
93 and any person deputized pursuant to §29-3-11 of this code
94 may be authorized and empowered by the State Fire
95 Marshal:

96 (1) To arrest any person anywhere within the confines
97 of the State of West Virginia, or have him or her arrested,
98 for any violation of the arson-related offenses of §61-3-1 *et*
99 *seq.* of this code or of the explosives-related offenses of
100 §61-3e-1 *et seq.* of said code: *Provided,* That any and all
101 persons so arrested shall be forthwith brought before the
102 magistrate or circuit court.

103 (2) To make complaint in writing before any court or
104 officer having jurisdiction and obtain, serve, and execute an
105 arrest warrant when knowing or having reason to believe
106 that anyone has committed an offense under any provision
107 of this article, of the arson-related offenses of §61-3-1 *et*
108 *seq.* of this code or of the explosives-related offenses of
109 §61-3e-1 *et seq.* of this code. Proper return shall be made on

110 all arrest warrants before the tribunal having jurisdiction
111 over the violation.

112 (3) To make complaint in writing before any court or
113 officer having jurisdiction and obtain, serve, and execute a
114 warrant for the search of any premises that may possess
115 evidence or unlawful contraband relating to violations of
116 this article, of the arson-related offenses of §61-3-1 *et seq.*
117 of this code or of the explosives-related offenses of §61-3e-
118 1 *et seq.* of said code. Proper return shall be made on all
119 search warrants before the tribunal having jurisdiction over
120 the violation.

121 (i) *Witnesses and oaths.* — The State Fire Marshal is
122 empowered and authorized to issue subpoenas and
123 subpoenas duces tecum to compel the attendance of persons
124 before him or her to testify in relation to any matter which
125 is, by the provision of this article, a subject of inquiry and
126 investigation by the State Fire Marshal and cause to be
127 produced before him or her such papers as he or she may
128 require in making the examination. The State Fire Marshal
129 is hereby authorized to administer oaths and affirmations to
130 persons appearing as witnesses before him or her. False
131 swearing in any matter or proceeding aforesaid is
132 considered perjury and is punishable as perjury.

133 (j) *Deputizing members of fire departments in this state.*
134 — The State Fire Marshal may deputize a member of any
135 fire department, duly organized and operating in this state,
136 who is approved by the chief of his or her department and
137 who is properly qualified to act as his or her assistant for the
138 purpose of making inspections with the consent of the
139 property owner or the person in control of the property and
140 the investigations as may be directed by the State Fire
141 Marshal, and the carrying out of orders as may be prescribed
142 by him or her, to enforce and make effective the provisions
143 of this article and any and all rules promulgated by the State
144 Fire Commission under authority of this article: *Provided,*
145 That in the case of a volunteer fire department, only the

146 chief thereof or his or her single designated assistant may be
147 so deputized.

148 (k) *Written report of examinations.* — The State Fire
149 Marshal shall, at the request of the county commission of
150 any county or the municipal authorities of any incorporated
151 municipality in this state, make to them a written report of
152 the examination made by him or her regarding any fire
153 happening within their respective jurisdictions.

154 (l) *Report of losses by insurance companies.* — It is the
155 duty of each fire insurance company or association doing
156 business in this state, within 10 days after the adjustment of
157 any loss sustained by it that exceeds \$1,500, to report to the
158 State Fire Marshal information regarding the amount of
159 insurance, the value of the property insured, and the amount
160 of claim as adjusted. This report is in addition to any
161 information required by the State Insurance Commissioner.
162 Upon the request of the owner or insurer of any property
163 destroyed or injured by fire or explosion, or in which an
164 attempt to cause a fire or explosion may have occurred, the
165 State Fire Marshal shall report in writing to the owner or
166 insurer the result of the examination regarding the property.

167 (m) *Issuance of permits and licenses.* — The State Fire
168 Marshal is authorized to issue permits, documents, and
169 licenses in accordance with the provisions of this article or
170 §29-3B-1 *et seq.* of this code: *Provided,* That unless
171 otherwise provided, the State Fire Marshall shall take final
172 action upon any completed permit applications within 30
173 days of receipt if the application is uncontested, or within
174 90 days if the application is contested. The State Fire
175 Marshal may require any person who applies for a permit to
176 use explosives, other than an applicant for a license to be a
177 pyrotechnic operator under §29-3-24 of this code, to be
178 fingerprinted and to authorize the State Fire Marshal to
179 conduct a criminal records check through the criminal
180 identification bureau of the West Virginia State Police and
181 a national criminal history check through the Federal
182 Bureau of Investigation. The results of any criminal records

183 or criminal history check shall be sent to the State Fire
184 Marshal.

185 (n) *Issuance of citations for fire and life safety*
186 *violations.* — The State Fire Marshal, any deputy fire
187 marshal, and any assistant fire marshal employed pursuant
188 to §29-3-11 of this code are hereby authorized, and any
189 person deputized pursuant to §29-3-12(j) of this code may
190 be authorized by the State Fire Marshal to issue citations, in
191 his or her jurisdiction, for fire and life safety violations of
192 the State Fire Code and as provided for by the rules
193 promulgated by the State Fire Commission in accordance
194 with §29-3-1 *et seq.* of this code: *Provided,* That a summary
195 report of all citations issued pursuant to this section by
196 persons deputized under §29-3-12(j) of this code shall be
197 forwarded monthly to the State Fire Marshal in the form and
198 containing information as he or she may by rule require,
199 including the violation for which the citation was issued, the
200 date of issuance, the name of the person issuing the citation,
201 and the person to whom the citation was issued. The State
202 Fire Marshal may at any time revoke the authorization of a
203 person deputized pursuant to §29-3-12(j) of this code to
204 issue citations, if in the opinion of the State Fire Marshal,
205 the exercise of authority by the person is inappropriate.

206 Violations for which citations may be issued include,
207 but are not limited to:

208 (1) Overcrowding places of public assembly;

209 (2) Locked or blocked exits in public areas;

210 (3) Failure to abate a fire hazard;

211 (4) Blocking of fire lanes or fire department
212 connections; and

213 (5) Tampering with, or rendering inoperable except
214 during necessary maintenance or repairs, on-premise
215 firefighting equipment, fire detection equipment, and fire
216 alarm systems.

217 (o) *Required training; liability coverage.* — No person
218 deputized pursuant to §29-3-12(j) of this code may be
219 authorized to issue a citation unless that person has
220 satisfactorily completed a law-enforcement officer training
221 course designed specifically for fire marshals. The course
222 shall be approved by the Law-enforcement Training
223 Subcommittee of the Governor’s Committee on Criminal
224 Justice and Highway Safety and the State Fire Commission.
225 In addition, no person deputized pursuant to §29-3-12(j) of
226 this code may be authorized to issue a citation until evidence
227 of liability coverage of the person has been provided, in the
228 case of a paid municipal fire department, by the
229 municipality wherein the fire department is located, or in the
230 case of a volunteer fire department, by the county
231 commission of the county wherein the fire department is
232 located or by the municipality served by the volunteer fire
233 department and that evidence of liability coverage has been
234 filed with the State Fire Marshal.

235 (p) *Statewide contracts.* — The State Fire Marshal may
236 cooperate with the Department of Administration,
237 Purchasing Division, to establish one or more statewide
238 contracts for equipment and supplies utilized by fire
239 companies and departments in accordance with §5A-3-1 *et*
240 *seq.* of this code.

241 (1) Any statewide contract established hereunder shall
242 be made available to any fire company and department in
243 this state, as well as any other state agency or political
244 subdivision that has a need for the equipment or supplies
245 included in those contracts.

246 (2) The State Fire Marshal may develop uniform
247 standards for equipment and supplies used by fire
248 companies and departments in accordance with §5A-3-1 *et*
249 *seq.* of this code.

250 (3) The State Fire Commission shall propose legislative
251 rules for promulgation in accordance with §29A-3-1 *et seq.*
252 of this code to effectuate the provisions of this subsection.

253 (q) *Penalties for violations.* — Any person who violates
254 any fire and life safety rule of the State Fire Code is guilty
255 of a misdemeanor and, upon conviction thereof, shall be
256 fined not less than \$100 nor more than \$1,000, or confined
257 in jail not more than 90 days, or both fined and confined.
258 Each and every day during which any violation of the
259 provisions of this article continues after knowledge or
260 official notice that same is illegal is a separate offense.

CHAPTER 33. INSURANCE

ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURERS.

§33-3-33b. Report regarding volunteer firefighter workers' compensation coverage.

1 (a) The Insurance Commissioner, in consultation with
2 the State Fire Marshal, the State Auditor, the Legislative
3 Auditor, and the Board of Risk and Insurance Management,
4 shall study the feasibility of combining the volunteer fire
5 departments in our state under a single policy for workers'
6 compensation coverage, self-insuring workers'
7 compensation coverage for volunteer fire departments, or
8 other workers' compensation coverage options. Such study
9 shall also include an evaluation of the benefit, necessity, and
10 feasibility of expanding the current scope of workers'
11 compensation coverage for volunteers, including, but not
12 limited to, presumptions for cardiovascular or pulmonary
13 disease, occupational pneumoconiosis, or other
14 occupational disease, as well as a comparison of those
15 proposals to other means of supplementing workers'
16 compensation insurance through secondary insurance
17 policies.

18 (b) On or before July 1, 2019, the Insurance
19 Commissioner shall submit to the Joint Committee on
20 Government and Finance and the Joint Committee on
21 Government Organization a comprehensive report of the
22 review and the Insurance Commissioner's

23 recommendations, substantiated by the findings of the
24 review, and steps that may be taken to meet the needs of and
25 sustain the volunteer fire departments for their workers'
26 compensation coverage.

CHAPTER 212

(H. B. 2869 - By Mr. Speaker (Mr. Armstead))

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-15b, relating to providing that certain state employees may be granted a leave of absence with pay while providing assistance as an essential member of an emergency aid provider during a declared state of emergency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-15b. Paid leave for certain state officers and employees during a declared state of emergency.

1 (a) Any state employee who is designated an essential
2 member of an emergency aid provider may be granted leave
3 from his or her state employment with pay, for not more
4 than fifteen work days in each year, to provide disaster relief
5 or emergency services in areas of the state in which a state
6 of emergency has been declared. Leave shall be granted
7 under this section upon: (1) Designation of the employee as
8 an essential member by the chief executive officer or other
9 officer or agent of the emergency aid provider who has
10 authority to act on its behalf; and (2) approval of that

11 employee's immediate supervisor. Leave shall be
12 granted without loss of pay, annual leave, sick leave,
13 earned overtime compensation, seniority or
14 compensatory time. The state shall compensate an
15 employee granted leave under this section at the
16 employee's regular rate of pay for those regular work
17 hours during which the employee is absent from his or her
18 state employment. Any supervisor granting leave to an
19 employee for purposes of participating in disaster relief
20 or emergency services pursuant to this section shall make
21 a report to the Governor which includes the name of the
22 employee and the total cost, if any, to the employing
23 agency attributable to the temporary replacement of the
24 employee granted leave in the circumstance where
25 replacement is necessary. The Governor shall keep a
26 record of the total cost reported and in no event may the
27 total cost for all state agencies exceed \$300,000:
28 *Provided*, That upon approval of the Governor and
29 repayment of the cost to the employing agency, from the
30 Civil Contingent Fund, leave may be granted in an excess
31 of a total cost of \$300,000.

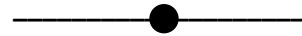
32 (b) Notwithstanding the provisions of this section to the
33 contrary, no person may be designated an essential member
34 of an emergency aid provider for purposes of this section, if
35 the person is employed by an emergency aid provider
36 located in or that customarily serves an area included within
37 the state of emergency.

38 (c) As used in this section:

39 (1) "Emergency aid provider" means a local
40 organization for emergency services as defined by section
41 two, article five, chapter fifteen of this code or a volunteer
42 fire department that is providing emergency services during
43 a state of emergency as a result of the circumstances that
44 resulted in the declaration of the state of emergency;

45 (2) "Essential member" means a person designated by
46 an emergency aid provider whose services are needed to
47 provide emergency services due to the circumstances that
48 resulted in the declaration of the state of emergency;

49 (3) “State of emergency” means the situation existing
 50 after the occurrence of a disaster or circumstance in which
 51 a state of emergency has been declared by the Governor or
 52 by the Legislature pursuant to the provisions of section six
 53 of this article or in which a major disaster declaration or
 54 emergency declaration has been issued by the President of
 55 the United States.



CHAPTER 213

**(Com. Sub. for H. B. 2889 - By Delegates Howell,
 Shott, Storch, Ward, Maynard, Ferro, Lynch and
 Criss)**

[Passed March 5, 2018; in effect ninety days from passage.]
 [Approved by the Governor on March 9, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
 by adding thereto a new section, designated §8-14-15a,
 relating to allowing military veterans with certain military
 ratings to qualify for examinations required of a probationary
 police officer.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 14. LAW AND ORDER; POLICE FORCE OR
 DEPARTMENTS; POWERS, AUTHORITY AND
 DUTIES OF LAW-ENFORCEMENT OFFICIALS AND
 POLICEMEN; POLICE MATRONS; SPECIAL
 SCHOOL ZONE AND PARKING LOT OR PARKING
 BUILDING POLICE OFFICERS; CIVIL SERVICE
 FOR CERTAIN POLICE DEPARTMENTS.**

**§8-14-15a. Veteran qualification for examinations required
 during probation period.**

1 (a) Any person who has served on active duty in the
 2 Armed Forces of the United States, was honorably

3 discharged from that service, and who has successfully
4 completed the course of instruction required to qualify him
5 or her for rating as a military police officer, law-
6 enforcement specialist or other equivalent rating in his or
7 her particular branch of the Armed Forces, may submit to
8 the Civil Service Commission a photostatic copy of the
9 certificate issued to him or her certifying successful
10 completion of such course of instruction and a photostatic
11 copy of his or her discharge from the Armed Forces. The
12 Civil Service Commission shall allow, upon request of the
13 veteran, that he or she be permitted to take any examinations
14 required during the probationary period without first having
15 to complete a training course for that subject: *Provided,*
16 That if the veteran does not pass the examination or
17 examinations, he or she may be subject to the same
18 reexamination requirements of persons who have not
19 applied under the provisions of this section.

20 (b) A veteran wishing to utilize the provisions of section
21 (a) must have first met the requirements contained in §8-14-
22 12 and §8-14-13 of this code.

23 (c) The veteran must successfully pass all examinations
24 and any other requirements of his or her probation period,
25 to be eligible for absolute appointment.



CHAPTER 214

**(Com. Sub. for H. B. 2916 - By Delegates Pethtel,
Hanshaw and Lovejoy)**

[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 §5-3-6 and to
amend and reenact §6-3-1a of said code all relating to

authorizing the carrying of firearms; authorizing investigators employed by the Attorney General to carry a concealed handgun while engaged in official duties; requiring such investigators to obtain and maintain a concealed handgun license; establishing training and recertification requirements; authorizing certain reserve deputy sheriffs to carry firearms; requiring written permission of the sheriff to carry a firearm while acting as a reserve deputy sheriff; authorizing the carrying of a firearm by on-duty reserve deputies only for purposes of defense of self or others, establishing qualifications to carry; specifying the training required for such persons to be eligible to carry a firearm; and allowing for reimbursement for the cost of the training.

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 3. ATTORNEY GENERAL.

**§5-3-6. Attorney General's investigators authority to carry
concealed weapon.**

1 (a) The Attorney General may allow, consistent with the
2 provisions of this section, an investigator to carry a
3 concealed firearm while performing his or her official
4 duties.

5 (b) An investigator employed by the Attorney General
6 may carry a concealed firearm approved by the Attorney
7 General solely for purposes of defense of self or others if
8 the investigator has:

9 (1) Obtained the written authorization by the Attorney
10 General;

11 (2) Been determined not to be prohibited from
12 possessing a firearm under state or federal law;

13 (3) Obtained and maintains a concealed handgun license
14 pursuant to §61-7-1 *et seq.* of this code; and

15 (4) Successfully completed a firearms training and
16 certification program equivalent to that provided to officers
17 attending the entry level law-enforcement certification
18 course provided at the West Virginia State Police Academy.
19 The investigator must thereafter successfully complete an
20 annual firearms qualification counsel equivalent to that
21 required of certified law-enforcement officers as established
22 by legislative rule. The Attorney General may reimburse the
23 investigator for the cost of the training and requalification.

24 (c) Neither the state, a political subdivision, an agency
25 nor an employee of the state acting in an official capacity,
26 may be held personally liable for an act of an investigator
27 employed by the Attorney General if the act or omission was
28 done in good faith while the investigator was performing
29 official duties or responsibilities under the office of the
30 Attorney General.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

§6-3-1a. Deputy sheriff's reserve; purpose; appointment and qualifications of members; duties; equipment; attire; training; oath; bond; not employee of sheriff or county commission for certain purposes; limitation on liability.

1 (a) The sheriff of any county may, for the purposes set
2 forth in this section, designate and appoint a deputy sheriff's
3 reserve, hereinafter referred to as "reserve" or "reserves." A
4 reserve may not be designated or created without the prior
5 approval of the county commission for the establishment of
6 the reserve.

7 (b) Each sheriff may appoint as members of the reserve
8 bona fide citizens of the county who are of good moral
9 character and who have not been convicted of a felony or
10 other crime involving moral turpitude. Any person
11 appointed shall serve at the will and pleasure of the sheriff
12 and is not subject to the provisions of §7-14-1 *et seq.* of this
13 code. A member of the reserve may not engage in any
14 political activity or campaign involving the office of sheriff
15 or from which activity or campaign the sheriff or candidates
16 for sheriff appointing the member would directly benefit.

17 (c) Members of the reserves shall not serve as law-
18 enforcement officers, nor carry firearms, except that a
19 member of the reserves may carry a firearm approved by the
20 sheriff while acting in the capacity as a reserve deputy
21 sheriff solely for purpose of defense of self or others, if that
22 member has:

23 (1) Obtained the written authorization of the sheriff;

24 (2) Been determined not to be prohibited from
25 possessing a firearm under state or federal law; and

26 (3) Successfully completed a firearms training and
27 certification program equivalent to that provided to officers
28 attending the entry level law-enforcement certification
29 course provided at the West Virginia State Police Academy.
30 The member must thereafter successfully complete an
31 annual firearms qualification course equivalent to that
32 required of certified law-enforcement officers as established
33 by legislative rule. The department may reimburse the
34 member for the cost of the training and requalification.

35 Members may carry other weapons, provided that the
36 sheriff certifies in writing to the county commission that the
37 reserve has met the special training requirements for the
38 weapon as established by the Governor's Committee on
39 Crime, Delinquency and Corrections. The Governor's
40 Committee on Crime, Delinquency and Corrections may
41 propose legislative rules for promulgation and emergency

42 rules pursuant to the provisions of §29A-3-1 *et seq.* of this
43 code to establish appropriate training standards. The
44 reserves may be provided with radio communication
45 equipment for the purpose of maintaining contact with the
46 sheriff's department or other law-enforcement agencies.
47 The duties of the reserves shall be limited to crowd control
48 or traffic control and direction within the county. In
49 addition, the reserves may perform any other duties of a
50 nonlaw-enforcement nature designated by the sheriff or by
51 a deputy sheriff designated and appointed by the sheriff for
52 that purpose: *Provided*, That a member of the reserves may
53 not aid or assist any law-enforcement officer in enforcing
54 the statutes and laws of this state in any labor trouble or
55 dispute between employer and employee.

56 (d) Members of the reserves may be uniformed;
57 however, if uniformed, the uniforms shall clearly
58 differentiate these members from other law-enforcement
59 deputy sheriffs.

60 (e) After appointment to the reserves, but prior to
61 service each member of the reserves shall receive
62 appropriate training and instruction in his or her functions
63 and authority as well as the limitations of authority. In
64 addition, each member of the reserves shall annually receive
65 in-service training.

66 (f) Each member of the reserve shall take the same oath
67 as prescribed by section five, article IV of the Constitution
68 of the State of West Virginia, but the taking of the oath does
69 not serve to make the member a public officer.

70 (g) The county commission of each county shall provide
71 for the bonding and liability insurance of each member of
72 the reserve.

73 (h) A member of the reserve is not an employee of either
74 the sheriff or of the county commission for any purpose or
75 purposes, including, but not limited to, the purposes of
76 workers' compensation, civil service, unemployment

77 compensation, public employees retirement, public employees
78 insurance, or for any other purpose. A member of the reserves
79 may not receive any compensation or pay for any services
80 performed as a member, nor may a member use the designated
81 uniform for any other similar work performed.

82 (i) Neither the county commission nor the sheriff is
83 liable for any of the acts of any member of the reserves
84 except in the case of gross negligence on the part of the
85 county commission or sheriff in the appointment of the
86 member or in the case of gross negligence on the part of
87 either the sheriff or any of his or her deputies in directing
88 any action on the part of the member.

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CHAPTER 215

**(Com. Sub. for H. B. 4138 - By Delegates Byrd,
Fluharty, Lane, R. Miller, Phillips, Fleischauer,
Moore, Lovejoy, Blair, Canestraro and Robinson)**

[Passed March 2, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §29-3-16a of the Code of West Virginia, 1931, as amended, relating to requiring each public or private school and daycare center that uses a fuel-burning heating system or other fuel-burning heating device that emits combustion gases to install carbon monoxide detectors in certain locations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.

1 (a) An operational smoke detector shall be installed in
2 the immediate vicinity of each sleeping area within all one-
3 and two-family dwellings, including any “manufactured
4 home” as that term is defined in §21-9-2(j) of this code. The
5 smoke detector shall be capable of sensing visible or
6 invisible particles of combustion and shall meet the
7 specifications and be installed as provided in the current
8 edition of the National Fire Protection Association Standard
9 72, “Standard for the Installation, Maintenance, and Use of
10 Household Fire Warning Equipment” and in the
11 manufacturer’s specifications. When activated, the smoke
12 detector shall provide an alarm suitable to warn the
13 occupants of the danger of fire.

14 (b) The owner of each dwelling described in subsection
15 (a) of this section shall provide, install, and replace the
16 operational smoke detectors required by this section. To
17 assure that the smoke detector continues to be operational,
18 in each dwelling described in subsection (a) of this section
19 which is not occupied by the owner of the dwelling, the
20 tenant in any dwelling shall perform routine maintenance on
21 the smoke detectors within the dwelling.

22 (c) Where a dwelling is not occupied by the owner and
23 is occupied by an individual who is deaf or hearing
24 impaired, the owner shall, upon written request by or on
25 behalf of the individual, provide and install a smoke
26 detector with a light signal sufficient to warn the deaf or
27 hearing-impaired individual of the danger of fire.

28 (d) An automatic fire sprinkler system installed in
29 accordance with the current edition of the National Fire
30 Protection Association Standard 13D, “Standard for the
31 Installation of Sprinkler Systems in Residential
32 Occupancies” may be provided in lieu of smoke detectors.

33 (e) After investigating a fire in any dwelling described in
34 subsection (a) of this section, the local investigating authority
35 shall issue to the owner a smoke detector installation order in
36 the absence of the required smoke detectors.

37 (f) An operational single station carbon monoxide
38 detector with a suitable alarm or a combination smoke
39 detector and carbon monoxide detector, which shall be
40 alternating current (AC) powered, either plugged directly in
41 to an electrical outlet that is not controlled by a switch or
42 hardwired into an alternating current (AC) electrical source,
43 with battery backup, shall be installed, maintained, tested,
44 repaired, or replaced, if necessary, in accordance with the
45 manufacturer's direction:

46 (1) In any newly constructed residential unit which has
47 a fuel-burning heating or cooking source including, but not
48 limited to, an oil or gas furnace or stove;

49 (2) In any residential unit which is connected to a newly
50 constructed building, including, but not limited to, a garage,
51 storage shed, or barn, which has a fuel-burning heating or
52 cooking source, including, but not limited to, an oil or gas
53 furnace or stove;

54 (3) Effective September 1, 2012, in either a common
55 area where the general public has access or all rooms in
56 which a person will be sleeping that are adjoining to and
57 directly below and above all areas or rooms that contain
58 permanently installed fuel-burning appliances and
59 equipment that emit carbon monoxide as a byproduct of
60 combustion located within all apartment buildings, boarding
61 houses, dormitories, long-term care facilities, adult or child
62 care facilities, assisted living facilities, one- and two-family
63 dwellings intended to be rented or leased, hotels and motels.

64 (g) Effective January 1, 2013, all single station carbon
65 monoxide detectors with a suitable alarm or a combination
66 smoke detector and carbon monoxide detectors shall be
67 hardwired into an alternating current (AC) electrical source,
68 with battery backup, when installed in all newly constructed
69 apartment buildings, boarding houses, dormitories,
70 hospitals, long-term care facilities, adult or child care
71 facilities, assisted living facilities, one- and two-family
72 dwellings intended to be rented or leased, hotels and motels.

73 (h) In any long-term care facility that is staffed on a
74 twenty-four hour, seven day a week basis, the single station
75 carbon monoxide detector with a suitable alarm or a
76 combination smoke detector and carbon monoxide detector
77 is only required to be installed in an area of the facility that
78 permits the detector to be audible to the staff on duty.

79 (i) Effective January 1, 2019, carbon monoxide
80 detectors shall be installed in every public or private school
81 or daycare facility that uses a fuel-burning heating system
82 or other fuel-burning device that produces combustion
83 gases. A carbon monoxide detector shall be located in each
84 area with a fuel-burning heating system or other fuel-
85 burning device that produces combustion gases.

86 (j) Any person installing a carbon monoxide detector in
87 a residential unit shall inform the owner, lessor, or the
88 occupant or occupants of the residential unit of the dangers
89 of carbon monoxide poisoning and instructions on the
90 operation of the installed carbon monoxide detector.

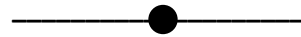
91 (k) When repair or maintenance work is undertaken on a
92 fuel-burning heating or cooking source or a venting system in
93 an existing residential unit, the person making the repair or
94 performing the maintenance shall inform the owner, lessor, or
95 the occupant or occupants of the unit being served by the fuel-
96 burning heating or cooking source or venting system of the
97 dangers of carbon monoxide poisoning and recommend the
98 installation of a carbon monoxide detector.

99 (l) Any person who violates any provision of this section
100 is guilty of a misdemeanor and, upon conviction thereof, for
101 a first offense, shall be fined \$250. For a second offense, the
102 person is guilty of a misdemeanor and, upon conviction
103 thereof, shall be fined \$750. For a third and subsequent
104 offenses, the person is guilty of a misdemeanor and, upon
105 conviction thereof, shall be fined \$2000.

106 (m) A violation of this section may not be considered to
107 constitute evidence of negligence or contributory
108 negligence or comparative negligence in any civil action or
109 proceeding for damages.

110 (n) A violation of this section may not constitute a
111 defense in any civil action or proceeding involving any
112 insurance policy.

113 (o) Nothing in this section shall be construed to limit the
114 rights of any political subdivision in this state to enact laws
115 imposing upon owners of any dwelling or other building
116 described in subsection (a) or (f) of this section a greater
117 duty with regard to the installation, repair, and replacement
118 of the smoke detectors or carbon monoxide detectors than is
119 required by this section.



CHAPTER 216

**(Com. Sub. for H. B. 4169 - By Delegates Barrett,
Shott, Overington, Moore, Kessinger, Lane, Queen,
Upton, Lovejoy, Canestraro and R. Miller)**

[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 §15-9A-4, relating to requiring certain businesses and establishments to post human trafficking assistance notices; establishing where notices must be posted and contents of notice; requiring the Director of the Division of Justice and Community Services to provide certain resources for giving notice on the Division's website; authorizing certain state and local agents to give notice of violations; providing for criminal penalties for failure to comply with posting of notices once given notice of lawful duty to post; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.**§15-9A-4. Human Trafficking Assistance Notices.**

1 (a) For the purpose of assisting victims of human
2 trafficking to obtain help and services, the following
3 businesses and establishments shall post a notice meeting
4 the requirements of this section:

5 (1) All locations licensed by the Alcohol Beverage
6 Control Commission to allow consumption of alcoholic
7 beverages, pursuant to chapter 60 of this code;

8 (2) Exotic entertainment facilities, as defined by §60-4-
9 23 of this code;

10 (3) Primary airports;

11 (4) Passenger rail stations;

12 (5) Bus stations;

13 (6) Locations where gasoline and diesel fuel are sold;

14 (7) Emergency departments within hospitals;

15 (8) Urgent care centers;

16 (9) Locations at which farm labor contractors and day
17 haulers work, if a physical facility is available at those
18 locations upon or in which notice can be posted;

19 (10) Privately operated job recruitment centers;

20 (11) Rest areas located along interstate highways in this
21 state, operated by the Division of Highways;

22 (12) Hotels; and

23 (13) Any other business or establishment that the
24 director determines, by legislative rule, is an effective
25 location to provide notice to victims of human trafficking.

26 (b) *Requirements for posting of notice.* – The notice
27 required by this section must be posted in English, Spanish,
28 and any other language determined by legislative rule by the
29 director. The notice must be posted in each public restroom for
30 the business or establishment, and either in a conspicuous
31 place near the public entrance of the business or establishment
32 or in another location in clear view of the public and
33 employees, where similar notices are customarily posted.

34 (c) The director shall provide hyperlinks on the division’s
35 website to downloadable posters that are eight and one-half
36 inches by 11 inches in size that provide information regarding
37 the National Human Trafficking Resource Center and display
38 the telephone number for the National Human Trafficking
39 Resource Center hotline. These downloadable posters must be
40 available in English, Spanish, and any other language
41 determined by legislative rule by the director. These
42 downloadable posters, if printed and posted, will satisfy the
43 posting requirements of this section.

44 (d) Any law-enforcement officer, representative of the
45 state health department or of a county health department,
46 representative of the State Alcoholic Beverage Control
47 Commission, representative of the Division of Labor, or
48 other state representative inspecting a business or
49 establishment or otherwise lawfully acting under his or her
50 state authority, may notify, in writing, any business or
51 establishment that it has failed to comply with the
52 requirements of this section. If the business or establishment
53 does not correct the violation within 30 days from the date
54 of receipt of such written notice, the owner shall be charged
55 with a violation of this section and upon conviction, is guilty
56 of a misdemeanor offense and may be punished by a fine of
57 not more than \$250. Upon a second or subsequent
58 conviction, the owner is guilty of a misdemeanor and shall
59 be punished by a fine of not more than \$500. The notice
60 required by this subsection must be delivered to the
61 noncomplying business or establishment by certified mail,
62 with return receipt requested.

63 (e) For the purposes of this section, and unless a
64 different meaning is plainly required:

65 (1) “Day hauler” means any person who is employed by
66 a farm labor contractor to transport, or who, for a fee,
67 transports, by motor vehicle, workers to render personal
68 services in connection with the production of any farm
69 products to, for, or under the direction of a third person;
70 *Provided*, That such term shall not include a person engaged
71 in the production of agricultural products;

72 (2) “Farm labor contractor” means any person who, for
73 a fee, employs workers to render

74 personal services in connection with the production of
75 any farm products to, for, or under the direction of a third
76 person, or who recruits, solicits, supplies, or hires workers
77 on behalf of an employer engaged in the growing or
78 producing of farm products, and who, for a fee, provides in
79 connection therewith one or more of the following services:
80 furnishes board, lodging, or transportation for those
81 workers; supervises, times, checks, counts, weighs, or
82 otherwise directs or measures their work; or disburses wage
83 payments to such persons: *Provided*, That such term shall
84 not include a person engaged in the production of
85 agricultural products;

86 (3) “Hospital” shall have the same meaning as set forth
87 in §16-2D-2(21) of this code.

88 (4) “Hotel” means any establishment which offers
89 overnight accommodations to the public in exchange for a
90 monetary payment;

91 (5) “Primary airport” shall have the same meaning as set
92 forth in 49 U.S.C. § 47102(16); and

93 (6) “Production of agricultural products” means raising,
94 growing, harvesting, or storing of crops; feeding, breeding,
95 or managing livestock, equine, or poultry; producing or
96 storing feed for use in the production of livestock.

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CHAPTER 217

**(Com. Sub. for H. B. 4275 - By Delegates Shott,
Hanshaw and Cowles)**

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

AN ACT to amend and reenact §15-2D-2 and §15-2D-3 of the Code of West Virginia, 1931, as amended, relating to the law-enforcement authority of the director and officers of the division of protective services; exempting certain safety and security information from disclosure under the West Virginia Freedom of Information Act; and clarifying that agencies installing electronic security systems designed to connect with the division's command center must be approved prior to installation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-2. Division established; purpose; appointment and qualifications of director.

1 (a) The state facilities protection division within the
2 Department of Military Affairs and Public Safety shall
3 hereafter be designated the Division of Protective Services.
4 The purpose of the division is to provide safety and security
5 at the capitol complex and other state facilities: *Provided,*
6 That nothing in this section shall be construed as limiting
7 the law-enforcement authority of the division set forth in
8 §15-2d-3 of this code.

9 (b) The Governor shall appoint, with the advice and
10 consent of the Senate, the director of the division whose
11 qualifications shall include at least 10 years of service as a

12 law-enforcement officer with at least three years in a
13 supervisory law-enforcement position, the successful
14 completion of supervisory and management training, and
15 the professional training required for police officers at the
16 West Virginia state police academy or an equivalent
17 professional law-enforcement training at another state,
18 federal or United States Military institution.

§15-2D-3. Duties and powers of the director and officers.

1 (a) The director is responsible for the control and
2 supervision of the division. The director and any officer of
3 the division specified by the director may carry designated
4 weapons and have the same powers of arrest and law
5 enforcement in Kanawha County as members of the West
6 Virginia State Police as set forth in §15-2-12(b) and §15-2-
7 12(d) of this code. The director and designated officers shall
8 also have such powers throughout the State of West Virginia
9 in investigating and performing law-enforcement duties for
10 offenses committed on the Capitol Complex or related to the
11 division's security and protection duties at the Capitol
12 Complex and throughout the state relating to offenses and
13 activities occurring on any property owned, leased or
14 operated by the State of West Virginia when undertaken at
15 the request of the agency occupying the property: *Provided,*
16 That nothing in this article shall be construed as to obligate
17 the director or the division to provide or be responsible for
18 providing security at state facilities outside the Capitol
19 Complex.

20 (b) Any officer of the division shall be certified as a law-
21 enforcement officer by the Governor's Committee on
22 Crime, Delinquency and Correction or may be conditionally
23 employed as a law-enforcement officer until certified in
24 accordance with the provisions of §30-29-5 of this code.

25 (c) The director may:

26 (1) Employ necessary personnel, all of whom shall be
27 classified exempt, assign them the duties necessary for the

28 efficient management and operation of the division and
29 specify members who may carry, without license, weapons
30 designated by the director;

31 (2) Contract for security and other services;

32 (3) Purchase equipment as necessary to maintain
33 security at the Capitol Complex and other state facilities as
34 may be determined by the Secretary of the Department of
35 Military Affairs and Public Safety;

36 (4) Establish and provide standard uniforms, arms,
37 weapons and other enforcement equipment authorized for
38 use by members of the division and shall provide for the
39 periodic inspection of the uniforms and equipment. All
40 uniforms, arms, weapons and other property furnished to
41 members of the division by the State of West Virginia is and
42 remains the property of the state;

43 (5) Appoint security officers to provide security on
44 premises owned or leased by the State of West Virginia;

45 (6) Upon request by the Superintendent of the West
46 Virginia State Police, provide security for the Speaker of the
47 West Virginia House of Delegates, the President of the West
48 Virginia Senate, the Governor or a justice of the West
49 Virginia Supreme Court of Appeals;

50 (7) Gather information from a broad base of employees
51 at and visitors to the Capitol Complex to determine their
52 security needs and develop a comprehensive plan to
53 maintain and improve security at the Capitol Complex
54 based upon those needs; and

55 (8) Assess safety and security needs and make
56 recommendations for safety and security at any proposed or
57 existing state facility as determined by the Secretary of the
58 Department of Military Affairs and Public Safety, upon
59 request of the secretary of the department to which the
60 facility is or will be assigned: *Provided*, That records of
61 such assessments, and any other records determined by the

62 Secretary of the Department of Military Affairs and Public
63 Safety to compromise the safety and security at any
64 proposed or existing state facility, are not public records and
65 are not subject to disclosure in response to a Freedom of
66 Information Act request under §29B-1-1 *et seq.* of this code.

67 (d) The director shall:

68 (1) On or before July 1, 1999, propose legislative rules
69 for promulgation in accordance with the provisions of
70 §29A-3-1 of this code. The rules shall, at a minimum,
71 establish ranks and the duties of officers within the
72 membership of the division.

73 (2) On or before July 1, 1999, enter into an interagency
74 agreement with the Secretary of the Department of Military
75 Affairs and Public Safety and the Secretary of the
76 Department of Administration, which delineates their
77 respective rights and authorities under any contracts or
78 subcontracts for security personnel. A copy of the
79 interagency agreement shall be delivered to the Governor,
80 the President of the West Virginia Senate and the Speaker
81 of the West Virginia House of Delegates and a copy shall
82 be filed in the office of the Secretary of State and shall be a
83 public record.

84 (3) Deliver a monthly status report to the Speaker of the
85 West Virginia House of Delegates and the President of the
86 West Virginia Senate.

87 (4) Require any service provider whose employees are
88 regularly employed on the grounds or in the buildings of the
89 Capitol Complex, or who have access to sensitive or critical
90 information, to have its employees submit to a fingerprint-
91 based state and federal background inquiry through the state
92 repository, and require a new employee who is employed to
93 provide services on the grounds or in the building of the
94 Capitol Complex to submit to an employment eligibility
95 check through E-verify.

96 (i) After the contract for such services has been
97 approved, but before any such employees are permitted to
98 be on the grounds or in the buildings of the Capitol Complex
99 or have access to sensitive or critical information, the
100 service provider shall submit a list of all persons who will
101 be physically present and working at the Capitol Complex
102 for purposes of verifying compliance with this section.

103 (ii) All current service providers shall, within ninety
104 days of the amendment and reenactment of this section by
105 the eightieth Legislature, ensure that all of its employees
106 who are providing services on the grounds or in the
107 buildings of the Capitol Complex or who have access to
108 sensitive or critical information submit to a fingerprint-
109 based state and federal background inquiry through the state
110 repository.

111 (iii) Any contract entered into, amended or renewed by
112 an agency or entity of state government with a service
113 provider shall contain a provision reserving the right to
114 prohibit specific employees thereof from accessing
115 sensitive or critical information or to be present at the
116 Capitol Complex based upon results addressed from a
117 criminal background check.

118 (iv) For purposes of this section, the term “service
119 provider” means any person or company that provides
120 employees to a state agency or entity of state government to
121 work on the grounds or in the buildings that make-up the
122 Capitol Complex or who have access to sensitive or critical
123 information.

124 (v) In accordance with the provisions of Public Law 92-
125 544 the criminal background check information will be
126 released to the Director of the Division of Protective
127 Services; and

128 (5) Be required to provide his or her approval prior to
129 the installation of any and all electronic security systems

130 purchased by any state agency which are designed to
131 connect to the division's command center.

132 (e) Effective July 1, 2017, the Director of Security and
133 security officers of the Division of Culture and History shall
134 be made part of, and be under the supervision and direction
135 of the Division of Protective Services. Security for all
136 Capitol Complex properties of the Division of Culture and
137 History shall be the responsibility of the Division of
138 Protective Services.

CHAPTER 218

**(H. B. 4462 - By Delegates Byrd, Hollen, Folk, Criss,
Robinson, Phillips, Dean, Kelly, Westfall, Canestraro
and Summers)**

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

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

AN ACT to amend and reenact §15-2-18 of the Code of West Virginia, 1931, as amended, relating to allowing off duty members and officers of the State Police to contract to work for a private person or entity during off duty hours as long as the type of the contract work does not violate State Police rules as to location or nature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-18. Officers or members failure to perform duties; general penalty; providing extraordinary police or security services by contract.

1 (a) Any officer or member of the State Police who
2 demands or receives from any person, firm or corporation

3 any money or other thing of value as a consideration for the
4 performance of, or the failure to perform, his or her duties
5 under the rules of the superintendent and the provisions of
6 this article, is guilty of a felony, and, upon conviction
7 thereof, shall be imprisoned in a correctional facility for not
8 less than one nor more than five years, and any such officer
9 or member of the State Police who violates any other
10 provisions of this article, for which no other penalty is
11 expressly provided, is guilty of a misdemeanor, and, upon
12 conviction thereof, shall be fined not less than \$25 nor more
13 than \$200, or confined in jail for not more than four months,
14 or both fined and confined.

15 (b) Notwithstanding any other provision of this article to
16 the contrary, the superintendent may contract with public,
17 quasi-public, military, or private entities to provide
18 extraordinary police or security services by the State Police
19 when it is determined by the superintendent to be in the public
20 interest. The superintendent shall assign the personnel,
21 equipment, or facilities he or she considers necessary and the
22 State Police shall be reimbursed for the wages, overtime
23 wages, benefits, and costs of providing the contract services as
24 negotiated between the parties. The compensation paid to State
25 Police personnel by virtue of contracts provided for in this
26 section shall be paid from a special account and shall be
27 excluded from any formulation used to calculate an
28 employee's benefits. All requests for obtaining extraordinary
29 police or security services shall be made to the superintendent
30 in writing and shall explain the funding source and the
31 authority for making the request. An officer or member of the
32 State Police may not be required to accept any assignment
33 made pursuant to this subsection. Every officer or member
34 assigned to duty under this section shall be paid according to
35 the hours and overtime hours actually worked notwithstanding
36 that officer's or member's status as exempt personnel under
37 the Federal Labor Standards Act or applicable state statutes.
38 Every contract entered into under this subsection shall contain
39 the provision that in the event of public disaster or emergency
40 where the reassignment to official duty of all officers and

41 members is required, neither the State Police nor any of its
42 officers or members are liable for any damages incurred as the
43 result of the reassignment. Further, any entity contracting with
44 the State Police, an officer, or member under this section shall
45 also agree as part of that contract to hold harmless and
46 indemnify the state, State Police and its personnel from any
47 liability arising out of employment under the contract. The
48 superintendent may propose legislative rules for promulgation
49 in accordance with §29A-3-1 *et seq.* of this code, relating to
50 the implementation of any contracts made under this
51 subsection: *Provided*, That the rules shall expressly prohibit
52 private employment of officers or members in circumstances
53 involving labor disputes. Notwithstanding any provision of
54 this article to the contrary, an officer or member may contract
55 to work for a private person or entity during his or her off duty
56 hours: *Provided, however*, That the contract work may not be
57 a type prohibited by this code or the rules of the State Police
58 on the locations and the nature of services provided.



CHAPTER 219

**(Com. Sub. for S. B. 10 - By Senators Sypolt,
Clements, Rucker, Smith, Maroney, Cline and
Gauch)**

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

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

AN ACT to amend and reenact §8-19-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §8-19-2a and §8-19-2b; to amend and reenact §16-13A-9 of said code; and to amend and reenact §24-2-1, §24-2-2, §24-2-3, and §24-2-4b of said code, all relating generally to the jurisdiction of the Public Service Commission; excluding the setting and adjustment of

rates, fees, and charges of municipal power systems from the jurisdiction of the Public Service Commission; providing for a right of appeal by customers; providing public service districts may accept payments for all fees and charges due by credit or check card; providing procedures and guidance for utilization of this method of payment; and clarifying the commission's jurisdiction as modified by chapters 161 and 209, Acts of the Legislature, regular session, 2017, over Internet protocol-enabled service, voice-over Internet protocol-enabled service, stormwater services by a public service district, political subdivisions providing separate or combined water and/or sewer services, and certain telephone company transactions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART II. LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS.

§8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges.

1 (a) For the purposes of this section:

2 (1) "Contract" means an agreement entered into by a
3 municipality with any other party for the purchase of
4 electric output, capacity, or energy from a project as defined
5 herein;

6 (2) "Any other party" means any other legal entity,
7 including, but not limited to, another municipality, political
8 subdivision, public authority, agency, or instrumentality of
9 any state or the United States, a partnership, a limited
10 partnership, a limited liability company, a corporation, an

11 electric cooperative or an investor-owned utility existing
12 under the laws of any state; and

13 (3) "Project" or "projects" means systems or facilities
14 owned by another party and used for the generation,
15 transmission, transformation, or supply of electric power, or
16 any interest in them, whether an undivided interest as a
17 tenant in common or otherwise, or any right to the output,
18 capacity, or services thereof.

19 (b) In addition to the general authority to purchase
20 electricity on a wholesale basis for resale to its customers,
21 any municipality that owns and operates an electric power
22 system under the provisions of this article may enter into a
23 contract with any other party for the purchase of electricity
24 from one or more projects located in the United States that
25 provides that the contracting municipality is obligated to
26 make payments required by the contract whether or not a
27 project is completed, operable, or operating and
28 notwithstanding the suspension, interruption, interference,
29 reduction, or curtailment of the output of a project or the
30 power and energy contracted for, and that the payments
31 shall not be subject to any reduction, whether by offset or
32 otherwise, and shall not be conditioned upon performance
33 or nonperformance by any other party. The contract may
34 provide that, in the event of a default by the municipality or
35 any other party to the contract in the performance of each
36 entity's obligations under the contract, any nondefaulting
37 municipality or any other party to the contract shall on a pro
38 rata basis succeed to the rights and interests of, and assume
39 the obligations of, the defaulting party.

40 (c) Notwithstanding any other provisions of law,
41 ordinance or charter provision to the contrary, a contract
42 under §8-19-2(b) of this code may extend for more than 50
43 years or 50 years from the date a project is estimated to be
44 placed into normal continuous operation and the execution
45 and effectiveness of the contract is not subject to any
46 authorizations or approvals by the state or any agency,

47 commission, instrumentality, or political subdivision
48 thereof except as otherwise specifically required by law.

49 (d) A contract under §8-19-2(b) of this code may
50 provide that payments by the municipality are made solely
51 from and may be secured by a pledge of and lien upon
52 revenues derived by the municipality from ownership and
53 operation and that payments shall constitute an operating
54 expense of the electric power system. No obligation under
55 the contract shall constitute a legal or equitable pledge,
56 charge, lien, or encumbrance upon any property of the
57 municipality or upon any of its income, receipts, or
58 revenues, except the revenues of the municipality's electric
59 power system. Neither the faith and credit nor the taxing
60 power of the municipality shall be pledged for the payment
61 of any obligation under the contract.

62 (e) A municipality contracting under the provisions of
63 §8-19-2(b) of this code is obligated to fix, charge, and
64 collect rents, rates, fees, and charges for electric power and
65 energy and other services it sells, furnishes, or supplies
66 through its electric power system in an amount sufficient to
67 provide revenues adequate to meet its obligations under the
68 contract and to pay any and all other amounts payable from
69 or constituting a charge and lien upon the revenues,
70 including the amounts necessary to pay the principal and
71 interest on any municipal bonds issued related to its electric
72 power system: *Provided*, That any change in the rates and
73 charges of the municipality to the customers of the electric
74 power system under the provisions of this section are
75 subject to the provisions and requirements of §8-19-2a of
76 this code and the obligations of the municipality under the
77 contract are costs of providing electric service within the
78 meaning of that section.

§8-19-2a. Procedure for changing rates of municipal electric power systems; legislative findings.

1 All rates, fees, and charges set by municipal electric
2 power systems shall be just, reasonable, applied without

3 unjust discrimination between or preference for any
4 customer or class of customer, and based primarily on the
5 costs of providing these services. All rates and charges shall
6 be based upon the measured or reasonably estimated cost of
7 service and the equitable sharing of those costs between
8 customers based upon the cost of providing the service
9 received by the customer, including a reasonable slant-in-
10 service depreciation expense. The rates and charges shall be
11 adopted by the power system's governing board by
12 municipal ordinance to be effective not sooner than 45 days
13 after adoption. The 45-day waiting period may be waived
14 by public vote of the governing body if that body finds and
15 declares the public utility that is a political subdivision of
16 the state to be in financial distress, such that the 45-day
17 waiting period would be detrimental to the ability of the
18 utility to deliver continued and compliant public services:
19 *Provided*, That notice of intent to effect a rate change shall
20 be specified on the monthly billing statement of the
21 customers of the utility for the month next preceding the
22 month in which the rate change is to become effective, and
23 the governing body shall give its customers other reasonable
24 notices as will allow filing of timely objections to the
25 proposed rate change and full participation in municipal rate
26 legislation through the provision of a public forum in which
27 customers may comment upon the proposed rate change
28 prior to an enactment vote. Notwithstanding the exclusion
29 of municipal power systems' rates, fees, charges, and rate-
30 making process from the jurisdiction of the Public Service
31 Commission, municipal power systems shall submit
32 information regarding their rates, fees, and charges to the
33 commission as set forth in §24-2-9 of this code.

§8-19-2b. Right of appeal by customers.

1 Customers may appeal a rate increase to the circuit court
2 of the county in which the municipality is located on the
3 grounds that the rate ordinance or its passage does not
4 comply with the provisions of this article by filing a petition,
5 signed by at least 750 customers or 25 percent of the
6 customers served by the municipal electric utility,

7 whichever is fewer. Any petition challenging the ordinance
8 must be filed within 30 days following the adoption of the
9 rate ordinance.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

1 (a) (1) The board may make, enact, and enforce all
2 needful rules in connection with the acquisition,
3 construction, improvement, extension, management,
4 maintenance, operation, care, protection, and the use of any
5 public service properties owned or controlled by the district.
6 The board shall establish, in accordance with this article,
7 rates, fees, and charges for the services and facilities it
8 furnishes, which shall be sufficient at all times,
9 notwithstanding the provisions of any other law or laws, to
10 pay the cost of maintenance, operation, and depreciation of
11 the public service properties and principal of and interest on
12 all bonds issued, other obligations incurred under the
13 provisions of this article, and all reserve or other payments
14 provided for in the proceedings which authorized the
15 issuance of any bonds under this article. The schedule of the
16 rates, fees, and charges may be based upon:

17 (A) The consumption of water or gas on premises
18 connected with the facilities, taking into consideration
19 domestic, commercial, industrial, and public use of water
20 and gas;

21 (B) The number and kind of fixtures connected with the
22 facilities located on the various premises;

23 (C) The number of persons served by the facilities;

24 (D) Any combination of §16-13A-9(a)(1)(A), §16-13A-
25 9(a)(1)(B), and §16-13A-9(a)(1)(C) of this code; or

26 (E) Any other basis or classification which the board
27 may determine to be fair and reasonable, taking into
28 consideration the location of the premises served and the
29 nature and extent of the services and facilities furnished.
30 However, no rates, fees or charges for stormwater services
31 may be assessed against highways, road, and drainage
32 easements or stormwater facilities constructed, owned, or
33 operated by the West Virginia Division of Highways.

34 (2) The board of a public service district with at least
35 4,500 customers and annual combined gross revenue of \$3
36 million or more from its separate or combined water and
37 sewer services may make, enact, and enforce all needful
38 rules in connection with the enactment or amendment of
39 rates, fees, and charges of the district. At a minimum, these
40 rules shall provide for:

41 (A) Adequate prior public notice of the contemplated
42 rates, fees, and charges by causing a notice of intent to effect
43 such a change to be provided to the customers of the district
44 for the month immediately preceding the month in which
45 the contemplated change is to be considered at a hearing by
46 the board. Such notice shall include a statement that a
47 change in rates, fees, and charges is being considered, the
48 time, date, and location of the hearing of the board at which
49 the change will be considered and that the proposed rates,
50 fees, and charges are on file at the office of the district for
51 review during regular business hours. Such notice shall be
52 printed on, or mailed with, the monthly billing statement, or
53 provided in a separate mailing.

54 (B) Adequate prior public notice of the contemplated
55 rates, fees, and charges by causing to be published, after the
56 first reading and approval of a resolution of the board
57 considering such revised rates, fees, and charges but not less
58 than one week prior to the public hearing of the board on
59 such resolution, as a Class I legal advertisement, of the
60 proposed action, in compliance with the provisions of §59-
61 3-1 *et seq.* of this code. The publication area for publication
62 shall be all territory served by the district. If the district

63 provides service in more than one county, publication shall
64 be made in a newspaper of general circulation in each
65 county that the district provides service.

66 (C) The public notice of the proposed action shall
67 summarize the current rates, fees, and charges and the
68 proposed changes to said rates, fees, and charges; the date,
69 time, and place of the public hearing on the resolution
70 approving such revised rates, fees, and charges and the place
71 or places within the district where the proposed resolution
72 approving the revised rates, fees, and charges may be
73 inspected by the public. A reasonable number of copies of
74 the proposed resolution shall be kept at the place or places
75 and be made available for public inspection. The notice
76 shall also advise that interested parties may appear at the
77 public hearing before the board and be heard with respect to
78 the proposed revised rates, fees and charges.

79 (D) The resolution proposing the revised rates, fees, and
80 charges shall be read at two meetings of the board with at
81 least two weeks intervening between each meeting. The
82 public hearing may be conducted by the board prior to, or
83 at, the meeting at which the resolution is considered for
84 adoption on the second reading.

85 (E) Rates, fees, and charges approved by resolution of
86 the board shall be forwarded in writing to the county
87 commission with the authority to appoint the members of
88 the board. The county commission shall publish notice of
89 the proposed revised rates, fees, and charges by a Class I
90 legal advertisement in compliance with the provisions of
91 §59-3-1 *et seq.* of this code. Within 45 days of receipt of the
92 proposed rates, fees, and charges, the county commission
93 shall take action to approve, modify, or reject the proposed
94 rates, fees, and charges, in its sole discretion. If, after 45
95 days, the county commission has not taken final action to
96 approve, modify, or reject the proposed rates, fees and
97 charges, as presented to the county commission, shall be
98 effective with no further action by the board or county
99 commission. In any event, this 45-day period shall be

100 mandatory unless extended by the official action of both the
101 board proposing the rates, fees, and charges, and the
102 appointing county commission.

103 (F) Enactment of the proposed or modified rates, fees,
104 and charges shall follow an affirmative vote by the county
105 commission and shall be effective no sooner than 45 days
106 following action. The 45-day waiting period may be waived
107 by public vote of the county commission only if the
108 commission finds and declares the district to be in financial
109 distress such that the 45-day waiting period would be
110 detrimental to the ability of the district to deliver continued
111 and compliant public services.

112 (G) The public service district, or a customer aggrieved
113 by the changed rates or charges who presents to the circuit
114 court a petition signed by at least 750 customers or 25
115 percent of the customers served by the public service
116 district, whichever is fewer, when dissatisfied by the
117 approval, modification, or rejection by the county
118 commission of the proposed rates, fees, and charges under
119 the provisions of this subdivision may file a complaint
120 regarding the rates, fees, and charges resulting from the
121 action of, or failure to act by, the county commission in the
122 circuit court of the county in which the county commission
123 sits: *Provided*, That any complaint or petition filed
124 hereunder shall be filed within 30 days of the county
125 commission's final action approving, modifying, or
126 rejecting such rates, fees and charges, or the expiration of
127 the 45-day period from the receipt by the county
128 commission, in writing, of the rates, fees, and charges
129 approved by resolution of the board, without final action by
130 the county commission to approve, modify, or reject such
131 rates, fees, and charges, and the circuit court shall resolve
132 said complaint: *Provided, however*, That the rates, fees, and
133 charges so fixed by the county commission, or those
134 adopted by the district upon which the county commission
135 failed to act, shall remain in full force and effect, until set

136 aside, altered, or amended by the circuit court in an order to
137 be followed in the future.

138 (3) Where water, sewer, stormwater, or gas services, or
139 any combination thereof, are all furnished to any premises,
140 the schedule of charges may be billed as a single amount for
141 the aggregate of the charges. The board shall require all
142 users of services and facilities furnished by the district to
143 designate on every application for service whether the
144 applicant is a tenant or an owner of the premises to be
145 served. If the applicant is a tenant, he or she shall state the
146 name and address of the owner or owners of the premises to
147 be served by the district. Notwithstanding the provisions of
148 §24-3-8 of this code to the contrary, all new applicants for
149 service shall deposit the greater of a sum equal to two
150 twelfths of the average annual usage of the applicant's
151 specific customer class or \$50 with the district to secure the
152 payment of service rates, fees, and charges in the event they
153 become delinquent as provided in this section. If a district
154 provides both water and sewer service, all new applicants
155 for service shall deposit the greater of a sum equal to two
156 twelfths of the average annual usage for water service or \$50
157 and the greater of a sum equal to two twelfths of the average
158 annual usage for wastewater service of the applicant's
159 specific customer class or \$50. In any case where a deposit
160 is forfeited to pay service rates, fees, and charges which
161 were delinquent at the time of disconnection or termination
162 of service, no reconnection or reinstatement of service may
163 be made by the district until another deposit equal to the
164 greater of a sum equal to two twelfths of the average usage
165 for the applicant's specific customer class or \$50 has been
166 remitted to the district. After 12 months of prompt payment
167 history, the district shall return the deposit to the customer
168 or credit the customer's account at a rate as the Public
169 Service Commission may prescribe: *Provided*, That where
170 the customer is a tenant, the district is not required to return
171 the deposit until the time the tenant discontinues service
172 with the district. Whenever any rates, fees, rentals, or
173 charges for services or facilities furnished remain unpaid for

174 a period of 20 days after the same become due and payable,
175 the user of the services and facilities provided is delinquent
176 and the user is liable at law until all rates, fees, and charges
177 are fully paid. The board may, under reasonable rules
178 promulgated by the Public Service Commission, shut off
179 and discontinue water or gas services to all delinquent users
180 of either water or gas facilities, or both, 10 days after the
181 water or gas services become delinquent: *Provided,*
182 *however,* That nothing contained within the rules of the
183 Public Service Commission shall be deemed to require any
184 agents or employees of the board to accept payment at the
185 customer's premises in lieu of discontinuing service for a
186 delinquent bill.

187 (b) In the event that any publicly or privately owned
188 utility, city, incorporated town, other municipal corporation
189 or other public service district included within the district
190 owns and operates separate water facilities, sewer facilities,
191 or stormwater facilities, and the district owns and operates
192 another kind of facility, either water or sewer, or both, as the
193 case may be, then the district and the publicly or privately
194 owned utility, city, incorporated town or other municipal
195 corporation or other public service district shall covenant
196 and contract with each other to shut off and discontinue the
197 supplying of water service for the nonpayment of sewer or
198 stormwater service fees and charges: *Provided,* That any
199 contracts entered into by a public service district pursuant
200 to this section shall be submitted to the Public Service
201 Commission for approval. Any public service district which
202 provides water and sewer service, water and stormwater
203 service or water, sewer, and stormwater service has the right
204 to terminate water service for delinquency in payment of
205 water, sewer or stormwater bills. Where one public service
206 district is providing sewer service and another public
207 service district or a municipality included within the
208 boundaries of the sewer or stormwater district is providing
209 water service and the district providing sewer or stormwater
210 service experiences a delinquency in payment, the district
211 or the municipality included within the boundaries of the

212 sewer or stormwater district that is providing water service,
213 upon the request of the district providing sewer or
214 stormwater service to the delinquent account, shall
215 terminate its water service to the customer having the
216 delinquent sewer or stormwater account: *Provided,*
217 *however,* That any termination of water service must
218 comply with all rules and orders of the Public Service
219 Commission: *Provided further,* That nothing contained
220 within the rules of the Public Service Commission shall be
221 deemed to require any agents or employees of the public
222 service districts to accept payment at the customer's
223 premises in lieu of discontinuing service for a delinquent
224 bill.

225 (c) Any district furnishing sewer facilities within the
226 district may require or may, by petition to the circuit court
227 of the county in which the property is located, compel or
228 may require the Bureau for Public Health to compel all
229 owners, tenants, or occupants of any houses, dwellings, and
230 buildings located near any sewer facilities where sewage
231 will flow by gravity or be transported by other methods
232 approved by the Bureau for Public Health, including, but not
233 limited to, vacuum and pressure systems, approved under
234 the provisions of §16-1-9 of this code, from the houses,
235 dwellings, or buildings into the sewer facilities, to connect
236 with and use the sewer facilities and to cease the use of all
237 other means for the collection, treatment, and disposal of
238 sewage and waste matters from the houses, dwellings, and
239 buildings where there is gravity flow or transportation by
240 any other methods approved by the Bureau for Public
241 Health, including, but not limited to, vacuum and pressure
242 systems, approved under the provisions of §16-1-9 of this
243 code and the houses, dwellings, and buildings can be
244 adequately served by the sewer facilities of the district and
245 it is declared that the mandatory use of the sewer facilities
246 provided for in this subsection is necessary and essential for
247 the health and welfare of the inhabitants and residents of the
248 districts and of the state. If the public service district
249 requires the property owner to connect with the sewer

250 facilities even when sewage from dwellings may not flow
251 to the main line by gravity and the property owner incurs
252 costs for any changes in the existing dwellings' exterior
253 plumbing in order to connect to the main sewer line, the
254 public service district board shall authorize the district to
255 pay all reasonable costs for the changes in the exterior
256 plumbing, including, but not limited to, installation,
257 operation, maintenance, and purchase of a pump or any
258 other method approved by the Bureau for Public Health.
259 Maintenance and operation costs for the extra installation
260 should be reflected in the users charge for approval of the
261 Public Service Commission. The circuit court shall
262 adjudicate the merits of the petition by summary hearing to
263 be held not later than 30 days after service of petition to the
264 appropriate owners, tenants, or occupants.

265 (d) Whenever any district has made available sewer
266 facilities to any owner, tenant, or occupant of any house,
267 dwelling, or building located near the sewer facility and the
268 engineer for the district has certified that the sewer facilities
269 are available to and are adequate to serve the owner, tenant,
270 or occupant and sewage will flow by gravity or be
271 transported by other methods approved by the Bureau for
272 Public Health from the house, dwelling, or building into the
273 sewer facilities, the district may charge, and the owner,
274 tenant, or occupant shall pay, the rates and charges for
275 services established under this article only after 30 days'
276 notice of the availability of the facilities has been received
277 by the owner, tenant, or occupant. Rates and charges for
278 sewage services shall be based upon actual water
279 consumption or the average monthly water consumption
280 based upon the owner's, tenant's, or occupant's specific
281 customer class.

282 (e) The owner, tenant, or occupant of any real property
283 may be determined and declared to be served by a
284 stormwater system only after each of the following
285 conditions is met: (1) The district has been designated by
286 the Environmental Protection Agency as an entity to serve

287 a West Virginia Separate Storm Sewer System community,
288 as defined in 40 C. F. R. §122.26; (2) the district's authority
289 has been properly expanded to operate and maintain a
290 stormwater system; (3) the district has made available a
291 stormwater system where stormwater from the real property
292 affects or drains into the stormwater system; and (4) the real
293 property is located in the Municipal Separate Storm Sewer
294 System's designated service area. It is further hereby found,
295 determined, and declared that the mandatory use of the
296 stormwater system is necessary and essential for the health
297 and welfare of the inhabitants and residents of the district
298 and of the state. The district may charge and the owner,
299 tenant, or occupant shall pay the rates, fees, and charges for
300 stormwater services established under this article only after
301 30 days' notice of the availability of the stormwater system
302 has been received by the owner. An entity providing
303 stormwater service shall provide a tenant a report of the
304 stormwater fee charged for the entire property and, if
305 appropriate, that portion of the fee to be assessed to the
306 tenant.

307 (f) All delinquent fees, rates, and charges of the district
308 for either water facilities, sewer facilities, gas facilities, or
309 stormwater systems or stormwater management programs
310 are liens on the premises served of equal dignity, rank, and
311 priority with the lien on the premises of state, county,
312 school, and municipal taxes. Nothing contained within the
313 rules of the Public Service Commission shall be deemed to
314 require any agents or employees of the public service
315 districts to accept payment at the customer's premises in
316 lieu of discontinuing service for a delinquent bill. In
317 addition to the other remedies provided in this section,
318 public service districts are granted a deferral of filing fees
319 or other fees and costs incidental to the bringing and
320 maintenance of an action in magistrate court for the
321 collection of delinquent water, sewer, stormwater, or gas
322 bills. If the district collects the delinquent account, plus
323 reasonable costs, from its customer or other responsible
324 party, the district shall pay to the magistrate the normal

325 filing fee and reasonable costs which were previously
326 deferred. In addition, each public service district may
327 exchange with other public service districts a list of
328 delinquent accounts: *Provided*, That an owner of real
329 property may not be held liable for the delinquent rates or
330 charges for services or facilities of a tenant, nor may any
331 lien attach to real property for the reason of delinquent rates
332 or charges for services or facilities of a tenant of the real
333 property unless the owner has contracted directly with the
334 public service district to purchase the services or facilities.

335 (g) Anything in this section to the contrary
336 notwithstanding, any establishment, as defined in §22-11-3
337 of this code, now or hereafter operating its own sewage
338 disposal system pursuant to a permit issued by the
339 Department of Environmental Protection, as prescribed by
340 §22-11-11 of this code, is exempt from the provisions of this
341 section.

342 (h) A public service district which has been designated
343 by the Environmental Protection Agency as an entity to
344 serve a West Virginia Separate Storm Sewer System
345 community shall prepare an annual report detailing the
346 collection and expenditure of rates, fees, or charges and
347 make it available for public review at the place of business
348 of the governing body and the stormwater utility main
349 office.

350 (i) Notwithstanding any code provision to the contrary,
351 a public service district may accept payment for all fees and
352 charges due, in the form of a payment by a credit or check
353 card transaction or a direct withdrawal from a bank account.
354 The public service district may set a fee to be added to each
355 transaction equal to the charge paid by the public service
356 district for use of the credit or check card or direct
357 withdrawal by the payor. The amount of such fee shall be
358 disclosed to the payor prior to the transaction and no other
359 fees for the use of a credit or check card or direct withdrawal
360 may be imposed upon the payor and the whole of such
361 charge or convenience fee shall be borne by the payor:

362 *Provided*, That, to the extent a public service district desires
363 to accept payments in the forms described in this subsection
364 and does not have access to the equipment or receive the
365 services necessary to do so, the public service district shall
366 first obtain three bids for services and equipment necessary
367 to affect the forms of transactions described in this
368 subsection and use the lowest qualified bid received.
369 Acceptance of a credit or check card or direct withdrawal as
370 a form of payment shall comport with the rules and
371 requirements set forth by the credit or check card provider
372 or banking institution.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 (a) The jurisdiction of the commission shall extend to
2 all public utilities in this state and shall include any utility
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by
5 air, railroad, street railroad, motor, or otherwise, by express
6 or otherwise, by land, water, or air, whether wholly or partly
7 by land, water, or air; transportation of oil, gas, or water by
8 pipeline; transportation of coal and its derivatives and all
9 mixtures and combinations thereof with other substances by
10 pipeline; sleeping car or parlor car services; transmission of
11 messages by telephone, telegraph, or radio; generation and
12 transmission of electrical energy by hydroelectric or other
13 utilities for service to the public, whether directly or through
14 a distributing utility; supplying water, gas, or electricity by
15 municipalities or others; sewer systems servicing 25 or
16 more persons or firms other than the owner of the sewer
17 systems: *Provided*, That if a public utility other than a
18 political subdivision intends to provide sewer service by an
19 innovative, alternative method, as defined by the federal
20 Environmental Protection Agency, the innovative,

21 alternative method is a public utility function and subject to
22 the jurisdiction of the Public Service Commission
23 regardless of the number of customers served by the
24 innovative, alternative method; any public service district
25 created under the provisions of §16-13A-1, *et seq.* of this
26 code, except that the Public Service Commission will have
27 no jurisdiction over the provision of stormwater services by
28 a public service district; toll bridges, wharves, ferries; solid
29 waste facilities; and any other public service: *Provided,*
30 *however,* That natural gas producers who provide natural
31 gas service to not more than 25 residential customers are
32 exempt from the jurisdiction of the commission with regard
33 to the provisions of such residential service: *Provided*
34 *further,* That upon request of any of the customers of such
35 natural gas producers, the commission may, upon good
36 cause being shown, exercise such authority as the
37 commission may deem appropriate over the operation, rates,
38 and charges of such producer and for such length of time as
39 the commission may consider to be proper.

40 (b) The jurisdiction of the commission over political
41 subdivisions of this state providing separate or combined
42 water and/or sewer services and having at least 4,500
43 customers and annual combined gross revenues of \$3
44 million or more that are political subdivisions of the state is
45 limited to:

46 (1) General supervision of public utilities, as granted
47 and described in §24-2-5 of this code;

48 (2) Regulation of measurements, practices, acts, or
49 services, as granted and described in §24-2-7 of this code;

50 (3) Regulation of a system of accounts to be kept by a
51 public utility that is a political subdivision of the state, as
52 granted and described in §24-2-8 of this code;

53 (4) Submission of information to the commission
54 regarding rates, tolls, charges, or practices, as granted and
55 described in §24-2-9 of this code;

56 (5) Authority to subpoena witnesses, take testimony,
57 and administer oaths to any witness in any proceeding
58 before or conducted by the commission, as granted and
59 described in §24-2-10 of this code; and

60 (6) Investigation and resolution of disputes between a
61 political subdivision of the state providing wholesale water
62 and/or wastewater treatment or other services, whether by
63 contract or through a tariff, and its customer or customers,
64 including, but not limited to, rates, fees and charges, service
65 areas and contested utility combinations: *Provided*, That
66 any request for an investigation related to such a dispute that
67 is based on the act or omission of the political subdivision
68 shall be filed within 30 days of the act or omission of the
69 political subdivision and the commission shall resolve said
70 dispute within 120 days of filing. The 120-day period for
71 resolution of the dispute may be tolled by the commission
72 until the necessary information showing the basis of the
73 rates, fees, and charges or other information as the
74 commission considers necessary is filed: *Provided*,
75 *however*, That the disputed rates, fees, and charges so fixed
76 by the political subdivision providing separate or combined
77 water and/or sewer services shall remain in full force and
78 effect until set aside, altered, or amended by the commission
79 in an order to be followed in the future.

80 (7) Customers of water and sewer utilities operated by a
81 political subdivision of the state may bring formal or
82 informal complaints regarding the commission's exercise of
83 the powers enumerated in this section and the commission
84 shall resolve these complaints.

85 (8) In the event that a political subdivision has a
86 deficiency in either its bond revenue or bond reserve
87 accounts, or is otherwise in breach of a bond covenant, any
88 bond holder may petition the Public Service Commission
89 for such redress as will bring the accounts to current status
90 or otherwise resolve the breached covenant, and the
91 commission shall have jurisdiction to fully resolve the
92 alleged deficiency or breach.

93 (c) The commission may, upon application, waive its
94 jurisdiction and allow a utility operating in an adjoining
95 state to provide service in West Virginia when:

96 (1) An area of West Virginia cannot be practicably and
97 economically served by a utility licensed to operate within
98 the State of West Virginia;

99 (2) Said area can be provided with utility service by a
100 utility which operates in a state adjoining West Virginia;

101 (3) The utility operating in the adjoining state is
102 regulated by a regulatory agency or commission of the
103 adjoining state; and

104 (4) The number of customers to be served is not
105 substantial. The rates the out-of-state utility charges West
106 Virginia customers shall be the same as the rate the utility is
107 duly authorized to charge in the adjoining jurisdiction. The
108 commission, in the case of any such utility, may revoke its
109 waiver of jurisdiction for good cause.

110 (d) Any other provisions of this chapter to the contrary
111 notwithstanding:

112 (1) An owner or operator of an electric generating
113 facility located or to be located in this state that has been
114 designated as an exempt wholesale generator under
115 applicable federal law, or will be so designated prior to
116 commercial operation of the facility, and for which such
117 facility the owner or operator holds a certificate of public
118 convenience and necessity issued by the commission on or
119 before July 1, 2003, shall be subject to §24-2-11c(e) through
120 §24-2-11c(j) of this code as if the certificate of public
121 convenience and necessity for such facility were a siting
122 certificate issued under §24-2-11c of this code and shall not
123 otherwise be subject to the jurisdiction of the commission
124 or to the provisions of this chapter with respect to such
125 facility except for the making or constructing of a material

126 modification thereof as provided in §24-2-1(d)(5) of this
127 code.

128 (2) Any person, corporation, or other entity that intends
129 to construct or construct and operate an electric generating
130 facility to be located in this state that has been designated as
131 an exempt wholesale generator under applicable federal
132 law, or will be so designated prior to commercial operation
133 of the facility, and for which facility the owner or operator
134 does not hold a certificate of public convenience and
135 necessity issued by the commission on or before July 1,
136 2003, shall, prior to commencement of construction of the
137 facility, obtain a siting certificate from the commission
138 pursuant to the provisions of §24-2-11c of this code in lieu
139 of a certificate of public convenience and necessity pursuant
140 to the provisions of §24-2-11 of this code. An owner or
141 operator of an electric generating facility as is described in
142 this subdivision for which a siting certificate has been issued
143 by the commission shall be subject to §24-2-11c(e) through
144 §24-2-11c(j) of this code and shall not otherwise be subject
145 to the jurisdiction of the commission or to the provisions of
146 this chapter with respect to such facility except for the
147 making or constructing of a material modification thereof as
148 provided in §24-2-1(d)(5) of this code.

149 (3) An owner or operator of an electric generating
150 facility located in this state that had not been designated as
151 an exempt wholesale generator under applicable federal law
152 prior to commercial operation of the facility that generates
153 electric energy solely for sale at retail outside this state or
154 solely for sale at wholesale in accordance with any
155 applicable federal law that preempts state law or solely for
156 both such sales at retail and such sales at wholesale and that
157 had been constructed and had engaged in commercial
158 operation on or before July 1, 2003, shall not be subject to
159 the jurisdiction of the commission or to the provisions of
160 this chapter with respect to such facility, regardless of
161 whether such facility subsequent to its construction has been
162 or will be designated as an exempt wholesale generator

163 under applicable federal law: *Provided*, That such owner or
164 operator shall be subject to §24-2-1(d)(5) of this code if a
165 material modification of such facility is made or
166 constructed.

167 (4) Any person, corporation, or other entity that intends
168 to construct or construct and operate an electric generating
169 facility to be located in this state that has not been or will
170 not be designated as an exempt wholesale generator under
171 applicable federal law prior to commercial operation of the
172 facility that will generate electric energy solely for sale at
173 retail outside this state or solely for sale at wholesale in
174 accordance with any applicable federal law that preempts
175 state law or solely for both such sales at retail and such sales
176 at wholesale and that had not been constructed and had not
177 been engaged in commercial operation on or before July 1,
178 2003, shall, prior to commencement of construction of the
179 facility, obtain a siting certificate from the commission
180 pursuant to the provisions of §24-2-11c of this code in lieu
181 of a certificate of public convenience and necessity pursuant
182 to the provisions of §24-2-11 of this code. An owner or
183 operator of an electric generating facility as is described in
184 this subdivision for which a siting certificate has been issued
185 by the commission shall be subject to §24-2-11c(e) through
186 §24-2-11c(j) of this code and shall not otherwise be subject
187 to the jurisdiction of the commission or to the provisions of
188 this chapter with respect to such facility except for the
189 making or constructing of a material modification thereof as
190 provided in §24-2-1(d)(5) of this code.

191 (5) An owner or operator of an electric generating
192 facility described in this subsection shall, before making or
193 constructing a material modification of the facility that is
194 not within the terms of any certificate of public convenience
195 and necessity or siting certificate previously issued for the
196 facility or an earlier material modification thereof, obtain a
197 siting certificate for the modification from the commission
198 pursuant to the provisions of §24-2-11c of this code in lieu
199 of a certificate of public convenience and necessity for the

200 modification pursuant to the provisions of §24-2-11 of this
201 code and, except for the provisions of §24-2-11c of this
202 code, shall not otherwise be subject to the jurisdiction of the
203 commission or to the provisions of this chapter with respect
204 to such modification.

205 (6) The commission shall consider an application for a
206 certificate of public convenience and necessity filed
207 pursuant to §24-2-11 of this code to construct an electric
208 generating facility described in this subsection or to make
209 or construct a material modification of such electric
210 generating facility as an application for a siting certificate
211 pursuant to §24-2-11c of this code if the application for the
212 certificate of public convenience and necessity was filed
213 with the commission prior to July 1, 2003, and if the
214 commission has not issued a final order thereon as of that
215 date.

216 (7) The limitations on the jurisdiction of the commission
217 over, and on the applicability of the provisions of this
218 chapter to, the owner or operator of an electric generating
219 facility as imposed by and described in this subsection shall
220 not be deemed to affect or limit the commission's
221 jurisdiction over contracts or arrangements between the
222 owner or operator of such facility and any affiliated public
223 utility subject to the provisions of this chapter.

224 (e) The commission shall not have jurisdiction of
225 Internet protocol-enabled service or voice-over Internet
226 protocol-enabled service. As used in this subsection:

227 (1) "Internet protocol-enabled service" means any
228 service, capability, functionality, or application provided
229 using Internet protocol, or any successor protocol, that
230 enables an end user to send or receive a communication in
231 Internet protocol format, or any successor format, regardless
232 of whether the communication is voice, data, or video.

233 (2) "Voice-over Internet protocol service" means any
234 service that:

235 (i) Enables real-time two-way voice communications
236 that originate or terminate from the user's location using
237 Internet protocol or a successor protocol; and

238 (ii) Uses a broadband connection from the user's
239 location.

240 (3) The term "voice-over Internet protocol service"
241 includes any service that permits users to receive calls that
242 originate on the public-switched telephone network and to
243 terminate calls on the public-switched telephone network.

244 (f) Notwithstanding any other provisions of this article,
245 the commission shall not have jurisdiction to review or
246 approve any transaction involving a telephone company
247 otherwise subject to §24-2-12 and §24-2-12a of this code if
248 all entities involved in the transaction are under common
249 ownership.

250 (g) The Legislature finds that the rates, fees, charges,
251 and ratemaking of municipal power systems are most fairly
252 and effectively regulated by the local governing body.
253 Therefore, notwithstanding any other provisions of this
254 article, the commission shall not have jurisdiction over the
255 setting or adjustment of rates, fees, and charges of municipal
256 power systems. Further, the jurisdiction of the Public
257 Service Commission over municipal power systems is
258 limited to that granted specifically in this code.

§24-2-2. General power of commission to regulate public utilities.

1 (a) The commission may investigate all rates, methods,
2 and practices of public utilities subject to the provisions of
3 this chapter; to require them to conform to the laws of this
4 state and to all rules, regulations and orders of the
5 commission not contrary to law; and to require copies of all
6 reports, rates, classifications, schedules, and timetables in
7 effect and used by the public utility or other person to be
8 filed with the commission, and all other information desired
9 by the commission relating to the investigation and

10 requirements, including inventories of all property in the
11 form and detail as the commission prescribes. The
12 commission may compel obedience to its lawful orders by
13 mandamus or injunction or other proper proceedings in the
14 name of the state in any circuit court having jurisdiction of
15 the parties or of the subject matter, or the Supreme Court of
16 Appeals directly, and the proceedings shall have priority
17 over all pending cases. The commission may change any
18 intrastate rate, charge, or toll which is unjust or
19 unreasonable or any interstate charge with respect to matters
20 of a purely local nature which have not been regulated, by
21 or pursuant to, an act of Congress and may prescribe a rate,
22 charge, or toll that is just and reasonable, and change or
23 prohibit any practice, device, or method of service in order
24 to prevent undue discrimination or favoritism between
25 persons and between localities and between commodities
26 for a like and contemporaneous service. But in no case may
27 the rate, toll, or charge be more than the service is
28 reasonably worth, considering the cost of the service. Every
29 order entered by the commission shall continue in force
30 until the expiration of the time, if any, named by the
31 commission in the order, or until revoked or modified by the
32 commission, unless the order is suspended, modified, or
33 revoked by order or decree of a court of competent
34 jurisdiction: *Provided*, That in the case of utilities used by
35 emergency shelter providers, the commission shall
36 prescribe rates, charges or tolls that are the lowest available.
37 “Emergency shelter provider” means any nonprofit entity
38 which provides temporary emergency housing and services
39 to the homeless or to victims of domestic violence or other
40 abuse.

41 (b) Notwithstanding any other provision of this code so
42 the contrary, rates are not discriminatory if, when
43 considering the debt costs associated with a future water or
44 sewer project which would not benefit existing customers,
45 the commission establishes rates which ensure that the
46 future customers to be served by the new project are solely
47 responsible for the debt costs associated with the project.

48 (c) Notwithstanding any other provision of this code to
49 the contrary, the jurisdiction of the commission over water
50 and/or sewer utilities that are political subdivisions of the
51 state providing a separate or combined services and having
52 at least 4,500 customers and annual combined gross
53 revenues of \$3 million or more is limited to those powers
54 enumerated in §24-2-1(b) of this code.

55 (d) Notwithstanding any other provision of this code to
56 the contrary, the jurisdiction of the commission does not
57 extend over the setting or adjustment of rates, fees, and
58 charges of municipal power systems. The rates, fees,
59 charges and rate-making process of municipal power
60 systems is governed by the provisions of §8-19-2a of this
61 code.

§24-2-3. General power of commission with respect to rates.

1 (a) The commission may enforce, originate, establish,
2 change, and promulgate tariffs, rates, joint rates, tolls, and
3 schedules for all public utilities except for municipal power
4 systems and water and/or sewer utilities that are political
5 subdivisions of this state providing a separate or combined
6 services and having at least 4,500 customers and annual
7 combined gross revenues of \$3 million or more: *Provided,*
8 That the commission may exercise such rate authority over
9 municipally owned natural gas utilities or a municipally
10 owned water and/or sewer utility having less than 4,500
11 customers or annual combined gross revenues of less than
12 \$3 million only under the circumstances and limitations set
13 forth in §24-2-4b of this code, and subject to the provisions
14 set forth in §24-2-3(b) of this code. And whenever the
15 commission, after hearing, finds any existing rates, tolls,
16 tariffs, joint rates, or schedules enacted or maintained by a
17 utility regulated under the provisions of this section to be
18 unjust, unreasonable, insufficient, or unjustly
19 discriminatory or otherwise in violation of any of the
20 provisions of this chapter, the commission shall by an order
21 fix reasonable rates, joint rates, tariffs, tolls, or schedules to
22 be followed in the future in lieu of those found to be unjust,

23 unreasonable, insufficient, or unjustly discriminatory or
24 otherwise in violation of any provisions of law, and the
25 commission, in fixing the rate of any railroad company, may
26 fix a fair, reasonable, and just rate to be charged on any
27 branch line thereof, independent of the rate charged on the
28 main line of that railroad.

29 (b) Any complaint filed with the commission by a resale
30 or wholesale customer of a municipally owned water and/or
31 sewer utility having less than 4,500 customers or annual
32 combined gross revenue of less than \$3 million concerning
33 rates, fees, or charges applicable to such resale or wholesale
34 customer shall be filed within 30 days of the enactment by
35 the governing body of the political subdivision of an
36 ordinance changing rates, fees, or charges for such service.
37 The commission shall resolve said complaint within 120
38 days of filing. The 120-day period for resolution of the
39 complaint may be tolled by the commission until the
40 necessary information showing the basis of the rates, fees,
41 charges, and other information as the commission considers
42 necessary is filed: *Provided*, That rates, fees, and charges so
43 fixed by the political subdivision providing separate or
44 combined water and/or sewer services shall remain in full
45 force and effect until set aside, altered, or amended by the
46 commission in an order to be followed in the future:
47 *Provided, however*, That the commission shall have no
48 authority to order refunds for amounts collected during the
49 pendency of the complaint proceeding unless the rates, fees,
50 or charges so enacted by the governing body were enacted
51 subject to refund under the provisions of §24-2-4b(d)(2) or
52 §24-2-4b(g) of this code.

53 (c) In determining just and reasonable rates, the
54 commission may audit and investigate management
55 practices and policies, or have performed an audit and
56 investigation of such practices and policies, in order to
57 determine whether the utility is operating with efficiency
58 and is utilizing sound management practices. The
59 commission shall adopt rules and regulations setting forth
60 the scope, frequency, and application of such audits and

61 investigations to the various utilities subject to its
62 jurisdiction. The commission may include the cost of
63 conducting the management audit in the cost of service of
64 the utility.

65 (d) In determining just and reasonable rates, the
66 commission shall investigate and review transactions
67 between utilities and affiliates. The commission shall limit
68 the total return of the utility to a level which, when
69 considered with the level of profit or return the affiliate
70 earns on transactions with the utility, is just and reasonable.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives, and municipally operated public utilities.

1 (a) The rates and charges of electric cooperatives,
2 natural gas cooperatives and municipal water and/or sewer
3 utilities that are political subdivisions of the state having
4 less than 4,500 customers or annual combined gross
5 revenues of less than \$3 million, except for municipally
6 operated commercial solid waste facilities as defined in
7 §22-15-2 of this code, and the rates and charges for local
8 exchange services provided by telephone cooperatives are
9 not subject to the rate approval provisions of §24-2-4 or
10 §24-2-4a of this code, but are subject to the limited rate
11 provisions of this section.

12 (b) All rates and charges set by electric cooperatives,
13 natural gas cooperatives, and municipally operated public
14 utilities that are political subdivisions of the state providing
15 water, sewer, and/or natural gas services that are subject to
16 the provisions of this section and all rates and charges for
17 local exchange services set by telephone cooperatives shall
18 be just, reasonable, applied without unjust discrimination
19 between or preference for any customer or class of customer
20 and based primarily on the costs of providing these services.
21 All rates and charges shall be based upon the measured or
22 reasonably estimated cost of service and the equitable
23 sharing of those costs between customers based upon the

24 cost of providing the service received by the customer,
25 including a reasonable plant-in-service depreciation
26 expense. The rates and charges shall be adopted by the
27 electric, natural gas, telephone cooperative, or political
28 subdivision's governing board or body and, in the case of
29 the municipally operated public utility, by municipal
30 ordinance to be effective not sooner than 45 days after
31 adoption. The 45-day waiting period may be waived by
32 public vote of the governing body if that body finds and
33 declares the public utility that is a political subdivision of
34 the state to be in financial distress such that the 45-day
35 waiting period would be detrimental to the ability of the
36 utility to deliver continued and compliant public services:
37 *Provided*, That notice of intent to effect a rate change shall
38 be specified on the monthly billing statement of the
39 customers of the utility for the month next preceding the
40 month in which the rate change is to become effective and
41 the utility governing body shall give its customers and, in
42 the case of a cooperative, its customers, members, and
43 stockholders, other reasonable notices as will allow filing of
44 timely objections to the proposed rate change and full
45 participation in municipal rate legislation through the
46 provision of a public forum in which customers may
47 comment upon the proposed rate change prior to an
48 enactment vote. The rates and charges or ordinance shall be
49 filed with the commission, together with any information
50 showing the basis of the rates and charges and other
51 information as the commission considers necessary. Any
52 change in the rates and charges with updated information
53 shall be filed with the commission. If a petition, as set out
54 in §24-2-4b(c)(1), §24-2-4b(c)(2), or §24-2-4b(c)(3) of this
55 code, is received and the electric cooperative, natural gas
56 cooperative, or telephone cooperative or municipality has
57 failed to file with the commission the rates and charges with
58 information showing the basis of rates and charges and other
59 information as the commission considers necessary, the
60 suspension period limitation of 120 days and the 100-day
61 period limitation for issuance of an order by a hearing
62 examiner, as contained in §24-2-4b(d) and §24-2-4b(e) of

63 this code, is tolled until the necessary information is filed.
64 The electric cooperative, natural gas cooperative, telephone
65 cooperative or municipality shall set the date when any new
66 rate or charge is to go into effect.

67 (c) The commission shall review and approve or modify
68 the rates and charges of electric cooperatives, natural gas
69 cooperatives, telephone cooperatives, or municipal natural
70 gas utilities and municipally owned water and/or sewer
71 utilities that are political subdivisions of the state and having
72 less than 4,500 customers or annual combined revenues of
73 less than \$3 million upon the filing of a petition within 30
74 days of the adoption of the ordinance or resolution changing
75 the rates or charges by:

76 (1) Any customer aggrieved by the changed rates or
77 charges who presents to the commission a petition signed
78 by not less than 25 percent of the customers served by the
79 municipally operated natural gas public utility or
80 municipally owned water and/or sewer utility or 25 percent
81 of the membership of the electric, natural gas, or telephone
82 cooperative residing within the state;

83 (2) Any customer who is served by a municipally
84 owned natural gas public utility and who resides outside the
85 corporate limits and who is affected by the change in the
86 rates or charges and who presents to the commission a
87 petition alleging discrimination between customers within
88 and without the municipal boundaries. The petition shall be
89 accompanied by evidence of discrimination; or

90 (3) Any customer or group of customers of the
91 municipally owned natural gas public utility who is affected
92 by the change in rates who reside within the municipal
93 boundaries and who present a petition to the commission
94 alleging discrimination between a customer or group of
95 customers and other customers of the municipal utility. The
96 petition shall be accompanied by evidence of discrimination.

197 (d) (1) The filing of a petition with the commission
198 signed by not less than 25 percent of the customers served
199 by the municipally owned natural gas public utility or a
200 municipally owned water and/or sewer utility having less
201 than 4,500 customers or annual combined gross revenues of
202 less than \$3 million or 25 percent of the membership of the
203 electric, natural gas, or telephone cooperative residing
204 within the state under §24-2-4b(c) of this code shall suspend
205 the adoption of the rate change contained in the ordinance
206 or resolution for a period of 120 days from the date the rates
207 or charges would otherwise go into effect or until an order
208 is issued as provided herein.

209 (2) Upon sufficient showing of discrimination by
210 customers outside the municipal boundaries or a customer
211 or a group of customers within the municipal boundaries
212 under a petition filed under §24-2-4b(c)(2) or §24-2-
213 4b(c)(3) of this code, the commission shall suspend the
214 adoption of the rate change contained in the ordinance for a
215 period of 120 days from the date the rates or charges would
216 otherwise go into effect or until an order is issued as
217 provided herein. A municipal rate ordinance enacted
218 pursuant to the provisions of this section and municipal
219 charter or state code that establishes or proposes a rate
220 increase that results in an increase of less than 25 percent of
221 the gross revenue of the utility shall be presumed valid and
222 rates shall be allowed to go into effect, subject to refund,
223 upon the date stated in that ordinance. Any refund
224 determined to be due and owing as a result of any difference
225 between any final rates approved by the commission and the
226 rates placed into effect subject to refund shall be refunded
227 as a credit against each customer's account for a period of
228 up to six months after entry of the commission's final order.
229 Any remaining balance which is not fully credited by credit
230 within six months after entry of the commission's final
231 order shall be directly refunded to the customer by check. In
232 the case of rates established or proposed that increase by
233 more than 25 percent of the gross revenue of the municipally
234 operated public utility, the utility may apply for, and the
235 commission may grant, a waiver of the suspension period
236 and allow rates to be effective upon enactment.

137 (e) The commission shall forthwith appoint a hearing
138 examiner from its staff to review the grievances raised by
139 the petitioners. The hearing examiner shall conduct a public
140 hearing and shall, within 100 days from the date the rates or
141 charges would otherwise go into effect, unless otherwise
142 tolled as provided in §24-2-4b(b) of this code, issue an order
143 approving, disapproving, or modifying, in whole or in part,
144 the rates or charges imposed by the electric, natural gas, or
145 telephone cooperative or by the municipally operated public
146 utility pursuant to this section.

147 (f) Upon receipt of a petition for review of the rates
148 under the provisions of §24-2-4b(c) of this code, the
149 commission may exercise the power granted to it under the
150 provisions of §24-2-3 of this code, consistent with the
151 applicable rate provisions of §8-19-4 of this code and §16-
152 13-16 of this code. The commission may determine the
153 method by which the rates are reviewed and may grant and
154 conduct a de novo hearing on the matter if the customer,
155 electric, natural gas, or telephone cooperative or
156 municipality requests a hearing.

157 (g) The commission may, upon petition by an electric,
158 natural gas, or telephone cooperative or municipal natural
159 gas public utility or a municipally owned water and/or sewer
160 utility, having less than 4,500 customers or annual
161 combined gross revenues of less than \$3 million allow an
162 interim or emergency rate to take effect, subject to refund or
163 future modification, if it is determined that the interim or
164 emergency rate is necessary to protect the municipality from
165 financial hardship attributable to the purchase of the utility
166 commodity sold, or the commission determines that a
167 temporary or interim rate increase is necessary for the utility
168 to avoid financial distress. In such cases, the commission
169 shall waive the 45-day waiting period provided for in §24-
170 2-4b(b) of this code and the 120-day suspension period
171 provided for in §24-2-4b(d) of this code.

172 (h) The commission shall, upon written request of the
173 governing body of a political subdivision, provide technical
174 assistance to the governing body in its deliberations
175 regarding a proposed rate increase.

176 (i) Notwithstanding any other provision, the
177 commission has no authority or responsibility with regard
178 to the regulation of rates, income, services, or contracts by
179 municipally operated public utilities for services which are
180 transmitted and sold outside of the State of West Virginia.

181 (j) Notwithstanding any other provision of this code to
182 the contrary, the jurisdiction of the commission over water
183 and/or sewer utilities that are political subdivisions of the
184 state and having at least 4,500 customers and annual gross
185 combined revenues of \$3 million or more shall be limited to
186 those powers enumerated in §24-2-1(b) of this code.

187 (k) Notwithstanding any other provision of this code to
188 the contrary, the jurisdiction of the commission does not
189 extend over the setting and adjustment of the rates, fees, and
190 charges of municipal power systems. The rates, fees,
191 charges, and rate-making process of municipal power
192 systems shall be governed by the provisions of §8-19-2a of
193 this code.



CHAPTER 220

**(Com. Sub. for H. B. 4207 - By Delegates Shott and
Hanshaw)**

[Passed March 5, 2018; in effect ninety days from passage.]

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

AN ACT to amend and reenact §39-4-20 of the Code of West Virginia, 1931, as amended, relating to receiving a commission to act as a notary public; authorizing an online electronic application process to apply to receive a commission to act as a notary public; removing the oath of office and requiring an applicant to swear or affirm under penalty of perjury that answers to questions in the application are true and if appointed, the applicant will perform faithfully

all notarial acts in accordance with the law; and eliminating the \$1000 bond requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REVISED UNIFORM LAW ON NOTARIAL ACTS.

§39-4-20. Commission as notary public; qualifications; no immunity or benefit; disposition of fees.

1 (a) An individual qualified under subsection (b) of this
2 section may apply to the Secretary of State for a commission
3 as a notary public through the Secretary of State's online
4 notary system. The applicant shall comply with and provide
5 the information required by rules promulgated by the
6 Secretary of State and pay any application fee.

7 (b) An applicant for a commission as a notary public
8 must:

9 (1) Be at least eighteen years of age;

10 (2) Be a citizen or permanent legal resident of the
11 United States;

12 (3) Be a resident of or have a place of employment or
13 practice in this state;

14 (4) Be able to read and write English;

15 (5) Have a high school diploma or its equivalent; and

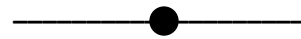
16 (6) Not be disqualified to receive a commission under
17 §39-4-23 of this code.

18 (c) Before issuance of a commission as a notary public,
19 an applicant shall provide a statement on the notary
20 application that they solemnly swear or affirm, under
21 penalty of perjury, that the answers to all questions in this
22 application are true, complete, and correct; that he or she has
23 carefully read the notaries public law of West Virginia; and,
24 if appointed and commissioned as a notary public, he or she

25 will perform faithfully, to the best of his or her ability all
26 notarial acts in accordance with the law.

27 (d) On compliance with this section, the Secretary of
28 State shall issue a commission as a notary public to an
29 applicant for a term of five years.

30 (e) A commission to act as a notary public authorizes the
31 notary public to perform notarial acts. The commission does
32 not provide the notary public any immunity or benefit
33 conferred by law of this state on public officials or employees.



CHAPTER 221

**(Com. Sub. for H. B. 4350 - By Delegates Howell,
Hamrick, Hill, Martin, Criss, Paynter, Moore,
Statler, Kessinger and Fast)**

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

AN ACT to amend and reenact §47-1A-11 and §47-1A-14 of the Code of West Virginia, 1931, as amended, all relating to eliminating the regulation of upholsterers by the Commissioner of Labor; removing tagging requirements for upholsterers; and eliminating annual registration and permit fees for upholsterers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY BUSINESSES.

§47-1A-11. Statements required on tags to be affixed to bedding.

1 (1) Every article of bedding made for sale, sold, or
2 offered for sale shall have attached thereto a tag on which is

3 stated the name of the filling material used, that such
4 material used is new or secondhand and, when required to
5 be sterilized, that such material has been sterilized and the
6 number of the sterilization permit. Such tag shall also
7 contain the name and address of the maker or the vendor and
8 the registry number, as hereinafter provided, of the maker.

9 (2) In the description of the filling material used on any
10 tag attached to an article of bedding, no term or designation
11 intended or likely to mislead shall be used; but where such
12 article contains more than one material, the amount of such
13 materials shall be stated on the tag and there shall be no
14 variance in excess of 10 percent from the amount stated on
15 the tag: *Provided*, That no variance shall be allowed for
16 filling material which is described as “all”, “pure”, “100%”
17 or terms of similar import.

18 (3) A complete secondhand article of bedding which has
19 not been remade or renovated may be sold “as is” without
20 being sterilized, but the original tag shall be removed by the
21 vendor and he or she shall attach a tag stating that the article
22 is secondhand – “contents unknown”. This requirement
23 shall not apply to articles sold at public auction, the sale of
24 antique furniture, or to a private sale from the home of the
25 owner direct to the purchaser: *Provided*, That the exceptions
26 herein stated shall not authorize the sale of an article of
27 bedding that has been exposed to infectious or contagious
28 disease and which, after such exposure, has not been
29 sterilized and approved for use.

***§47-1A-14. Annual registration and permit fees.**

1 (a) The annual registration fee for all manufacturers
2 shipping or selling articles of bedding in the State of West
3 Virginia shall be \$90, payable on the first day of the fiscal
4 year. Any manufacturer who submits an annual registration
5 fee on or after July 16 shall pay a \$25 late fee in addition to
6 the annual fee.

*NOTE: This section was also amended by H. B. 4401 (Chapter 137)
which passed prior to this act.

7 (b) The annual sterilizer permit fee shall be \$90, payable
8 on the first day of the fiscal year. Any sterilizer who submits
9 an annual permit fee on or after July 16 shall pay a \$25 late
10 fee in addition to the annual fee.

11 (c) The fee for reissuing a revoked or expired
12 registration or permit shall be \$90.

13 (d) All fees paid pursuant to this article shall be paid to
14 the Commissioner of Labor and deposited in an
15 appropriated special revenue account hereby created in the
16 State Treasury to be known as the Bedding and Upholstery
17 Fund and expended for the implementation and enforcement
18 of this article. Through June 30, 2019, amounts collected
19 which are found from time to time to exceed funds needed
20 for the purposes set forth in this article may be utilized by
21 the commissioner as needed to meet the division's funding
22 obligation: *Provided*, That beginning July 1, 2019, amounts
23 collected may not be utilized by the commissioner as needed
24 to meet the division's funding obligations.

CHAPTER 222

**(Com. Sub. for S. B. 307 - By Senators Trump, Blair,
Plymale and Boso)**

[Passed March 6, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §17-16-1 of the Code of West Virginia, 1931, as amended, relating to declaring that fundraising conducted by a volunteer fire department, school-sponsored or -approved group, bona fide charity, or nonprofit entity on a state highway or roadway within the boundaries of a municipality does not constitute an obstruction or nuisance if done during daylight hours, at signal controlled

intersections requiring all vehicles to stop, or at a location approved by municipal law enforcement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. OBSTRUCTIONS.

§17-16-1. “Obstructions” defined; obstructions declared nuisance; nuisance exception; abatement of nuisance by injunction.

1 Obstructions, within the meaning of this chapter, shall
2 include trees which have been cut or have fallen either on
3 adjacent land or within the bounds of a public road in such a
4 manner as to interfere with travel thereon; limbs of trees which
5 have fallen within a public road or branches of trees
6 overhanging the same so as to interfere with travel thereon;
7 landslides; carcasses of dead animals, lumber, wood, or logs
8 piled within the bounds of a public road; machines, vehicles,
9 conveyances, and implements abandoned or habitually placed
10 within the bounds of a public road; fences, buildings, or other
11 obstructions within the bounds of a public road; ashes, cinders,
12 earth, stone, or other material placed on a public road or in any
13 ditch or waterway along such road; water diverted from its
14 regular course or channel so as to injure or endanger a public
15 road; any road connected without lawful authority with a
16 public road in such manner as to obstruct or impede travel
17 thereon or the flow of water in the gutters or drains along such
18 road; pipelines, telegraph, telephone, trolley, or other poles and
19 wires connected therewith, constructed or erected on a public
20 road in such a way as to interfere with the use thereof; or any
21 other thing which will prevent the easy, safe, and convenient
22 use of such public road for public travel. Such obstructions
23 shall be considered within the bounds of any state or county-
24 district road whenever any part thereof shall occupy any part
25 of the right-of-way provided by law or acquired for road
26 purposes, not including the additional land acquired for slopes,
27 cuts, or fills. Fundraising by a volunteer fire department
28 including boot drives and bucket brigades, and similar fund
29 raising activities by school-approved or -sponsored groups,

30 bona fide charitable organizations and nonprofit service
31 organizations within the boundaries of a municipality do not
32 constitute an obstruction or nuisance under this chapter:
33 *Provided*, That the fund raising activity is conducted during
34 daylight hours at a signal controlled intersection, an
35 intersection requiring all vehicles to stop, or at a location
36 approved for such an activity by the municipal law-
37 enforcement agency. Such obstructions so placed and left
38 within the limits of such road are hereby declared to be public
39 nuisances, and, in addition to other remedies provided in this
40 chapter, the county court or the State Road Commission, as the
41 case may be, may apply to the circuit court, or other court of
42 competent jurisdiction of the county in which they may be, for
43 an injunction to abate such nuisance.



CHAPTER 223

**(Com. Sub. for S. B. 445 - By Senators Boso, Swope,
Gaunch, Jeffries, Rucker, Maroney, Plymale,
Maynard and Beach)**

[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 §17-2A-17a; to amend and reenact §17-4-17b of said code; and to amend said code by adding thereto a new section, designated §17-4-17e, all relating to utility relocation; stating legislative findings; defining term; authorizing the Division of Highways to acquire real or personal property for utility accommodation; authorizing the division to lease real property to utilities; allowing the division to pay for utility relocation costs subject to reimbursement agreement; specifying methods of preliminary engineering design work completion and utility

relocation construction work payment; providing legislative and emergency rule-making authority; and providing for allocation of costs and the repayments thereof for utility relocation on any state highway construction projects financed by proceeds of bonds or notes which are issued before July 1, 2021.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-17a. Acquisition of property for utility accommodation purposes; utility defined.

1 (a) The Legislature finds that it is in the public interest
2 for utility facilities to be accommodated on the right-of-way
3 of state highways when such use and occupancy of the
4 highway right-of-way do not adversely affect highway or
5 traffic safety or otherwise impair the highway or its
6 aesthetic quality, and do not conflict with the provisions of
7 federal, state, or local laws, legislative rules, or agency
8 policies. Utilities provide an essential service to the general
9 public and, as a matter of sound economic public policy and
10 law, utilities have used state road rights-of-way for
11 transmitting and distributing their services. Such
12 accommodation of utility facilities on the right-of-way of
13 state highways serves an important public purpose by
14 increasing public access to utility services.

15 (b) “Utility” means, for purposes of this chapter,
16 privately, publicly, or cooperatively owned line, facility, or
17 system for producing, transmitting, or distributing
18 communications, data, information, video services, power,
19 electricity, light, heat, gas, oil, crude products, water, steam,
20 waste, stormwater not connected with highway drainage, or
21 any other similar commodity, including any fire or police
22 signal system or street lighting system, which directly or
23 indirectly serves the public. The term “utility” also includes
24 those similar facilities which are owned or leased by a

25 government agency for its own use, or otherwise dedicated
26 solely to governmental use.

27 (c) In addition to all other powers given and assigned to
28 the commissioner in this chapter, the commissioner may
29 acquire, either temporarily or permanently, in the name of
30 the Division of Highways, and adjacent to public roadways
31 or highways, all real or personal property, public or private,
32 or any interests or rights therein, including any easement,
33 riparian right, or right of access, determined by the
34 commissioner to be necessary for present or presently
35 foreseeable future utility accommodation purposes.

36 (d) Notwithstanding any provision of this article, the
37 commissioner may lease real property held by the Division
38 of Highways or any interest or right in the property,
39 including airspace rights, if any, for the purpose of
40 accommodating any utility that has requested a lease if the
41 commissioner finds, in his or her sole discretion, that
42 entering into the lease agreement with the utility is in the
43 public interest. The term of any accommodation lease
44 authorized by this section shall not exceed 30 years. Neither
45 competitive bids nor public solicitations are required prior
46 to entering into a utility accommodation lease. Any utility
47 accommodation lease shall require the utility to pay fair
48 market value for the real property interest as determined by
49 the commissioner using common valuation methods, which
50 shall include consideration of the use of the property for
51 utility accommodation purposes: *Provided*, That amounts
52 paid for property damage by the division in a condemnation
53 case shall not be considered in the commissioner's
54 determination of fair market value. The commissioner shall
55 have the option to charge and collect a one-time lease
56 payment or fixed installment lease payments from a utility
57 in connection with an accommodation lease. All moneys
58 received from utility accommodation leases shall be paid
59 into the state Treasury and credited to the State Road Fund.
60 The provisions of this subsection are completely voluntary
61 and shall not be interpreted to require any utility to lease any

62 real property, or any interest or right in the property, from
63 the commissioner: *Provided, however,* That for any utility
64 which is not subject to the jurisdiction of the Public Service
65 Commission, the lease shall not contain any exclusivity
66 provisions.

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines on highway construction projects.

1 (a) Whenever the division reasonably determines that
2 any public utility line or facility located upon, across, or
3 under any portion of a state highway needs to be removed,
4 relocated, or adjusted in order to accommodate a highway
5 project, the division shall give to the utility reasonable
6 notice in writing as mutually agreed, but not to exceed 18
7 months, directing it to begin the physical removal,
8 relocation, or adjustment of such utility obstruction or
9 interference at the cost of the utility, including construction
10 inspection costs and in compliance with the rules of the
11 division and the provisions of §29A-3-1 *et seq.* of this code.

12 (b) If the notice is in conjunction with a highway
13 improvement project, it will be provided at the date of
14 advertisement or award. Prior to the notice directing the
15 physical removal, relocation, or adjustment of a utility line
16 or facility, the utility shall adhere to the division's utility
17 relocation procedures for public road improvements which
18 shall include, but not be limited to, the following:

19 (1) The division will submit to the utility a letter and a
20 set of plans for the proposed highway improvement project;

21 (2) The utility must within a reasonable time submit to
22 the division a written confirmation acknowledging receipt
23 of the plans and a declaration of whether or not its facilities
24 are within the proposed project limits and the extent to
25 which the facilities are in conflict with the project;

26 (3) If the utility is adjusting, locating, or relocating
27 facilities or lines from or into the division's right-of-way,
28 the utility must submit to the division plans showing
29 existing and proposed locations of utility facilities;

30 (4) The utility's submission shall include with the plans
31 a work plan demonstrating that the utility adjustment,
32 location, or relocation will be accomplished in a manner and
33 time frame established by the division's written procedures
34 and instructions. The work plan shall specify the order and
35 calendar days for removal, relocation, or adjustment of the
36 utility from or within the project site and any staging
37 property acquisition or other special requirements needed to
38 complete the removal, relocation, or adjustment. The
39 division shall approve the work plan, including any requests
40 for compensation, submitted by a utility for a highway
41 improvement project if it is submitted within the established
42 schedule and does not adversely affect the letting date. The
43 division will review the work plan to ensure compliance
44 with the proposed improvement plans and schedule.

45 (c) If additional utility removal, relocation, or
46 adjustment work is found necessary after the letting date of
47 the highway improvement project, the utility shall provide
48 a revised work plan within 30 calendar days after receipt of
49 the division's written notification of the additional work.
50 The utility's revised work plan shall be reviewed by the
51 division to ensure compliance with the highway project or
52 improvement. The division shall reimburse the utility for
53 work performed by the utility that must be performed again
54 as the result of a plan change on the part of the division.

55 (d) Should the utility fail to comply with the notice to
56 remove, relocate, or adjust, the utility is liable to the division
57 for direct contract damages, including costs, fees, penalties,
58 or other contract charges, for which the division is proven
59 to be liable to a contractor caused by the utility's failure to
60 timely remove, relocate, or adjust, unless a written
61 extension is granted by the division. The utility shall not be
62 liable for any delay or other failure to comply with a notice

63 to remove, relocate or adjust that is not solely the fault of
64 the utility, including, but not limited to, the following:

65 (1) The division has not performed its obligations in
66 accordance with the division's rules;

67 (2) The division has not obtained all necessary rights-
68 of-way that affect the utility;

69 (3) The delay or other failure to comply by the utility is
70 due to the division's failure to manage schedules and
71 communicate with the utility;

72 (4) The division seeks to impose liability on the utility
73 based solely upon oral communications or communications
74 not directed to the utility's designated contact person;

75 (5) The division changes construction plans in any
76 manner following the notice to remove or relocate and the
77 change affects the utility's facilities; or

78 (6) Other good cause, beyond the control of and not the
79 fault of the utility, including, but not limited to, labor
80 disputes, unavailability of materials on a national level, act
81 of God, or extreme weather conditions.

82 (e) In order to avoid construction delays and to create an
83 efficient and effective highway program, the division may
84 schedule program meetings with the public utility on a
85 quarterly basis to assure that schedules are maintained.

86 (f) If a utility that is required by law to bear all or a
87 portion of its own relocation costs elects to pursue a
88 reimbursement agreement with the division pursuant to this
89 subsection and provides the division with sufficient
90 evidence to demonstrate that the utility is not adequately
91 staffed, equipped, or capitalized to perform such relocation
92 work with its own forces or contractors at a time convenient
93 to and in coordination with the associated highway project,
94 the division may pay for the associated relocation costs,
95 including, but not limited to, design engineering, design

96 review, construction, and inspection costs, out of the State
97 Road Fund: *Provided*, That the utility shall reimburse the
98 division in full for such portion of the relocation costs that
99 it is required by law to bear within two years of the
100 completion of the highway project. The division shall
101 deduct from the utility's reimbursement amount any costs
102 resulting from work performed as a result of plan changes
103 made by the division. Before the division may pay any
104 relocation costs, the division and the utility shall enter into
105 a written reimbursement agreement containing terms that
106 are mutually acceptable to the division and the utility
107 seeking the reimbursement agreement.

108 (1) Preliminary engineering design work associated
109 with utility relocations to be paid for by the division
110 pursuant to a reimbursement agreement shall be completed
111 by any of the following methods:

112 (A) The division's or the utility's internal forces;

113 (B) A consultant selected by the division if the contract
114 is administered by the division: *Provided*, That the selected
115 consultant shall be pre-approved by the utility; or

116 (C) Inclusion as part of the highway construction
117 contract let by the division as agreed to by the utility:
118 *Provided*, That the subcontractor performing the
119 preliminary engineering design work associated with the
120 relocation is pre-approved by the utility.

121 (2) Utility relocation construction work paid for by the
122 division pursuant to a reimbursement agreement shall be
123 completed by either of the following methods:

124 (A) A contract awarded by the division to the lowest
125 qualified bidder based on an appropriate competitive
126 solicitation: *Provided*, That the lowest qualified bidder for
127 utility relocation construction work is pre-approved by the
128 utility; or

129 (B) Inclusion as part of the highway construction
130 contract let by the division as agreed to by the utility:
131 *Provided*, That the subcontractor performing the utility
132 relocation construction work is pre-approved by the utility.

133 (3) All design and construction work paid for by the
134 division pursuant to a reimbursement agreement is subject
135 to the reasonable inspection and acceptance of the utility,
136 whose acceptance shall not be unreasonably withheld, and
137 shall be performed in accordance with the specifications and
138 standards required by the utility.

139 (4) All relocation work performed pursuant to a
140 reimbursement agreement shall conform to applicable state
141 and federal laws or regulations.

142 (5) The provisions of this subsection are completely
143 voluntary and shall not be interpreted to require any utility
144 to enter into a reimbursement agreement with the division
145 or avail itself of the options authorized by this subsection.

146 (6) The division may propose rules for legislative
147 approval in accordance with the provisions of §29A-3-1 *et*
148 *seq.* of this code and the division may promulgate
149 emergency rules pursuant to the provisions of §29A-3-15 of
150 this code in order to comply with this subsection.

§17-4-17e. Utility relocation on state highway construction projects financed by proceeds of bonds or notes issued before July 1, 2021.

1 Subject to the provisions of §17-4-17d of this code, and
2 notwithstanding any other provisions to the contrary,
3 whenever the Commissioner of Highways determines that
4 any utility facility located upon, across, above, or under any
5 portion of a state highway needs to be relocated in order to
6 accommodate a highway project funded, in whole or in part,
7 with proceeds of bonds or notes issued by the division,
8 commissioner, West Virginia Parkways Authority, or the
9 State of West Virginia on or after January 1, 2018, and on

10 or before July 1, 2021, the commissioner shall notify the
11 utility owning or operating the facility, which shall relocate
12 the facility in accordance with this article and in accordance
13 with the cost-sharing provisions of this section. The utility
14 shall bear 85 percent of any such relocation costs, and the
15 Division of Highways shall bear 15 percent of any such
16 relocation costs. The division's share shall be paid out of the
17 State Road Fund or paid with other eligible funds, within
18 two years of completion of the highway project, and shall
19 be considered a cost of the highway project: *Provided*, That
20 nothing in this section shall alter or amend the responsibility
21 of the division to pay for the cost of utility facilities
22 relocation when such costs are incurred to accommodate a
23 highway project and such utilities maintain pre-existing
24 property rights in their facilities' present location.



CHAPTER 224

**(Com. Sub. for H. B. 2694 - By Delegates Hamrick,
Gearheart, Zatezalo, Howell, Atkinson, Ward,
Williams, Statler, Moye, Sobonya and Butler)**

[Passed March 2, 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 §17-4-55, relating to the study of the feasibility of the development and implementation of a program to facilitate commercial sponsorship of rest areas, welcome centers, roads, and vehicles; providing for sponsorship agreements; providing for agreement requirements; providing for disposition of funds received from agreements; providing for the promulgation of emergency or legislative rules; and providing for a report of the status of the program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-55. Rest area, welcome center, road, and vehicle commercial sponsorship program.

1 (a) The Division of Highways shall undertake a study of
2 the feasibility of implementing a program to facilitate
3 commercial sponsorship of rest areas, welcome centers,
4 roads, and vehicles owned or leased by the Division of
5 Highways to help offset the costs of the operation and
6 maintenance of rest areas, welcome centers, roads, and
7 vehicles.

8 (b) The Division of Highways shall implement a program
9 to facilitate commercial sponsorship of rest areas, welcome
10 centers, roads, and vehicles owned or leased by the Division of
11 Highways (1) if it is feasible and practicable, in accordance
12 with the study required by subsection (a) of this section, and
13 (2) upon approval of the proposed sponsorship program by the
14 Federal Highway Administration.

15 (c) Upon implementation of the program, the Division
16 of Highways may enter into sponsorship agreements with
17 private entities in accordance with this section. A
18 sponsorship agreement may allow a private entity to place
19 signs and placards identifying itself as a sponsor of the rest
20 area, welcome center, road or vehicle that is visible to the
21 traveling public in exchange for consideration at fair market
22 value. A sponsorship agreement may include any other
23 provisions the Division of Highways deems necessary.
24 Sponsorship agreements shall comply with all applicable
25 state and federal rules and regulations.

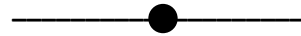
26 (d) All net revenue received by the Division of
27 Highways from the sponsorship agreements shall be
28 deposited in the State Road Fund.

29 (e) The Commissioner of the Division of Highways may
30 propose rules for legislative approval or emergency rules
31 pursuant to §29A-3-1 *et seq.* of this code to establish and

32 implement the program as may be necessary to carry out the
33 purposes of this section.

34 (f) On or before December 1, 2018, the Commissioner
35 of the Division of Highways shall

36 submit a report to the Joint Committee on Government
37 and Finance detailing the status and progress of the
38 feasibility study directed in subsection (a) of this section. If
39 the sponsorship program is implemented, the commissioner
40 shall also report to the Joint Committee on Government and
41 Finance on the status of the sponsorship program.



CHAPTER 225

(Com. Sub. for H. B. 2983 - By Mr. Speaker (Mr.
Armstead))

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §17-2A-8 of the Code of West Virginia, 1931, as amended, relating to requiring the Commissioner of the Division of Highways to implement reasonable design techniques intended to minimize damage that may result from recurring floods within the purpose and need of the state road system, and relating to updating certain statutory references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. ROADS AND HIGHWAYS.

§17-2A-8. Powers, duties and responsibilities of commissioner.

1 In addition to all other duties, powers and
2 responsibilities given and assigned to the commissioner in
3 this chapter, the commissioner may:

4 (1) Exercise general supervision over the state road
5 program and the construction, reconstruction, repair and
6 maintenance of state roads and highways: *Provided*, That
7 the commissioner shall implement reasonable design
8 techniques intended to minimize damage that may result
9 from recurring floods within the purpose and need of the
10 state road system;

11 (2) Determine the various methods of road construction
12 best adapted to the various sections and areas of the state
13 and establish standards for the construction and
14 maintenance of roads and highways in the various sections
15 and areas of the state;

16 (3) Conduct investigations and experiments, hold
17 hearings and public meetings and attend and participate in
18 meetings and conferences within and without the state for
19 purposes of acquiring information, making findings and
20 determining courses of action and procedure relative to
21 advancement and improvement of the state road and
22 highway system;

23 (4) Enter private lands to make inspections and surveys
24 for road and highway purposes;

25 (5) Acquire, in name of the department, by lease, grant,
26 right of eminent domain or other lawful means all lands and
27 interests and rights in lands necessary and required for
28 roads, rights-of-way, cuts, fills, drains, storage for
29 equipment and materials and road construction and
30 maintenance in general;

31 (6) Procure photostatic copies of any or all public
32 records on file at the State Capitol of Virginia which may
33 be considered necessary or proper in ascertaining the
34 location and legal status of public road rights-of-way
35 located or established in what is now the State of West
36 Virginia, which when certified by the commissioner, may
37 be admitted in evidence, in lieu of the original, in any of the
38 courts of this state;

39 (7) Plan for and hold annually a school of good roads,
40 of not less than three or more than six days' duration, for
41 instruction of his or her employees, which is held in
42 conjunction with West Virginia University and may be held
43 at the university or at any other suitable place in the state;

44 (8) Negotiate and enter in reciprocal contracts and
45 agreements with proper authorities of other states and of the
46 United States relating to and regulating the use of roads and
47 highways with reference to weights and types of vehicles,
48 registration of vehicles and licensing of operators, military
49 and emergency movements of personnel and supplies and
50 all other matters of interstate or national interest;

51 (9) Classify and reclassify, locate and relocate,
52 expressway, trunkline, feeder and state local service roads
53 and designate by number the routes within the state road
54 system;

55 (10) Create, extend or establish, upon petition of any
56 interested party or parties or on the commissioner's own
57 initiative, any new road or highway found necessary and
58 proper;

59 (11) Exercise jurisdiction, control, supervision and
60 authority over local roads, outside the state road system, to
61 the extent determined by him or her to be expedient and
62 practicable;

63 (12) Discontinue, vacate and close any road or highway,
64 or any part of any road or highway, the continuance and
65 maintenance of which are found unnecessary and improper,
66 upon petition and hearing or upon investigation initiated by
67 the commissioner;

68 (13) Close any state road while under construction or
69 repair and provide a temporary road during the time of the
70 construction or repair;

- 71 (14) Adjust damages occasioned by construction,
72 reconstruction or repair of any state road or the
73 establishment of any temporary road;
- 74 (15) Establish and maintain a uniform system of road
75 signs and markers;
- 76 (16) Fix standard widths for road rights-of-way, bridges
77 and approaches to bridges and fix and determine grades and
78 elevations therefor;
- 79 (17) Test and standardize materials used in road
80 construction and maintenance, either by governmental
81 testing and standardization activities or through contract by
82 private agencies;
- 83 (18) Allocate the cost of retaining walls and drainage
84 projects, for the protection of a state road or its right-of-way,
85 to the cost of construction, reconstruction, improvement or
86 maintenance;
- 87 (19) Acquire, establish, construct, maintain and operate,
88 in the name of the department, roadside recreational areas
89 along and adjacent to state roads and highways;
- 90 (20) Exercise general supervision over the construction
91 and maintenance of airports and landing fields under the
92 jurisdiction of the West Virginia State Aeronautics
93 Commission, of which the commissioner is a member, and
94 make a study and general plan of a statewide system of
95 airports and landing fields;
- 96 (21) Provide traffic engineering services to
97 municipalities of the state upon request of the governing
98 body of any municipality and upon terms that are agreeably
99 arranged;
- 100 (22) Institute complaints before the Public Service
101 Commission or any other appropriate governmental agency
102 relating to freight rates, car service and movement of road
103 materials and equipment;

104 (23) Invoke any appropriate legal or equitable remedies,
105 subject to section seven of this article, to enforce his or her
106 orders, to compel compliance with requirements of law and
107 to protect and preserve the state road and highway system
108 or any part of the system;

109 (24) Make and promulgate rules for the government and
110 conduct of personnel, for the orderly and efficient
111 administration and supervision of the state road program
112 and for the effective and expeditious performance and
113 discharge of the duties and responsibilities placed upon him
114 or her by law;

115 (25) Delegate powers and duties to his or her appointees
116 and employees who shall act by and under his or her
117 direction and be responsible to him or her for their acts;

118 (26) Designate and define any construction and
119 maintenance districts within the state road system that is
120 found expedient and practicable;

121 (27) Contract for the construction, improvement and
122 maintenance of the roads;

123 (28) Comply with provisions of present and future
124 federal aid statutes and regulations, including execution of
125 contracts or agreements with and cooperation in programs
126 of the United States government and any proper department,
127 bureau or agency of the United States government relating
128 to plans, surveys, construction, reconstruction,
129 improvement and maintenance of state roads and highways;

130 (29) Prepare budget estimates and requests;

131 (30) Establish a system of accounting covering and
132 including all fiscal and financial matters of the department;

133 (31) Establish and advance a right-of-way Acquisition
134 Revolving Fund, a Materials Revolving Fund and an
135 Equipment Revolving Fund;

136 (32) Enter into contracts and agreements with and
137 cooperate in programs of counties, municipalities and other
138 governmental agencies and subdivisions of the state relating
139 to plans, surveys, construction, reconstruction,
140 improvement, maintenance and supervision of highways,
141 roads, streets and other travel ways when and to the extent
142 determined by the department to be expedient and practical;

143 (33) Report, as provided by law, to the Governor and the
144 Legislature;

145 (34) Purchase materials, supplies and equipment
146 required for the state road program and system;

147 (35) Dispose of all obsolete and unusable and surplus
148 supplies and materials which cannot be used
149 advantageously and beneficially by the department in the
150 state road program by transfer of the supplies and materials
151 to other governmental agencies and institutions by
152 exchange, trade or sale of the supplies and materials;

153 (36) Investigate road conditions, official conduct of
154 department personnel and fiscal and financial affairs of the
155 department and hold hearings and make findings thereon or on
156 any other matters within the jurisdiction of the department;

157 (37) Establish road policies and administrative
158 practices;

159 (38) Fix and revise from time to time tolls for transit
160 over highway projects constructed by the Division of
161 Highways after May 1, 1999, that have been authorized by
162 the provisions of §17-17A-5b of this chapter;

163 (39) Take actions necessary to alleviate any conditions as
164 the Governor may declare to constitute an emergency, whether
165 or not the emergency condition affects areas normally under
166 the jurisdiction of the Division of Highways; and

167 (40) Provide family restrooms at all rest areas along
168 interstate highways in this state, all to be constructed in
169 accordance with federal law.

●

CHAPTER 226

**(Com. Sub. for H. B. 4447 - By Delegates Shott,
Hanshaw, Moore, C. Miller, Harshbarger, Fast,
Lane, Hollen, Capito, Summers and Byrd)**

[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 §17-2E-1, §17-2E-2, §17-2E-3, §17-2E-4, §17-2E-5, §17-2E-6, §17-2E-7, §17-2E-8, and §17-2E-9, all relating to providing a uniform and efficient system of broadband conduit installation coinciding with the construction, maintenance, or improvement of highways and rights-of-way under the oversight of the Division of Highways; making legislative findings; defining terms; providing procedures for broadband conduit installation in rights-of-way; providing for highway safety guidelines; establishing a procedure for joint use between telecommunications carriers; setting forth a procedure for monetary and in-kind compensation; providing a method for Division of Highways to offer excess conduit to a telecommunications carrier; setting forth standards to be utilized in agreements entered into by the Division of Highways and two or more telecommunications carriers in a single trench; providing that existing rules, policies, and procedures of the Division of Highways and United States Code shall control; and providing that the Commissioner of the Division of Highways may promulgate rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. DIG ONCE POLICY.

§17-2E-1. Legislative findings.

1 (a) The Legislature finds that it is in the public interest
2 to accommodate telecommunications facilities on Division
3 of Highways right-of-way when the use of the right-of-way
4 does not adversely affect the safety of the traveling public
5 or impair the highway or its aesthetic quality or conflict with
6 any federal, state, or local laws, rules, regulations, or
7 policies.

8 (b) The Legislature further finds that a broadband
9 connection is an essential part of developing the state and
10 local economies, enhancing the transportation system and
11 creating a safer and more secure environment for our
12 citizens.

13 (c) The Legislature further finds that expanding
14 telecommunication facilities will allow the state to
15 participate in the E-Rate Program of funding for digital
16 education in America to provide reliable services
17 opportunities for education and training.

18 (d) The Legislature further finds that fast, reliable
19 broadband connections enhance telemedical opportunities
20 for our rural doctors and hospitals, linking them to our major
21 medical centers. Thereby overcoming distance barriers, and
22 improving access to medical services that often are not
23 consistently available in rural communities.

24 (e) The Legislature further finds that instituting a dig
25 once policy encourages telecommunications carriers to
26 coordinate installation of broadband conduit to minimize
27 costs to the carriers and minimize disruption and
28 inconvenience to the traveling public.

§17-2E-2. Definitions.

1 In this article, unless the context otherwise requires:

2 (1) “Broadband conduit” or “conduit” means a conduit,
3 innerduct or microduct for fiber optic cables that support
4 facilities for broadband service.

5 (2) "Broadband service" has the same meaning as
6 defined in §31G-1-2 of this code.

7 (3) "Council" means the Broadband Enhancement
8 Council.

9 (4) "Division" means the Division of Highways.

10 (5) "Longitudinal access" means access to or the use of
11 any part of a right-of-way that extends generally parallel to
12 the traveled right-of-way.

13 (6) "Permit" means an encroachment permit issued by
14 the Commissioner of the Division of Highways under the
15 authority of this Code, and pursuant to the "*Accommodation*
16 *of Utilities On Highway Right Of Way and Adjustment and*
17 *Relocation Of Utility Facilities On Highway Projects*
18 *Policy*", or equivalent policy, as currently enforced by the
19 Division of Highways, that specifies the requirements and
20 conditions for performing work in a right-of-way.

21 (7) "Right-of-way" means land, property, or any interest
22 therein acquired or controlled by the West Virginia Division
23 of Highways for transportation facilities or other
24 transportation purposes or specifically acquired for utility
25 accommodation.

26 (8) "Telecommunications carrier" means a
27 telecommunications carrier:

28 (A) As determined by the Public Service Commission
29 of West Virginia; or

30 (B) That meets the definition of telecommunications
31 carrier with respect to the Federal Communications
32 Commission, as contained in 47 U.S.C. §153.

33 (9) "Telecommunications facility" means any cable, line,
34 fiber, wire, conduit, innerduct, access manhole, handhole,
35 tower, hut, pedestal, pole, box, transmitting equipment,
36 receiving equipment, power equipment or other equipment,

37 system or device that is used to transmit, receive, produce or
38 distribute a signal for telecommunications purposes via
39 wireline, electronic or optical means.

40 (10) "Utility facility" has the meaning ascribed to it in
41 §17-2A-17a of this Code.

42 (11) "Wireless access" means access to and use of a
43 right-of-way for the purpose of constructing, installing,
44 maintaining, using, or operating telecommunications
45 facilities for wireless telecommunications.

**§17-2E-3. Use of rights-of-way. Broadband conduit installation
in rights-of-way; permits; agreements; compensation;
valuation of compensation.**

1 (a) Before obtaining a permit for the construction or
2 installation of a telecommunications facility in a right-of-
3 way, a telecommunications carrier must enter into an
4 agreement with the Division consistent with the
5 requirements of this article.

6 (b) Before granting permitted longitudinal access or
7 wireless access to a right-of-way, the Division of Highways
8 shall:

9 (1) First enter into an agreement with a
10 telecommunications carrier that is competitively neutral and
11 nondiscriminatory as to other telecommunications carriers.

12 (2) Upon receipt of any required approval or
13 concurrence by the Federal Highway Administration the
14 Division may issue a permit granting access under this
15 section: *Provided*, That the Division of Highways shall
16 comply with all applicable federal regulations with respect
17 to approval of an agreement, including but not limited to 23
18 C.F.R. §710.403 and 23 C.F.R. §710.405. The agreement
19 shall be approved by the Commissioner of Highways in
20 order to be effective and, without limitation:

21 (A) Specify the terms and conditions for renegotiation
22 of the agreement;

23 (B) Set forth the maintenance requirements for each
24 telecommunications facility;

25 (C) Be nonexclusive; and

26 (D) Be for a term of not more than 30 years.

27 (c) Unless specifically provided for in an agreement
28 entered into pursuant to §17-2E-3(a) of this code, the
29 Division of Highways may not grant a property interest in a
30 right-of-way pursuant to this article.

31 (d) A telecommunications carrier shall compensate the
32 Division of Highways for access to a right-of-way for the
33 construction, installation, and maintenance of
34 telecommunication facilities, the use of spare conduit or
35 related facilities of the Division of Highways as part of any
36 longitudinal access or wireless access granted to a right-of-
37 way pursuant to this section. The compensation must be,
38 without limitation:

39 (1) At fair market value;

40 (2) Competitively neutral;

41 (3) Nondiscriminatory;

42 (4) Open to public inspection;

43 (5) Calculated based on the geographic region of this
44 state, taking into account the population and the impact on
45 private right-of-way users in the region; and once
46 calculated, set at an amount that encourages the deployment
47 of digital infrastructure within this State:

48 (6) Paid in monetary compensation or with in-kind
49 compensation, or a combination of monetary compensation
50 and in-kind compensation; and

51 (7) Paid in a lump-sum payment or in annual
52 installments, as agreed to by the telecommunications carrier
53 and the Division of Highways.

54 (e) The Division may consider adjustments for areas, the
55 Division in conjunction with the Council, determines are
56 underserved or unserved areas of the state and may consider
57 the value to such areas for economic development,
58 enhancing the transportation system, expanding
59 opportunities for digital learning, and telemedicine.

60 (f) For the purpose of determining the amount of
61 compensation a telecommunications carrier must pay the
62 Division of Highways for the use of spare conduit or excess
63 conduit or related facilities of the Division of Highways as
64 part of any longitudinal access or wireless access granted to
65 a right-of-way pursuant to this section, the Division may:

66 (1) Conduct an analysis once every five years, in
67 accordance with the rules, policies, or guidelines of the
68 Division of Highways, to determine the fair market value of
69 a right-of-way to which access has been granted pursuant to
70 this section; and

71 (2) If compensation is paid in-kind, determine the fair
72 market value of the in-kind compensation based on the
73 incremental costs for the installation of conduit and related
74 facilities.

75 (g) The value of in-kind compensation, or a combination
76 of money and in-kind compensation, must be equal to or
77 greater than the amount of monetary compensation that the
78 Division of Highways would charge if the compensation
79 were paid solely with money.

80 (h) The provisions of this article shall not apply to the
81 relocation or modification of existing telecommunication
82 facilities in a right-of-way, nor shall these provisions apply
83 to aerial telecommunications facilities or associated
84 apparatus or equipment in a right-of-way. Relocation of

85 telecommunications facilities within rights-of-way for state
86 highways shall be in accordance with the provisions of §17-
87 4-17b of this code.

§17-2E-4. Highway safety.

1 (a) The Division of Highways, in its sole discretion, may
2 deny any longitudinal access or wireless access if such
3 access would compromise the safe, efficient, and
4 convenient use of any road, route, highway, or interstate in
5 this state for the traveling public.

6 (b) Any longitudinal access or wireless access to a right-
7 of-way granted by the Division of Highways pursuant to this
8 article does not abrogate, limit, supersede, or otherwise
9 affect access granted or authorized pursuant to the
10 Division's rules, policies, and guidelines related to
11 accommodation of utilities on highways' rights-of-way and
12 adjustment and relocation of utility facilities on highway
13 projects.

**§17-2E-5. Telecommunications carrier initiated construction
and joint use.**

1 (a) The Division of Highways shall provide for the
2 proportionate sharing of costs between telecommunications
3 carriers for joint trenching or trench sharing based on the
4 amount of conduit innerduct space or excess conduit that is
5 authorized in the agreements entered into pursuant to this
6 article. If the Division plans to use the trench, it shall pay its
7 proportional share unless it is utilizing the trench as in-kind
8 payment for use of the right-of-way.

9 (b) Upon application for a permit, the carrier will notify,
10 by email, the West Virginia Broadband Enhancement
11 Council and all other carriers on record with the West
12 Virginia Broadband Enhancement Council of the
13 application. Other carriers have 30 calendar days to notify
14 the applicant if they wish to share the applicant's trench.
15 This requirement extends to all underground construction
16 technologies.

17 (c) The carrier shall also meet the following conditions
18 for a permit:

19 (1) The telecommunications carrier will be required to
20 place, at its sole expense, a Class II legal advertisement, in
21 accordance with §59-3-2(a) of this code, and of a form and
22 content approved by the Division of Highways, in the local
23 project area newspaper, in the Charleston newspaper, on
24 industry and the Division of Highways' websites, and
25 within other pertinent media, announcing the general scope
26 of the proposed installation within the right-of-way and
27 providing competing telecommunications carriers the
28 opportunity to timely express an interest in installing
29 additional telecommunication facilities during the initial
30 installation. The legal advertisement is to run at least two
31 consecutive weeks, and the telecommunications carrier is to
32 notify the Division of any interest of other parties received.

33 (2) If a competing telecommunications carrier expresses
34 interest in participating in the project, an agreement between
35 the two (or more) telecommunications carriers will be
36 executed by those entities, outlining the responsibilities and
37 financial obligations of each, with respect to the installation
38 within the right-of-way. A copy of the executed agreement
39 shall be provided to the Division of Highways.

40 (3) The telecommunications carrier that placed the legal
41 advertisement is responsible for resolving in good faith all
42 disputes between any competing telecommunications
43 carriers that timely responded to the advertisement and that
44 wishes to install facilities within the same portion of the
45 rights-of-way to be occupied. Should a dispute arise
46 between the initial telecommunications carrier and a
47 competing telecommunications carrier, the initial
48 telecommunications carrier will attempt to mediate the
49 dispute. Any dispute that is not resolved by the
50 telecommunications carriers shall be adjudicated by the
51 Public Service Commission.

52 (d) If two or more telecommunications carriers are
53 required or authorized to share a single trench, each carrier
54 in the trench must share the cost and benefits of the trench
55 in a fair, reasonable, competitively neutral, and
56 nondiscriminatory manner. This requirement extends to all
57 underground construction technologies.

58 (e) The Commissioner of the Division of Highways
59 shall promulgate rules governing the relationship between
60 the telecommunications carriers, as hereinafter provided in
61 this article.

§17-2E-6. Monetary and in-kind compensation.

1 (a) All monetary compensation collected by the
2 Division of Highways pursuant to this article shall be
3 deposited in the State Road Fund.

4 (b) In-kind compensation paid to the Division of
5 Highways under an agreement entered into pursuant to this
6 article may include, without limitation:

7 (1) Conduit or excess conduit;

8 (2) Innerduct;

9 (3) Dark fiber;

10 (4) Access points;

11 (5) Telecommunications equipment or services;

12 (6) Bandwidth; and

13 (7) Other telecommunications facilities as a component
14 of the present value of the trenching.

15 (c) The Division of Highways shall value any in-kind
16 compensation based on fair market value at the time of
17 installation or review, and may also consider any valuation
18 or cost information provided by the telecommunications
19 carrier.

20 (d) In-kind compensation paid to the Division of
21 Highways may be disposed of if both of the following
22 conditions are met:

23 (1) The telecommunications facility received as in-kind
24 payment has not been used within 10 years of its installation;
25 and

26 (2) The Commissioner of the Division of Highways
27 determines that the Division does not have an immediately
28 foreseeable need for the telecommunications facility.

29 (e) Upon determining that it is appropriate to dispose of
30 the telecommunications facility, the Division shall
31 determine its current fair market value. The Division shall
32 offer the provider or providers who made the in-kind
33 payment the option to purchase any telecommunications
34 facility obtained from such provider. If the provider or
35 providers do not purchase the telecommunications facility,
36 it shall be offered for public auction in the same manner as
37 the Division auctions excess rights-of-way.

§17-2E-7. Multiple carriers in a single trench.

1 (a) If the Division of Highways enters into an agreement
2 with two or more telecommunications carriers, a consortium
3 or other entity whose members, partners or other
4 participants are two or more telecommunications carriers,
5 or, if the Division requires or allows two or more
6 telecommunications carriers to share a single trench, the
7 agreements entered into pursuant to this article shall require
8 that the telecommunications carriers share the obligation of
9 compensating the Division of Highways on a fair,
10 reasonable and equitable basis, taking into consideration the
11 proportionate uses and benefits to be derived by each
12 telecommunications carrier from the trench, conduits, and
13 other telecommunications facilities installed under the
14 agreements.

15 (b) The provisions of §17-2E-7(a) of this code do not
16 prevent the Division of Highways from requiring every

17 participating telecommunications carrier to bear joint and
18 several liability for the obligations owed to the Division of
19 Highways under the agreements.

20 (c) Any agreement requiring two or more
21 telecommunications carriers to share the obligation of
22 compensating the Division of Highways shall provide the
23 Division the right to review and audit the records and
24 contracts of and among the participating carriers to ensure
25 compliance with §17-2E-7(a) of this code.

§17-2E-8. Existing policies.

1 (a) The requirements set forth in this article do not alter
2 existing rules, policies, and procedures relating to other
3 utility facilities within a right-of-way or for accommodating
4 utility facilities or other facilities under the control of the
5 Division of Highways.

6 (b) The Division of Highways may consider the
7 financial and technical qualifications of a
8 telecommunications carrier when determining specific
9 insurance requirements for contractors authorized to enter a
10 right-of-way to construct, install, inspect, test, maintain, or
11 repair telecommunications facilities with longitudinal
12 access or wireless access to the right-of-way.

13 (c) If the Division of Highways authorizes longitudinal
14 access, wireless access, or the use of, and access to, conduit
15 or related facilities of the Division for construction and
16 installation of a telecommunications facility, the Division
17 may require an approved telecommunications carrier to
18 install the telecommunications facility in the same general
19 location as similar facilities already in place, coordinate
20 their planning and work with other contractors performing
21 work in the same geographic area, install in a joint trench
22 when two or more telecommunications carriers are
23 performing installations at the same time and equitably
24 share costs between such carriers.

25 (d) The placement, installation, maintenance, repair,
26 use, operation, replacement, and removal of
27 telecommunications facilities with longitudinal access or
28 wireless access to a right-of-way or that use or access
29 conduit or related facilities of the Division shall be
30 accommodated only when in compliance with this code and
31 Division of Highways rules, policies and guidelines.

32 (e) Access to a right-of-way must be administered in
33 compliance with the Telecommunications Act of 1996, 47
34 U.S.C. §151 *et seq.*, as amended.

§17-2E-9. Rule-making authority.

1 The Commissioner of the Division of Highways may
2 promulgate rules pursuant to the provisions of §29A-3-15
3 of this code as may be necessary to carry out the purpose of
4 this article, and as may have been specifically delineated
5 within this article.



CHAPTER 227

**(S. B. 263 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed January 26, 2018; in effect from passage.]
[Approved by the Governor on January 29, 2018.]

AN ACT to amend and reenact §11-13X-13 of the Code of West Virginia, 1931, as amended, relating to the elimination of film tax credits; preserving rights to all previously issued film tax credits; ceasing operations of the West Virginia Film Office; and transferring certain duties of the West Virginia Film Office to the Division of Tourism.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY
INVESTMENT ACT.**

**§11-13X-13. Effective date, elimination of film tax credits,
preservation of film tax credits earned prior to the sunset
date; cessation of the West Virginia Film Office.**

1 (a) The credit allowed by this article shall be allowed
2 upon eligible expenditures occurring after December 31,
3 2007.

4 (b) The amendments to this article enacted in the year
5 2009 shall apply to all taxable years beginning after
6 December 31, 2007, and shall apply with retroactive effect
7 with relation to taxable years beginning prior to the date of
8 passage of such amendments.

9 (c) No tax credits authorized under this article shall be
10 issued following the effective date of legislation
11 establishing this subsection, §11-13X-13(d), and §11-13X-
12 13(e) of this code in the year 2018. Notwithstanding any
13 provision of this article to the contrary, no entitlement to any
14 tax credit under this article may result from, and no credit is
15 available to any person for, expenditures incurred following
16 the effective date of this subsection.

17 (d) Notwithstanding the provisions of §11-13X-13(c) of
18 this code, film tax credits to which a taxpayer has gained
19 lawful entitlement prior to the effective date of this subsection,
20 may continue to be applied against tax liabilities, subject to the
21 conditions, limitations, and constraints applicable to such
22 credit under this article, until exhausted or otherwise
23 terminated in accordance with the terms of this article and this
24 code. Film tax credits to which a taxpayer has gained lawful
25 entitlement prior to the effective date of this subsection may be
26 transferred in accordance with §11-13X-8 of this code, subject
27 to the conditions, limitations, and constraints applicable to
28 such credit under this article, until exhausted or otherwise
29 terminated in accordance with the terms of this article and this
30 code.

31 (e) Effective July 1, 2018, all operations of the West
32 Virginia Film Office shall cease. To the extent necessary to
33 settle, finalize, and conclude business relating to
34 outstanding film tax credits issued prior to the effective date
35 of the bill, the Division of Tourism is hereby authorized to
36 administer such duties for that limited purpose.

CHAPTER 228

**(Com. Sub. for S. B. 275 - By Senators Clements,
Azinger, Beach, Jeffries, Maroney, Prezioso,
Romano, Unger, Takubo, Stollings 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 §11-10-5d of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3-9d of said code; and to amend and reenact §60-3A-21 of said code, all relating to the excise tax on sales of intoxicating liquors and wine; defining terms; providing that tax collected on sales sourced within the corporate limits of a municipality be remitted to the municipality; providing that the tax collected on sales sourced outside the corporate limits of a municipality be remitted to the county; providing rule-making authority; providing sourcing rules for determining whether tax is collected within or outside of the corporate limits of a municipality; permitting counties to inspect and make copies of certain Tax Commissioner records relating to the collection of tax within the county and the municipalities in the county or the remittance of tax to such county or municipalities; and permitting municipalities to inspect and make copies of certain Tax Commissioner records relating to the collection of tax within the municipality and within the county in which the municipality is located, but outside of the corporate limits of another municipality, and the remittance of tax to such municipality and county.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5d. Confidentiality and disclosure of returns and return information.

1 (a) *General rule.* — Except when required in an official
2 investigation by the Tax Commissioner into the amount of
3 tax due under any article administered under this article or
4 in any proceeding in which the Tax Commissioner is a party
5 before a court of competent jurisdiction to collect or
6 ascertain the amount of such tax and except as provided in
7 §11-10-5d(d) through §11-10-5d(n) of this code, it shall be
8 unlawful for any officer, employee, or agent of this state or
9 of any county, municipality, or governmental subdivision to
10 divulge or make known in any manner the tax return, or any
11 part thereof, of any person or disclose information
12 concerning the personal affairs of any individual or the
13 business of any single firm or corporation, or disclose the
14 amount of income, or any particulars set forth or disclosed
15 in any report, declaration, or return required to be filed with
16 the Tax Commissioner by any article of this chapter
17 imposing any tax administered under this article or by any
18 rule of the Tax Commissioner issued thereunder, or
19 disclosed in any audit or investigation conducted under this
20 article. For purposes of this article, tax returns and return
21 information obtained from the Tax Commissioner pursuant
22 to an exchange of information agreement or otherwise
23 pursuant to the provisions of §11-10-5d(d) through §11-10-
24 5d(n) of this code which is in the possession of any officer,
25 employee, agent, or representative of any local or municipal
26 governmental entity or other governmental subdivision is
27 subject to the confidentiality and disclosure restrictions set
28 forth in this article: *Provided*, That such officers,
29 employees, or agents may disclose the information in an
30 official investigation, by a local or municipal governmental

31 authority or agency charged with the duty and responsibility
32 to administer the tax laws of the jurisdiction, into the
33 amount of tax due under any lawful local or municipal tax
34 administered by that authority or agency, or in any
35 proceeding in which the local or municipal governmental
36 subdivision, authority, or agency is a party before a court of
37 competent jurisdiction to collect or ascertain the amount of
38 the tax. Unlawful disclosure of the information by any
39 officer, employee, or agent of any local, municipal, or
40 governmental subdivision is subject to the sanctions set
41 forth in this article.

42 (b) *Definitions.* — For purposes of this section:

43 (1) *Background file document.* — The term
44 “background file document”, with respect to a written
45 determination, includes the request for that written
46 determination, any written material submitted in support of
47 the request and any communication (written or otherwise)
48 between the state Tax Department and any person outside
49 the state Tax Department in connection with the written
50 determination received before issuance of the written
51 determination.

52 (2) *Disclosure.* — The term “disclosure” means making
53 known to any person in any manner whatsoever a return or
54 return information.

55 (3) *Inspection.* — The terms “inspection” and
56 “inspected” means any examination of a return or return
57 information.

58 (4) *Return.* — The term “return” means any tax or
59 information return or report, declaration of estimated tax,
60 claim, or petition for refund or credit or petition for
61 reassessment that is required by, or provided for, or
62 permitted under the provisions of this article (or any article
63 of this chapter administered under this article) which is filed
64 with the Tax Commissioner by, on behalf of, or with respect
65 to any person and any amendment or supplement thereto,

66 including supporting schedules, attachments, or lists which
67 are supplemental to, or part of, the filed return.

68 (5) *Return information.* — The term “return
69 information” means:

70 (A) A taxpayer’s identity; the nature, source, or amount
71 of his or her income, payments, receipts, deductions,
72 exemptions, credits, assets, liabilities, net worth, tax
73 liability, tax withheld, deficiencies, overassessments, or tax
74 payments, whether the taxpayer’s return was, is being, or
75 will be examined or subject to other investigation or
76 processing, or any other data received by, recorded by,
77 prepared by, furnished to, or collected by the Tax
78 Commissioner with respect to a return or with respect to the
79 determination of the existence, or possible existence, of
80 liability (or the amount thereof) or by any person under the
81 provisions of this article (or any article of this chapter
82 administered under this article) for any tax, additions to tax,
83 penalty, interest, fine, forfeiture, or other imposition or
84 offense; and

85 (B) Any part of any written determination or any
86 background file document relating to such written
87 determination. “Return information” does not include,
88 however, data in a form which cannot be associated with or
89 otherwise identify, directly or indirectly, a particular
90 taxpayer. Nothing in the preceding sentence, or in any other
91 provision of this code, shall be construed to require the
92 disclosure of standards used or to be used for the selection
93 of returns for examination or data used or to be used for
94 determining such standards.

95 (6) *Tax administration.* — The term “tax
96 administration” means:

97 (A) The administration, management, conduct,
98 direction, and supervision of the execution and application
99 of the tax laws or related statutes of this state and the
100 development and formulation of state and local tax policy

101 relating to existing or proposed state and local tax laws and
102 related statutes of this state; and

103 (B) Includes assessment, collection, enforcement,
104 litigation, publication, and statistical gathering functions
105 under the laws of this state and of local governments.

106 (7) *Taxpayer identity.* — The term “taxpayer identity”
107 means the name of a person with respect to whom a return
108 is filed, his or her mailing address, his or her taxpayer
109 identifying number, or a combination thereof.

110 (8) *Taxpayer return information.* — The term “taxpayer
111 return information” means return information as defined in
112 §11-10-5d(b)(5) of this code which is filed with, or
113 furnished to, the Tax Commissioner by or on behalf of the
114 taxpayer to whom such return information relates.

115 (9) *Written determination.* — The term “written
116 determination” means a ruling, determination letter,
117 technical advice memorandum, or letter or administrative
118 decision issued by the Tax Commissioner.

119 (c) *Criminal penalty.* — Any officer, employee, or agent
120 (or former officer, employee, or agent) of this state or of any
121 county, municipality, or governmental subdivision who
122 violates this section shall be guilty of a misdemeanor and,
123 upon conviction thereof, shall be fined not more than
124 \$1,000, or imprisoned for not more than one year, or both,
125 together with costs of prosecution.

126 (d) *Disclosure to designee of taxpayer.* — Any person
127 protected by the provisions of this article may, in writing,
128 waive the secrecy provisions of this section for any purpose
129 and any period as he or she states in the written waiver. The
130 Tax Commissioner may, subject to such requirements and
131 conditions as he or she may prescribe, thereupon release to
132 designated recipients such taxpayer’s return or other
133 particulars filed under the provisions of the tax articles
134 administered under the provisions of this article, but only to

135 the extent necessary to comply with a request for
136 information or assistance made by the taxpayer to such other
137 person. However, return information shall not be disclosed
138 to such person or persons if the Tax Commissioner
139 determines that such disclosure would seriously impair
140 administration of this state's tax laws.

141 (e) Disclosure of returns and return information for use
142 in criminal investigations. —

143 (1) *In general.* — Except as provided in §11-10-5d(e)(3)
144 of this code, any return or return information with respect to
145 any specified taxable period or periods shall, pursuant to
146 and upon the grant of an ex parte order by a federal district
147 court judge, federal magistrate, or circuit court judge of this
148 state, under §11-10-5d(e)(2) of this code, be open (but only
149 to the extent necessary as provided in such order) to
150 inspection by, or disclosure to, officers and employees of
151 any federal agency, or of any agency of this state, who
152 personally and directly engaged in:

153 (A) Preparation for any judicial or administrative
154 proceeding pertaining to the enforcement of a specifically
155 designated state or federal criminal statute to which this
156 state, the United States, or such agency is or may be a party;

157 (B) Any investigation which may result in such a
158 proceeding; or

159 (C) Any state or federal grand jury proceeding
160 pertaining to enforcement of such a criminal statute to
161 which this state, the United States, or such agency is or may
162 be a party. Such inspection or disclosure shall be solely for
163 the use of such officers and employees in such preparation,
164 investigation, or grand jury proceeding.

165 (2) *Application of order.* — Any United States attorney,
166 any special prosecutor appointed under Section 593 of Title
167 28, United States Code, or any attorney in charge of a
168 United States justice department criminal division

169 organized crime strike force established pursuant to Section
170 510 of Title 28, United States Code, may authorize an
171 application to a circuit court judge or magistrate, as
172 appropriate, for the order referred to in §11-10-5d(e)(1) of
173 this code. Any prosecuting attorney of this state may
174 authorize an application to a circuit court judge of this state
175 for the order referred to in §11-10-5d(e)(1) of this code.
176 Upon the application, the judge or magistrate may grant
177 such order if he or she determines on the basis of the facts
178 submitted by the applicant that:

179 (A) There is reasonable cause to believe, based upon
180 information believed to be reliable, that a specific criminal
181 act has been committed;

182 (B) There is reasonable cause to believe that the return
183 or return information is or may be relevant to a matter
184 relating to the commission of such act; and

185 (C) The return or return information is sought
186 exclusively for use in a state or federal criminal
187 investigation or proceeding concerning such act and the
188 information sought to be disclosed cannot reasonably be
189 obtained, under the circumstances, from another source.

190 (3) The Tax Commissioner may not disclose any return
191 or return information under §11-10-5d(e)(1) of this code if
192 he or she determines and certifies to the court that the
193 disclosure would identify a confidential informant or
194 seriously impair a civil or criminal tax investigation.

195 (f) *Disclosure to person having a material interest.* —
196 The Tax Commissioner may, pursuant to legislative rules
197 promulgated by him or her, and upon such terms as he or
198 she may require, disclose a return or return information to a
199 person having a material interest in the return or return
200 information: *Provided*, That such disclosure shall only be
201 made if the Tax Commissioner determines, in his or her
202 discretion, that the disclosure would not seriously impair
203 administration of this state's tax laws.

204 (g) *Statistical use.* — This section shall not be construed
205 to prohibit the publication or release of statistics classified
206 to prevent the identification of particular returns and the
207 items thereof.

208 (h) *Disclosure of amount of outstanding lien.* — If
209 notice of lien has been recorded pursuant to §11-10-12 of
210 this code, the amount of the outstanding obligation secured
211 by such lien may be disclosed to any person who furnishes
212 written evidence satisfactory to the Tax Commissioner that
213 such person has a right in the property subject to the lien or
214 intends to obtain a right in such property.

215 (i) *Reciprocal exchange.* — The Tax Commissioner
216 may, pursuant to written agreement, permit the proper
217 officer of the United States, or the District of Columbia, or
218 any other state, or any political subdivision of this state, or
219 his or her authorized representative, who is charged by law
220 with responsibility for administration of a similar tax, to
221 inspect reports, declarations, or returns filed with the Tax
222 Commissioner or may furnish to such officer or
223 representative a copy of any document, provided any other
224 jurisdiction grants substantially similar privileges to the Tax
225 Commissioner or to the Attorney General of this state:
226 *Provided,* That pursuant to written agreement the Tax
227 Commissioner may provide to the assessor of any county,
228 sheriff of any county, or the mayor of any West Virginia
229 municipality the federal employer identification number of
230 any business being carried on within the jurisdiction of the
231 requesting assessor, sheriff, or mayor. The disclosure shall
232 be only for the purpose of, and only to the extent necessary
233 in, the administration of tax laws: *Provided, however,* That
234 the information may not be disclosed to the extent that the
235 Tax Commissioner determines that such disclosure would
236 identify a confidential informant or seriously impair any
237 civil or criminal tax investigation.

238 (j) *Exchange with municipalities and counties.* —

239 (1) The Tax Commissioner shall, upon the written
240 request of the mayor or governing body of any West
241 Virginia municipality, allow the duly authorized agent of
242 the municipality to inspect and make copies of the state
243 business and occupation tax return filed by taxpayers of the
244 municipality and any other state tax returns (including, but
245 not limited to, consumers sales and service tax return
246 information and health care provider tax return information)
247 that is reasonably requested by the municipality. Such
248 inspection or copying shall include disclosure to the
249 authorized agent of the municipality for tax administration
250 purposes of all available return information from files of the
251 tax department relating to taxpayers who transact business
252 within the municipality. The Tax Commissioner shall be
253 permitted to inspect or make copies of any tax return and
254 any return information or other information related thereto
255 in the possession of any municipality, or its employees,
256 officers, agents, or representatives, that has been submitted
257 to or filed with the municipality by any person for any tax
258 including, but not limited to, the municipal business and
259 occupation tax, public utility tax, municipal license tax, tax
260 on purchases of intoxicating liquors, license tax on horse
261 racing or dog racing, and municipal amusement tax.

262 (2) The Tax Commissioner shall, upon the written
263 request of the county commission of a West Virginia
264 county, allow the duly authorized agent of the county to
265 inspect and make copies of the following records related to
266 tax on the sale of intoxicating liquor and wine:

267 (A) All records of the Tax Commissioner, including
268 available return information, related to the collection of tax
269 in the county or the remittance of tax to the county pursuant
270 to §60-3-9d or §60-3A-21 of this code; and

271 (B) All records of the Tax Commissioner, including
272 available return information, related to the collection of tax
273 within the corporate limits of a municipality within the
274 county or the remittance of tax to a municipality within the
275 county pursuant to §60-3-9d or §60-3A-21 of this code.

276 (3) The Tax Commissioner shall, upon the written
277 request of the mayor or governing body of a West Virginia
278 municipality, allow the duly authorized agent of the
279 municipality to inspect and make copies of the following
280 records related to tax on the sale of intoxicating liquor and
281 wine:

282 (A) All records of the Tax Commissioner, including
283 available return information, related to the collection of tax
284 within the corporate limits of the municipality or the
285 remittance of tax to the municipality pursuant to §60-3-9d
286 and §60-3A-21 of this code;

287 (B) All records of the Tax Commissioner, including
288 available return information, related to the collection of tax
289 within the county in which the municipality is located but
290 outside the corporate limits of another municipality
291 pursuant to §60-3-9d and §60-3A-21 of this code; and

292 (C) All records of the Tax Commissioner, including
293 available return information, related to the remittance of tax
294 to the county in which the municipality is located pursuant
295 to §60-3-9d and §60-3A-21 of this code.

296 (k) *Release of administrative decisions.* — The Tax
297 Commissioner shall release to the public his or her
298 administrative decisions, or a summary thereof: *Provided,*
299 That unless the taxpayer appeals the administrative decision
300 to a circuit court or waives in writing his or her rights to
301 confidentiality, any identifying characteristics or facts about
302 the taxpayer shall be omitted or modified to an extent so as
303 to not disclose the name or identity of the taxpayer.

304 (l) *Release of taxpayer information.* — If the Tax
305 Commissioner believes that enforcement of the tax laws
306 administered under this article will be facilitated and
307 enhanced thereby, he or she shall disclose, upon request, the
308 names and address of persons:

309 (A) Who have a current business registration certificate;

- 310 (B) Who are licensed employment agencies;
- 311 (C) Who are licensed collection agencies;
- 312 (D) Who are licensed to sell drug paraphernalia;
- 313 (E) Who are distributors of gasoline or special fuel;
- 314 (F) Who are contractors;
- 315 (G) Who are transient vendors;
- 316 (H) Who are authorized by law to issue a sales or use
317 tax exemption certificate;
- 318 (I) Who are required by law to collect sales or use taxes;
- 319 (J) Who are foreign vendors authorized to collect use
320 tax;
- 321 (K) Whose business registration certificate has been
322 suspended or canceled or not renewed by the Tax
323 Commissioner;
- 324 (L) Against whom a tax lien has been recorded under
325 §11-10-12 of this code (including any particulars stated in
326 the recorded lien);
- 327 (M) Against whom criminal warrants have been issued
328 for a criminal violation of this state's tax laws; or
- 329 (N) Who have been convicted of a criminal violation of
330 this state's tax laws.
- 331 (m) *Disclosure of return information to child support*
332 *enforcement division.* —
- 333 (1) *State return information.* — The Tax Commissioner
334 may, upon written request, disclose to the child support
335 enforcement division created by §48A-2-1 *et seq.* of this
336 code:

337 (A) Available return information from the master files
338 of the tax department relating to the Social Security account
339 number, address, filing status, amounts, and nature of
340 income and the number of dependents reported on any
341 return filed by, or with respect to, any individual with
342 respect to whom child support obligations are sought to be
343 enforced; and

344 (B) Available state return information reflected on any
345 state return filed by, or with respect to, any individual
346 described in §11-10-5d(m)(1)(A) of this code relating to the
347 amount of the individual's gross income, but only if such
348 information is not reasonably available from any other
349 source.

350 (2) *Restrictions on disclosure.* — The Tax
351 Commissioner shall disclose return information under §11-
352 10-5d(m)(1) of this code only for purposes of, and to the
353 extent necessary in, collecting child support obligations
354 from and locating individuals owing such obligations.

355 (n) *Disclosure of names and addresses for purposes of*
356 *jury selection.* — The Tax Commissioner shall, at the
357 written request of a circuit court or the chief judge thereof,
358 provide to the circuit court within 30 calendar days a list of
359 the names and addresses of individuals residing in the
360 county or counties comprising the circuit who have filed a
361 state personal income tax return for the preceding tax year.
362 The list provided shall set forth names and addresses only.
363 The request shall be limited to counties within the
364 jurisdiction of the requesting court.

365 The court, upon receiving the list or lists, shall direct the
366 jury commission of the appropriate county to merge the
367 names and addresses with other lists used in compiling a
368 master list of residents of the county from which prospective
369 jurors are to be chosen. Immediately after the master list is
370 compiled, the jury commission shall cause the list provided
371 by the Tax Commissioner and all copies thereof to be

372 destroyed and shall certify to the circuit court and to the Tax
373 Commissioner that the lists have been destroyed.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-9d. Tax on purchases of intoxicating liquors inside and outside corporate limits of municipalities.

1 (a)(1) For the purpose of providing financial assistance
2 to and for the use and benefit of the various counties and
3 municipalities of this state, there is hereby levied a tax upon
4 all purchases of intoxicating liquor from state stores or other
5 agencies of the Alcohol Beverage Control Commissioner,
6 of wine from any person licensed to sell wine at retail under
7 the provisions of §60-8-1 *et seq.* of this code, and of wine
8 from distributors licensed to sell or distribute wine under the
9 provisions of §60-8-1 *et seq.* of this code. The tax shall be
10 five percent of the purchase price and shall be added to and
11 collected with the purchase price by the commissioner, by
12 the person licensed to sell wine at retail, or by the distributor
13 licensed to sell or distribute wine, as the case may be:
14 *Provided*, That the tax may not be collected on the
15 intoxicating liquors sold by or purchased from holders of a
16 license issued under the provisions of §60-7-1 *et seq.* of this
17 code: *Provided, however*, That the tax may not be collected
18 on purchases of intoxicating liquors or wine in the original
19 sealed package for the purpose of resale in the original
20 sealed package if the final purchase of such intoxicating
21 liquors or wine is subject to the tax imposed under this
22 section, under §8-13-7 of this code, or under §60-3A-21 of
23 this code. This section may not be interpreted to authorize a
24 purchase for resale exemption in contravention of §11-15-
25 9a of this code. For purposes of this article, the term
26 “original sealed package” means an original sealed package
27 as defined in §8-13-7 of this code.

28 (2) (A) All such tax collected within one mile of the
29 corporate limits of any municipality within the state shall be
30 remitted to such municipality; all other tax collected shall
31 be remitted to the county in which it was collected:
32 *Provided*, That where the corporate limits of more than one
33 municipality is within one mile of the place of collection of
34 such tax, all such tax collected shall be divided equally
35 among each of said municipalities: *Provided, however*, That
36 such mile is measured by the most direct hard surface road
37 or access way usually and customarily used as ingress and
38 egress to the place of tax collection.

39 (B) Effective January 1, 2019, all such tax collected on
40 sales sourced within the corporate limits of any municipality
41 within the state shall be remitted to that municipality. All
42 such tax collected on sales sourced outside the corporate
43 limits of any municipality shall be remitted to the county in
44 which the sale is sourced.

45 (C) When determining whether the tax is collected
46 within the corporate limits of any municipality, a seller shall
47 use the sourcing rules provided in §11-15B-1 *et seq.* of this
48 code.

49 (3) *Rulemaking.* — (A) The Tax Commissioner shall
50 propose rules for promulgation in accordance with the
51 requirements of §29A-3-1 *et seq.* of this code to provide for
52 the collection of the tax required by this section. The Tax
53 Commissioner may promulgate emergency rules in
54 accordance with §29A-3-15 of this code, as necessary, to
55 carry out the requirements of this section.

56 (B) The West Virginia Alcohol Beverage Control
57 Commissioner may propose rules for promulgation in
58 accordance with the requirements of §29A-3-1 *et seq.* of this
59 code to provide for the collection of the tax required by this
60 section. The West Virginia Alcohol Beverage Control
61 Commissioner may promulgate emergency rules in
62 accordance with §29A-3-15 of this code, as necessary, to
63 carry out the requirements of this section.

64 (b) For purposes of this section, terms have the same
65 meaning as provided in §8-13-7(b) of this code.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-21. Tax on purchases of liquor.

1 (a) For the purpose of providing financial assistance to
2 and for the use and benefit of the various counties and
3 municipalities of this state, there is hereby levied tax upon
4 all purchases of liquor from retail licensees. The tax shall be
5 five percent of the purchase price and shall be added to and
6 collected with the purchase price by the retail licensee.

7 (b) (1) All such tax collected within the corporate limits
8 of a municipality in this state shall be remitted to such
9 municipality; all such tax collected outside of but within one
10 mile of the corporate limits of any municipality shall be
11 remitted to such municipality; and all other tax so collected
12 shall be remitted to the county in which it was collected:
13 *Provided*, That where the corporate limits of more than one
14 municipality is within one mile of the place of collection of
15 such tax, all such tax collected shall be divided equally
16 among each of such municipalities: *Provided, however*,
17 That such mile is measured by the most direct hard surface
18 road or access way usually and customarily used as ingress
19 and egress to the place of tax collection.

20 (2) Effective January 1, 2019, all such tax collected on
21 sales sourced within the corporate limits of any municipality
22 within the state shall be remitted to that municipality. All
23 such tax collected on sales sourced outside the corporate
24 limits of any municipality shall be remitted to the county in
25 which the sale is sourced.

26 (3) When determining whether the tax is collected on
27 sales within the corporate limits of any municipality, a seller
28 shall use the sourcing rules provided in §11-15B-1 *et seq.* of
29 this code.

30 (c) The Tax Commissioner, by appropriate rule
31 promulgated pursuant to §29A-3-1 *et seq.* of this code, shall
32 provide for the collection of such tax upon all purchases
33 from retail licensees, separation or proration of the same,
34 and distribution thereof to the respective counties and
35 municipalities for which the same shall be collected. Such
36 rule shall provide that all such taxes shall be deposited with
37 the state Treasurer and distributed quarterly by the state
38 Treasurer upon warrants of the Auditor payable to the
39 counties and municipalities.

CHAPTER 229

**(S. B. 298 - By Senators Blair, Boley, Boso, Drennan,
Facemire, Ferns, Gaunch, Maroney, Palumbo,
Plymale, Prezioso and Stollings)**

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §11-4-2 of the Code of West Virginia, 1931, as amended, relating to authorizing county assessors to make separate entries in their landbooks when real property is partly used for exempt, and partly for nonexempt, purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-2. Form of landbooks.

1 The Tax Commissioner shall prescribe a form of landbook
2 and the information and itemization to be entered therein,
3 which shall include separate entries of: (1) All real property or
4 whatever portion thereof in square feet that is owned, used, and
5 occupied by the owner exclusively for residential purposes,

6 including mobile homes, permanently affixed to the land and
7 owned by the owner of the land; (2) all real property or
8 whatever portion thereof in square feet that is owned by an
9 organization that is exempt from federal income taxes under
10 26 U. S. C. §501(c)(3) or 501 (c)(4) and used primarily and
11 immediately for a purpose that is exempt from tax under §11-
12 3-9 of this code; (3) all real property or whatever portion
13 thereof in square feet that is owned by an organization that is
14 exempt from federal income taxes under 26 U. S. C.
15 §501(c)(3) or 501 (c)(4) and that is not used primarily and
16 immediately for a purpose that is exempt from tax under §11-
17 3-9 of this code; (4) all farms including land used for
18 agriculture, horticulture, and grazing occupied by the owner or
19 bona fide tenant; (5) and all other real property. For each entry
20 there shall be shown: (A) The value of land, the value of
21 buildings, and the aggregate value; (B) the character and estate
22 of the owners, the number of acres or lots, and the local
23 description of the tracts or lots; and (C) the amount of taxes
24 assessed against each tract or lot for all purposes.



CHAPTER 230

(S. B. 338 - By Senators Blair and Boso)

[Passed March 3, 2018; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating generally to employer withholding taxes; changing due date for employers to file annual reconciliation and withholding statements with Tax Commissioner to January 31; requiring certain employers to file withholding return information electronically with the Tax Commissioner; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.**§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employer.**

1 (a) *General.* — Every employer required to deduct and
2 withhold tax under this article shall file a withholding return
3 as prescribed by the Tax Commissioner and pay over to the
4 Tax Commissioner the taxes required to be deducted and
5 withheld. The due dates for returns and payments shall be
6 established by the Tax Commissioner to match as closely as
7 practicable the due dates in effect for federal income tax
8 purposes, in accordance with the procedures established by
9 the Internal Revenue Service pursuant to Section 3402 of
10 the Internal Revenue Code except as otherwise provided in
11 this section: *Provided*, That not later than January 31, 2019,
12 and January 31 of each year thereafter, employers and
13 payers shall submit to the Tax Commissioner the annual
14 reconciliation of West Virginia income tax withheld,
15 together with state copies of all withholding tax statements
16 reflecting West Virginia tax withholding, including, but not
17 limited to, forms W-2, W-2G, and 1099, furnished to each
18 employee or payee for the preceding calendar year,
19 notwithstanding the fact that the employer or payer may
20 have a calendar tax year ending on December 31 or a fiscal
21 tax year ending on a date other than December 31.
22 Notwithstanding the provisions of this section, where the
23 average quarterly amount deducted and withheld by any
24 employer is less than \$150 and the aggregate for the
25 calendar year can reasonably be expected to be less than
26 \$600, the Tax Commissioner may by rule permit an
27 employer to file an annual return and pay over to the Tax
28 Commissioner the taxes deducted and withheld on or before
29 the last day of the month following the close of the calendar
30 year.

31 (b) *Annual returns and payments of withheld tax of*
32 *certain domestic and household employees.* — Employers
33 of domestic and household employees whose withholdings

34 of federal income tax are annually paid and reported by the
35 employer pursuant to the filing of Schedule H of federal
36 form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS, or 1041
37 shall, on or before January 31 next succeeding the end of the
38 calendar year for which withholdings are deducted and
39 withheld, file an annual withholding return with the Tax
40 Commissioner, and annually remit to the Tax
41 Commissioner, West Virginia personal income taxes
42 deducted and withheld for the employees together with state
43 copies of all withholding tax statements reflecting West
44 Virginia tax withholding, including, but not limited to,
45 forms W-2, W-2G, and 1099, furnished to each employee
46 or payee for the preceding calendar year, notwithstanding
47 the fact that the employer or payer may have a calendar tax
48 year ending on December 31 or a fiscal tax year ending on
49 a date other than December 31. The Tax Commissioner may
50 promulgate legislative or other rules pursuant to §29A-3-1
51 *et seq.* of this code for implementation of this subsection.

52 (c) *Deposit in trust for Tax Commissioner.* — Whenever
53 any employer fails to collect, truthfully account for, or pay
54 over the tax, or to make returns of the tax as required in this
55 section, the Tax Commissioner may serve a notice requiring
56 the employer to collect the taxes which become collectible
57 after service of the notice, to deposit the taxes in a bank
58 approved by the Tax Commissioner, in a separate account,
59 in trust for and payable to the Tax Commissioner and to
60 keep the amount of the tax in the separate account until
61 payment over to the Tax Commissioner. The notice remains
62 in effect until a notice of cancellation is served by the Tax
63 Commissioner.

64 (d) *Accelerated payment.* —

65 (1) Every employer required to deduct and withhold tax
66 whose average payment per calendar month for the
67 preceding calendar year under §11-21-74(a) of this code
68 exceeded \$100,000 shall remit the tax attributable to the
69 first 15 days of June each year by June 23.

70 (2) For purposes of complying with §11-21-74(d)(1) of
71 this code, the employer shall remit an amount equal to the
72 withholding tax due under this article on employee
73 compensation subject to withholding tax payable or paid to
74 employees for the first 15 days of June or, at the employer's
75 election, the employer may remit an amount equal to 50
76 percent of the employer's liability for withholding tax under
77 this article on compensation payable or paid to employees
78 for the preceding month of May.

79 (3) For an employer which has not been in business for
80 a full calendar year, the total amount the employer was
81 required to deduct and withhold under §11-21-74(a) of this
82 code for the prior calendar year shall be divided by the
83 number of months, including fractions of a month, that it
84 was in business during the prior calendar year and if that
85 amount exceeds \$100,000, the employer shall remit the tax
86 attributable to the first 15 days of June each year by June
87 23, as provided in §11-21-74(d)(2) of this code.

88 (4) When an employer required to make an advanced
89 payment of withholding tax under §11-21-74(d)(1) of this
90 code makes out its return for the month of June, which is
91 due by July 20, that employer may claim as a credit against
92 its liability under this article for tax on employee
93 compensation paid or payable for employee services
94 rendered during the month of June the amount of the
95 advanced payment of tax made under §11-21-74(d)(1) of
96 this code.

97 (e) An annual reconciliation of West Virginia personal
98 income tax withheld shall be submitted by the employer by
99 January 31, following the close of the calendar year,
100 together with Tax Division copies of all withholding tax
101 statements for that preceding calendar year. The
102 reconciliation shall be accompanied by a list of the amounts
103 of income withheld for each employee in such form as the
104 Tax Commissioner prescribes and shall be filed separately
105 from the employer's monthly or quarterly return.

106 (f) Any employer required to file a withholding return
107 for 50 or more employees shall file its return using
108 electronic filing as defined in §11-21-54 of this code:
109 *Provided*, That for any tax period beginning after December
110 31, 2017, any employer that uses a payroll service or is
111 required to file a withholding return for 25 or more
112 employees shall file its return using electronic filing as
113 defined in §11-21-54 of this code. An employer that is
114 required to file electronically but does not do so is subject
115 to a penalty in the amount of \$25 per employee for whom
116 the return was not filed electronically, unless the employer
117 shows that the failure is due to a technical inability to
118 comply.

CHAPTER 231

(S. B. 427 - By Senators Gaunch and Facemire)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §11-6-23 of the Code of West Virginia, 1931, as amended, relating to allowing the Secretary of State to give written notice of delinquency in the payment of certain taxes to certain taxpayers by first class mail.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-23. Lien of taxes; notice; collection by suit.

1 (a) The amount of taxes and levies assessed under this
2 article shall constitute a debt due the state, county, district,
3 or municipal corporation entitled thereto, and shall be a lien
4 on all property and assets of the taxpayer within the state.

5 (b) The lien shall attach December 31, following the
6 commencement of the assessment year, and shall be prior to
7 all other liens and charges.

8 (c) The auditor shall, between May 1 and May 15 of
9 each year, prepare a list of the taxpayers delinquent in the
10 payment of the taxes and levies, setting forth their
11 respective addresses and the amount of state, county,
12 district, and municipal taxes due from each, which list shall
13 be certified by the Auditor to the Board of Public Works and
14 filed in the Office of the Secretary of State.

15 (d) The Secretary of State shall preserve the list in his or
16 her office, and a certificate from him or her that any
17 taxpayer mentioned in the list is delinquent in the amount of
18 taxes assessed under this article shall be prima facie
19 evidence thereof.

20 (e) Within 10 days after the filing of the list, the
21 Secretary of State shall give final written notice of any
22 delinquency of \$1,000 or greater by registered or certified
23 mail to each of the delinquent taxpayers at his or her, or its,
24 last known post office address; the Secretary of State may
25 give final written notice of any delinquency of less than
26 \$1,000 by first class mail to each of the delinquent taxpayers
27 at his or her, or its, last known post office address; and upon
28 the failure of any delinquent taxpayer to pay the taxes within
29 30 days from the mailing of the notice.

30 (f) The Attorney General shall enforce the collection of
31 the taxes and levies, and for that purpose he or she may
32 distraint upon any personal property of the delinquent
33 taxpayer, or a sufficient amount thereof to satisfy the taxes,
34 including accrued interest, penalties, and costs.

35 (g) The Attorney General may also enforce the lien
36 created by this section on the real estate of the delinquent
37 taxpayer by instituting a suit, or suits, in equity in the Circuit
38 Court of Kanawha County.

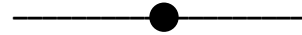
39 (h) In the bill filed in the suit it shall be sufficient to
40 allege that the defendant or defendants have failed to pay

41 the taxes and that each of them justly owes the amount of
42 property taxes, levies, and penalties, which amount shall be
43 computed up to the first day of the month in which the bill
44 was filed.

45 (i) No defendant may plead that the Secretary of State
46 failed to give notice as prescribed by this section.

47 (j) If, upon the hearing of the suit, it shall appear to the
48 court that any defendant has failed to pay the taxes and accrued
49 penalties, the court shall enter a decree against the defendant
50 for the amount due, and if the decree is not paid within 10 days,
51 the court shall enter a decree directing a sale of the real estate
52 subject to the lien, or so much as may be necessary to satisfy
53 the taxes, including interest, penalties, and costs.

54 (k) When two or more taxpayers are included in one
55 suit, the court shall apportion the cost among them as it may
56 deem just.



CHAPTER 232

**(S. B. 441 - By Senators Takubo, Maroney, Stollings,
Woelfel and Plymale)**

[Passed March 7, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating to health care provider taxes; extending the directed payment program tax on certain eligible acute care hospitals for three years; and providing an expiration date for the tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

1 (a) In addition to the rate of the tax imposed by §11-27-
2 9 and §11-27-15 of this code on providers of inpatient and
3 outpatient hospital services, there is imposed on certain
4 eligible acute care hospitals an additional tax of seventy-
5 five one-hundredths of one percent on the gross receipts
6 received or receivable by eligible acute care hospitals that
7 provide inpatient or outpatient hospital services in this state
8 through a directed payment program, or its successor, in
9 accordance with 42 C. F. R. 438.6.

10 (b) For purposes of this section, the term “eligible acute
11 care hospital” means any inpatient or outpatient hospital
12 conducting business in this state that is not:

13 (1) A state-owned or -designated facility;

14 (2) A critical access hospital, designated as a critical
15 access hospital after meeting all federal eligibility criteria;

16 (3) A licensed free-standing psychiatric or medical
17 rehabilitation hospital; or

18 (4) A licensed long-term acute care hospital.

19 (c) There is continued a special revenue account in the
20 State Treasury designated the Medicaid State Share Fund.
21 The amount of taxes collected under this section, including
22 any interest, additions to tax and penalties collected under
23 §11-10-1 *et seq.* of this code, less the amount of allowable
24 refunds, the amount of any interest payable with respect to
25 such refunds, and costs of administration and collection,
26 shall be deposited into the Special Revenue Fund and do not
27 revert to general revenue. The Tax Commissioner shall
28 establish and maintain a separate account and accounting
29 for the funds collected under this section in an account to be
30 designated as the Eligible Acute Care Provider
31 Enhancement Account. The amounts collected shall be
32 deposited, within 15 days after receipt by the Tax

33 Commissioner, into the Eligible Acute Care Provider
34 Enhancement Account. Disbursements from the Eligible
35 Acute Care Provider Enhancement Account within the
36 Medicaid State Share Fund may only be used to support
37 West Virginia Medicaid and the directed payment program,
38 or its successor, in accordance with 42 C. F. R. 438.6 and as
39 otherwise set forth in this section.

40 (d) The imposition and collection of taxes imposed by
41 this section is suspended immediately upon the occurrence
42 of any of the following:

43 (1) The effective date of any action by Congress that
44 would disqualify the taxes imposed by this section from
45 counting toward state Medicaid funds available to be used
46 to determine the federal financial participation;

47 (2) The effective date of any decision, enactment, or
48 other determination by the Legislature or by any court,
49 officer, department, agency or office of state or federal
50 government that has the effect of disqualifying the tax from
51 counting toward state Medicaid funds available to be used
52 to determine federal financial participation for Medicaid
53 matching funds or creating for any reason a failure of the
54 state to use the assessment of the Medicaid program as
55 described in this section; and

56 (3) If the tax payments remitted by the eligible acute
57 care hospitals are not used to effectuate the provisions of
58 this article.

59 (e) Any funds remaining in the Eligible Acute Care
60 Provider Enhancement Account as of June 30, 2018, and on
61 June 30 of each year thereafter, shall be transferred to the West
62 Virginia Medical Services Fund after that June 30 but no later
63 than the next ensuing September 30. These funds shall be used
64 during the state fiscal year in which they were transferred at
65 the discretion of the Bureau for Medical Services.

66 (f) The changes to the tax rate in this section enacted in
67 the 2017 regular session are effective July 1, 2017.

68 (g) The tax imposed by this section expires on and after
69 June 30, 2021, unless otherwise extended by the Legislature.



CHAPTER 233

(Com. Sub. for S. B. 461 - By Senators Ferns and Cline)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §11-14C-31 of the Code of West Virginia, 1931, as amended, relating to petitions for refunds of motor fuel excise tax by certain taxpayers; extending time periods for certain taxpayers to file petition for refunds; and maintaining current time period to file petition for refunds of taxes paid on motor fuel sold for certain purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-31. Claiming refunds.

1 (a) Any person seeking a refund pursuant to §11-14C-9(c)
2 or §11-14C-9(d) of this code shall present to the commissioner
3 a petition for refund in the form required by the commissioner
4 and provide the information required by the commissioner.
5 The Tax Commissioner may require the petitioner to provide
6 the original or duplicate original sales slips or invoices from
7 the distributor or producer or retail dealer, as the case may be,
8 showing the amount of the purchases, together with evidence
9 of payment thereof, and a statement stating how the motor fuel
10 was used: *Provided*, That sales slips or invoices marked

11 “duplicate” are not acceptable: *Provided, however,* That
12 certified copies of sales slips or invoices are acceptable:
13 *Provided further,* That copies of sales slips and invoices may
14 be used with any application for refund made under authority
15 of §11-14C-9(c)(15) of this code when the motor fuel is used
16 to operate tractors and gas engines or threshing machines for
17 agricultural purposes: *And provided further,* That a refund
18 claim made under the authority of §11-14C-9(c)(1) of this code
19 and a refund claim made under the authority of §11-14C-
20 9(d)(1) of this code shall be accompanied by such verification
21 as prescribed by the Tax Commissioner: *And provided further,*
22 That billing statements and electronic invoices are acceptable
23 in lieu of original invoices at the discretion of the Tax
24 Commissioner: *And provided further,* That the person
25 claiming a refund under §11-14C-9(c) or §11-14C-9(d) of this
26 code shall retain for at least three years following the postmark
27 date of the application for refund a copy of the invoices, sales
28 slips, and billing statements for which the refund was claimed.

29 (b) Any person claiming a refund pursuant to §11-14C-
30 30 of this code shall file a petition in writing with the
31 commissioner. The petition shall be in the form and with
32 supporting records as required by the commissioner and
33 made under the penalty of perjury.

34 (c) The right to receive any refund under the provisions of
35 this section is not assignable and any assignment thereof is
36 void and of no effect. No payment of any refund may be made
37 to any person other than the original person entitled to claim
38 the refund except as otherwise expressly provided in this
39 article. The commissioner shall cause a refund to be made
40 under the authority of this section only when the claim for
41 refund is filed with the commissioner within the following
42 time periods:

43 (1) A petition for refund under §11-14C-30 of this code,
44 other than for evaporation loss, shall be filed with the
45 commissioner within three years from the end of the month
46 in which: (A) The tax was erroneously or illegally paid; (B)

47 the gallons were exported or lost by casualty; or (C) a
48 change of rate took effect;

49 (2) A petition for refund under §11-14C-30 of this code
50 for evaporation loss shall be filed within three years from
51 the end of the year in which the evaporation occurred;

52 (3) A petition for refund under §11-14C-9(c) or §11-14C-
53 9(d) of this code shall be filed with the commissioner within
54 one year from the end of the calendar year for purchases of
55 motor fuel during the calendar year: *Provided*, That any
56 application for refund made under authority of §11-14C-
57 9(c)(15) of this code when the motor fuel is used to operate
58 tractors and gas engines or threshing machines for agricultural
59 purposes shall be filed within 12 months from the month of
60 purchase or delivery of the motor fuel: *Provided, however*,
61 That all persons authorized to claim a refundable exemption
62 under the authority of §11-14C-9(c)(1) through §11-14C-
63 9(c)(6) of this code and §11-14C-9(d)(1) through §11-14C-
64 9(d)(6) of this code shall do so no later than December 31
65 for the purchases of motor fuel made during the preceding fiscal
66 year ending June 30: *Provided further*, That a petition for
67 refund under §11-14C-9(d)(10) of this code shall be filed with
68 the commissioner on or before the last day of January, April,
69 July, and October for purchases of motor fuel during the
70 immediately preceding calendar quarter.

71 (d) Any petition for a refund not timely filed is not
72 construed to be or constitute a moral obligation of the State
73 of West Virginia for payment. Every petition for refund is
74 subject to the provisions of §11-10-14 of this code.

75 (e) The commissioner may make any investigation
76 considered necessary before refunding to a person the tax
77 levied by §11-14C-5 of this code. The commissioner may
78 also subject to audit the records related to a refund of the tax
79 levied by §11-14C-5 of this code.

●

CHAPTER 234

(Com. Sub. for H. B. 2843 - By Delegates Fast, Kessinger, Hill, Howell and Ward)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §7-11B-3, §7-11B-4, §7-11B-7 and §7-11B-8 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Tax Increment Financing Act; giving Class III municipalities the authority to exercise the powers under the act, and requiring certain reporting to certain levying bodies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1 (a) *General.* — When used in this article, words and
2 phrases defined in this section have the meanings ascribed
3 to them in this section unless a different meaning is clearly
4 required either by the context in which the word or phrase
5 is used or by specific definition in this article.

6 (b) *Words and phrases defined.* —

7 “Agency” includes a municipality, a county or
8 municipal development agency established pursuant to
9 authority granted in §7-12-1 of this code, a port authority,
10 an airport authority or any other entity created by this state
11 or an agency or instrumentality of this state that engages in
12 economic development activity or the Division of
13 Highways.

14 “Base assessed value” means the taxable assessed value
15 of all real and tangible personal property, excluding
16 personal motor vehicles, having a tax situs within a
17 development or redevelopment district as shown upon the
18 landbooks and personal property books of the assessor on
19 July 1 of the calendar year preceding the effective date of
20 the order or ordinance creating and establishing the
21 development or redevelopment district: *Provided*, That for
22 any development or redevelopment district approved after
23 the effective date of the amendments to this section enacted
24 during the regular session of the Legislature in 2014,
25 personal trailers, personal boats, personal campers, personal
26 motor homes, personal ATVs and personal motorcycles
27 having a tax situs within a development or redevelopment
28 district are excluded from the base assessed value.

29 “Blighted area” means an area within the boundaries of
30 a development or redevelopment district located within the
31 territorial limits of a municipality or county in which the
32 structures, buildings or improvements, by reason of
33 dilapidation, deterioration, age or obsolescence, inadequate
34 provision for access, ventilation, light, air, sanitation, open
35 spaces, high density of population and overcrowding or the
36 existence of conditions which endanger life or property, are
37 detrimental to the public health, safety, morals or welfare.
38 “Blighted area” includes any area which, by reason of the
39 presence of a substantial number of substandard, slum,
40 deteriorated or deteriorating structures, predominance of
41 defective or inadequate street layout, faulty lot layout in
42 relation to size, adequacy, accessibility or usefulness,
43 unsanitary or unsafe conditions, deterioration of site or other
44 improvements, diversity of ownership, defective or unusual
45 conditions of title or the existence of conditions which
46 endanger life or property by fire and other causes, or any
47 combination of such factors, substantially impairs or arrests
48 the sound growth of a municipality, retards the provision of
49 housing accommodations or constitutes an economic or
50 social liability and is a menace to the public health, safety,
51 morals or welfare in its present condition and use, or any

52 area which is predominantly open and which because of
53 lack of accessibility, obsolete platting, diversity of
54 ownership, deterioration of structures or of site
55 improvements, or otherwise, substantially impairs or arrests
56 the sound growth of the community.

57 “Commissioner of Highways” means the Commissioner
58 of the Division of Highways.

59 “Conservation area” means any improved area within
60 the boundaries of a development or redevelopment district
61 located within the territorial limits of a municipality or
62 county in which fifty percent or more of the structures in the
63 area have an age of thirty-five years or more. A conservation
64 area is not yet a blighted area but is detrimental to the public
65 health, safety, morals or welfare and may become a blighted
66 area because of any one or more of the following factors:
67 Dilapidation; obsolescence; deterioration; illegal use of
68 individual structures; presence of structures below
69 minimum code standards; abandonment; excessive
70 vacancies; overcrowding of structures and community
71 facilities; lack of ventilation, light or sanitary facilities;
72 inadequate utilities; excessive land coverage; deleterious
73 land use or layout; depreciation of physical maintenance;
74 and lack of community planning. A conservation area shall
75 meet at least three of the factors provided in this
76 subdivision.

77 “County commission” means the governing body of a
78 county of this state and, for purposes of this article only,
79 includes the governing body of a Class I, Class II or Class
80 III municipality in this state.

81 “Current assessed value” means the annual taxable
82 assessed value of all real and tangible personal property,
83 excluding personal motor vehicles, having a tax situs within
84 a development or redevelopment district as shown upon the
85 landbook and personal property records of the assessor:
86 *Provided*, That for any development or redevelopment
87 district approved after the effective date of the amendments

88 to this section enacted during the regular session of the
89 Legislature in 2014, personal trailers, personal boats,
90 personal campers, personal motor homes, personal ATVs
91 and personal motorcycles having a tax situs within a
92 development or redevelopment district are excluded from
93 the current assessed value.

94 “Development office” means the West Virginia
95 Development Office created in §5B-2-1 of this code.

96 “Development project” or “redevelopment project”
97 means a project undertaken in a development or
98 redevelopment district for eliminating or preventing the
99 development or spread of slums or deteriorated,
100 deteriorating or blighted areas, for discouraging the loss of
101 commerce, industry or employment, for increasing
102 employment or for any combination thereof in accordance
103 with a tax increment financing plan. A development or
104 redevelopment project may include one or more of the
105 following:

106 (A) The acquisition of land and improvements, if any,
107 within the development or redevelopment district and
108 clearance of the land so acquired; or

109 (B) The development, redevelopment, revitalization or
110 conservation of the project area whenever necessary to
111 provide land for needed public facilities, public housing or
112 industrial or commercial development or revitalization, to
113 eliminate unhealthful, unsanitary or unsafe conditions, to
114 lessen density, mitigate or eliminate traffic congestion,
115 reduce traffic hazards, eliminate obsolete or other uses
116 detrimental to public welfare or otherwise remove or
117 prevent the spread of blight or deterioration;

118 (C) The financial or other assistance in the relocation of
119 persons and organizations displaced as a result of carrying
120 out the development or redevelopment project and other
121 improvements necessary for carrying out the project plan,
122 together with those site improvements that are necessary for

123 the preparation of any sites and making any land or
124 improvements acquired in the project area available, by sale
125 or lease, for public housing or for development,
126 redevelopment or rehabilitation by private enterprise for
127 commercial or industrial uses in accordance with the plan;

128 (D) The construction of capital improvements within a
129 development or redevelopment district designed to increase
130 or enhance the development of commerce, industry or
131 housing within the development project area; or

132 (E) Any other projects the county commission or the
133 agency deems appropriate to carry out the purposes of this
134 article.

135 “Development or redevelopment district” means an area
136 proposed by one or more agencies as a development or
137 redevelopment district which may include one or more
138 counties, one or more municipalities or any combination
139 thereof, that has been approved by the county commission
140 of each county in which the project area is located if the
141 project is located outside the corporate limits of a
142 municipality, or by the governing body of a municipality if
143 the project area is located within a municipality, or by both
144 the county commission and the governing body of the
145 municipality when the development or redevelopment
146 district is located both within and without a municipality.

147 “Division of Highways” means the state Department of
148 Transportation, Division of Highways.

149 “Economic development area” means any area or
150 portion of an area within the boundaries of a development
151 or redevelopment district located within the territorial limits
152 of a municipality or county that is neither a blighted area nor
153 a conservation area and for which the county commission
154 finds that development or redevelopment will not be solely
155 used for development of commercial businesses that will
156 unfairly compete in the local economy and that

157 development or redevelopment is in the public interest
158 because it will:

159 (A) Discourage commerce, industry or manufacturing
160 from moving their operations to another state;

161 (B) Result in increased employment in the municipality
162 or county, whichever is applicable; or

163 (C) Result in preservation or enhancement of the tax
164 base of the county or municipality.

165 “Governing body of a municipality” means the city
166 council of a Class I, Class II or Class III municipality in this
167 state.

168 “Incremental value”, for any development or
169 redevelopment district, means the difference between the
170 base assessed value and the current assessed value. The
171 incremental value will be positive if the current value
172 exceeds the base value and the incremental value will be
173 negative if the current value is less than the base assessed
174 value.

175 “Includes” and “including”, when used in a definition
176 contained in this article, shall not exclude other things
177 otherwise within the meaning of the term being defined.

178 “Intergovernmental agreement” means any written
179 agreement that may be entered into by and between two or
180 more county commissions, or between two or more
181 municipalities, or between a county commission and a
182 municipality, in the singular and the plural, or between two
183 or more government entities and the Commissioner of
184 Highways: *Provided*, That any intergovernmental
185 agreement shall not be subject to provisions governing
186 intergovernmental agreements set forth in other provisions
187 of this code, including, but not limited to, §8-23-1 *et seq.* of
188 this code, but shall be subject to the provisions of this
189 article.

190 “Local levying body” means the county board of
191 education and the county commission and includes the
192 governing body of a municipality when the development or
193 redevelopment district is located, in whole or in part, within
194 the boundaries of the municipality.

195 “Obligations” or “tax increment financing obligations”
196 means bonds, loans, debentures, notes, special certificates
197 or other evidences of indebtedness issued by a county
198 commission or municipality pursuant to this article to carry
199 out a development or redevelopment project or to refund
200 outstanding obligations under this article.

201 “Order” means an order of the county commission
202 adopted in conformity with the provisions of this article and
203 as provided in this chapter.

204 “Ordinance” means a law adopted by the governing
205 body of a municipality in conformity with the provisions of
206 this article and as provided in §8-1-1 *et seq.* of this code.

207 “Payment in lieu of taxes” means those estimated
208 revenues from real property and tangible personal property
209 having a tax situs in the area selected for a development or
210 redevelopment project which revenues, according to the
211 development or redevelopment project or plan, are to be
212 used for a private use, which levying bodies would have
213 received had a county or municipality not adopted one or
214 more tax increment financing plans and which would result
215 from levies made after the date of adoption of a tax
216 increment financing plan during the time the current
217 assessed value of all taxable real and tangible personal
218 property in the area selected for the development or
219 redevelopment project exceeds the total base assessed value
220 of all taxable real and tangible personal property in the
221 development or redevelopment district until the designation
222 is terminated as provided in this article.

223 “Person” means any natural person, and any
224 corporation, association, partnership, limited partnership,

225 limited liability company or other entity, regardless of its
226 form, structure or nature, other than a government agency
227 or instrumentality.

228 “Private project” means any project that is subject to ad
229 valorem property taxation in this state or to a payment in
230 lieu of tax agreement that is undertaken by a project
231 developer in accordance with a tax increment financing plan
232 in a development or redevelopment district.

233 “Project” means any capital improvement, facility or
234 both, as specifically set forth and defined in the project plan,
235 requiring an investment of capital including, but not limited
236 to, extensions, additions or improvements to existing
237 facilities, including water or wastewater facilities, and the
238 remediation of contaminated property as provided for in
239 §22-22-1 *et seq.* of this code, but does not include
240 performance of any governmental service by a county or
241 municipal government.

242 “Project area” means an area within the boundaries of a
243 development or redevelopment district in which a
244 development or redevelopment project is undertaken as
245 specifically set forth and defined in the project plan.

246 “Project costs” means expenditures made in preparation
247 of the development or redevelopment project plan and
248 made, or estimated to be made, or monetary obligations
249 incurred, or estimated to be incurred, by the county
250 commission which are listed in the project plan as capital
251 improvements within a development or redevelopment
252 district, plus any costs incidental thereto. “Project costs”
253 include, but are not limited to:

254 (A) Capital costs, including, but not limited to, the
255 actual costs of the construction of public works or
256 improvements, capital improvements and facilities, new
257 buildings, structures and fixtures, the demolition, alteration,
258 remodeling, repair or reconstruction of existing buildings,
259 structures and fixtures, environmental remediation, parking

260 and landscaping, the acquisition of equipment and site
261 clearing, grading and preparation;

262 (B) Financing costs, including, but not limited to, an
263 interest paid to holders of evidences of indebtedness issued
264 to pay for project costs, all costs of issuance and any
265 redemption premiums, credit enhancement or other related
266 costs;

267 (C) Real property assembly costs, meaning any deficit
268 incurred resulting from the sale or lease as lessor by the
269 county commission of real or personal property having a tax
270 situs within a development or redevelopment district for
271 consideration that is less than its cost to the county
272 commission;

273 (D) Professional service costs including, but not limited
274 to, those costs incurred for architectural planning,
275 engineering and legal advice and services;

276 (E) Imputed administrative costs including, but not
277 limited to, reasonable charges for time spent by county
278 employees or municipal employees in connection with the
279 implementation of a project plan;

280 (F) Relocation costs including, but not limited to, those
281 relocation payments made following condemnation and job
282 training and retraining;

283 (G) Organizational costs including, but not limited to,
284 the costs of conducting environmental impact and other
285 studies and the costs of informing the public with respect to
286 the creation of a development or redevelopment district and
287 the implementation of project plans;

288 (H) Payments made, in the discretion of the county
289 commission or the governing body of a municipality, which
290 are found to be necessary or convenient to creation of
291 development or redevelopment districts or the
292 implementation of project plans; and

293 (I) That portion of costs related to the construction of
294 environmental protection devices, storm or sanitary sewer
295 lines, water lines, amenities or streets or the rebuilding or
296 expansion of streets, or the construction, alteration,
297 rebuilding or expansion of which is necessitated by the
298 project plan for a development or redevelopment district,
299 whether or not the construction, alteration, rebuilding or
300 expansion is within the area or on land contiguous thereto.

301 “Project developer” means any person who engages in
302 the development of projects in the state.

303 “Project plan” means the plan for a development or
304 redevelopment project that is adopted by a county
305 commission or governing body of a municipality in
306 conformity with the requirements of this article and this
307 chapter or §8-1-1 *et seq.* of this code.

308 “Real property” means all lands, including
309 improvements and fixtures on them and property of any
310 nature appurtenant to them or used in connection with them
311 and every estate, interest and right, legal or equitable, in
312 them, including terms of years and liens by way of
313 judgment, mortgage or otherwise, and indebtedness secured
314 by the liens.

315 “Redevelopment area” means an area designated by a
316 county commission or the governing body of a municipality
317 in respect to which the commission or governing body has
318 made a finding that there exist conditions which cause the
319 area to be classified as a blighted area, a conservation area,
320 an economic development area or a combination thereof,
321 which area includes only those parcels of real property
322 directly and substantially benefitted by the proposed
323 redevelopment project located within the development or
324 redevelopment district or land contiguous thereto.

325 “Redevelopment plan” means the comprehensive
326 program under this article of a county or municipality for
327 redevelopment intended by the payment of redevelopment

328 costs to reduce or eliminate those conditions, the existence
329 of which qualified the redevelopment area as a blighted
330 area, conservation area, economic development area or
331 combination thereof, and to thereby enhance the tax bases
332 of the levying bodies which extend into the redevelopment
333 area. Each redevelopment plan shall conform to the
334 requirements of this article.

335 “Tax increment” means the amount of regular levy
336 property taxes attributable to the amount by which the
337 current assessed value of real and tangible personal property
338 having a tax situs in a development or redevelopment
339 district exceeds the base assessed value of the property.

340 “Tax increment financing fund” means a separate fund
341 for a development or redevelopment district established by
342 the county commission or governing body of the
343 municipality into which all tax increment revenues and
344 other pledged revenues are deposited and from which
345 projected project costs, debt service and other expenditures
346 authorized by this article are paid.

347 “This code” means the Code of West Virginia, 1931, as
348 amended by the Legislature.

349 “Total ad valorem property tax regular levy rate” means
350 the aggregate levy rate of all levying bodies on all taxable
351 property having a tax situs within a development or
352 redevelopment district in a tax year but does not include
353 excess levies, levies for general obligation bonded
354 indebtedness or any other levies that are not regular levies.

§7-11B-4. Powers generally.

1 In addition to any other powers conferred by law, a
2 county commission or governing body of a Class I, Class II
3 or Class III municipality may exercise any powers
4 necessary and convenient to carry out the purpose of this
5 article, including the power to:

6 (1) Create development and redevelopment areas or
7 districts and to define the boundaries of those areas or
8 districts;

9 (2) Cause project plans to be prepared, to approve the
10 project plans, and to implement the provisions and
11 effectuate the purposes of the project plans;

12 (3) Establish tax increment financing funds for each
13 development or redevelopment district;

14 (4) Issue tax increment financing obligations and pledge
15 tax increments and other revenues for repayment of the
16 obligations;

17 (5) Deposit moneys into the tax increment financing
18 fund for any development or redevelopment district;

19 (6) Enter into any contracts or agreements, including,
20 but not limited to, agreements with project developers,
21 consultants, professionals, financing institutions, trustees
22 and bondholders determined by the county commission to
23 be necessary or convenient to implement the provisions and
24 effectuate the purposes of project plans;

25 (7) Receive from the federal government or the state
26 loans and grants for, or in aid of, a development or
27 redevelopment project and to receive contributions from
28 any other source to defray project costs;

29 (8) Exercise the right of eminent domain to condemn
30 property for the purposes of implementing the project plan.
31 The rules and procedures set forth in §54-1-1 *et seq.* of this
32 code shall govern all condemnation proceedings authorized
33 in this article;

34 (9) Make relocation payments to those persons,
35 businesses, or organizations that are displaced as a result of
36 carrying out the development or redevelopment project;

37 (10) Clear and improve property acquired by the county
38 commission pursuant to the project plan and construct
39 public facilities on it or contract for the construction,
40 development, redevelopment, rehabilitation, remodeling,
41 alteration or repair of the property;

42 (11) Cause parks, playgrounds or water, sewer or
43 drainage facilities or any other public improvements,
44 including, but not limited to, fire stations, community
45 centers and other public buildings, which the county
46 commission is otherwise authorized to undertake to be laid
47 out, constructed or furnished in connection with the
48 development or redevelopment project. When the public
49 improvement of the county commission is to be located, in
50 whole or in part, within the corporate limits of a
51 municipality, the county commission shall consult with the
52 mayor and the governing body of the municipality regarding
53 the public improvement and shall pay for the cost of the
54 public improvement from the tax increment financing fund;

55 (12) Lay out and construct, alter, relocate, change the
56 grade of, make specific repairs upon or discontinue public
57 ways and construct sidewalks in, or adjacent to, the project
58 area: *Provided*, That when the public way or sidewalk is
59 located within a municipality, the governing body of the
60 municipality shall consent to the same and if the public way
61 is a state road, the consent of the commissioner of highways
62 shall be necessary;

63 (13) Cause private ways, sidewalks, ways for vehicular
64 travel, playgrounds or water, sewer or drainage facilities
65 and similar improvements to be constructed within the
66 project area for the particular use of the development or
67 redevelopment district or those dwelling or working in it;

68 (14) Construct, or cause to be constructed, any capital
69 improvements of a public nature;

70 (15) Construct capital improvements to be leased or sold
71 to private entities in connection with the goals of the
72 development or redevelopment project;

73 (16) Cause capital improvements owned by one or more
74 private entities to be constructed within the development or
75 redevelopment district;

76 (17) Designate one or more official or employee of the
77 county commission to make decisions and handle the affairs
78 of development and redevelopment project areas or districts
79 created by the county commission pursuant to this article;

80 (18) Adopt orders, ordinances or bylaws or repeal or
81 modify such ordinances or bylaws or establish exceptions to
82 existing ordinances and bylaws regulating the design,
83 construction and use of buildings within the development or
84 redevelopment district created by a county commission or
85 governing body of a municipality under this article;

86 (19) Enter orders, adopt bylaws or repeal or modify such
87 orders or bylaws or establish exceptions to existing orders
88 and bylaws regulating the design, construction and use of
89 buildings within the development or redevelopment district
90 created by a county commission or governing body of a
91 municipality under this article;

92 (20) Sell, mortgage, lease, transfer or dispose of any
93 property or interest therein, by contract or auction, acquired
94 by it pursuant to the project plan for development,
95 redevelopment or rehabilitation in accordance with the
96 project plan;

97 (21) Expend project revenues as provided in this article;

98 (22) Enter into one or more intergovernmental
99 agreements or memorandums of understanding with the
100 Commissioner of Highways or with other county
101 commissions or municipalities regarding development or
102 redevelopment districts;

103 (23) Designate one or more officials or employees of the
104 county commission or municipality that created the
105 development or redevelopment district to sign documents,
106 to make decisions and handle the affairs of the development
107 or redevelopment district. When two or more county
108 commissions, or municipalities, or any combination thereof,
109 established the development or redevelopment district, the
110 government entities shall enter into one or more
111 intergovernmental agreements regarding administration of
112 the development or redevelopment district and the handling
113 of its affairs; and

114 (24) Do all things necessary or convenient to carry out
115 the powers granted in this article.

§7-11B-7. Creation of a development or redevelopment or district.

1 (a) County commissions and the governing bodies of
2 Class I, Class II or Class III municipalities, upon their own
3 initiative or upon application of an agency or a developer,
4 may propose creation of a development or redevelopment
5 district and designate the boundaries of the district:
6 *Provided*, That a district may not include noncontiguous
7 land.

8 (b) The county commission or municipality proposing
9 creation of a development or redevelopment district shall
10 then hold a public hearing at which interested parties are
11 afforded a reasonable opportunity to express their views on
12 the proposed creation of a development or redevelopment
13 district and its proposed boundaries.

14 (1) Notice of the hearing shall be published as a Class II
15 legal advertisement in accordance with §59-3-2 of this code.

16 (2) The notice shall include the time, place and purpose
17 of the public hearing, describe in sufficient detail the tax
18 increment financing plan, the proposed boundaries of the
19 development or redevelopment district and, when a
20 development or redevelopment project plan is being

21 proposed, the proposed tax increment financing obligations
22 to be issued to finance the development or redevelopment
23 project costs.

24 (3) Prior to the first day of publication, a copy of the
25 notice shall be sent by first-class mail to the director of the
26 Development Office and to the chief executive officer of all
27 other local levying bodies having the power to levy taxes on
28 real and tangible personal property located within the
29 proposed development or redevelopment district.

30 (4) All parties who appear at the hearing shall be
31 afforded an opportunity to express their views on the
32 proposal to create the development or redevelopment
33 district and, if applicable, the development or
34 redevelopment project plan and proposed tax increment
35 financing obligations.

36 (c) After the public hearing, the county commission, or
37 the governing body of the municipality, shall finalize the
38 boundaries of the development or redevelopment district,
39 the development or redevelopment project plan, or both, and
40 submit the same to the director of the Development Office
41 for his or her review and approval. The director, within sixty
42 days after receipt of the application, shall approve the
43 application as submitted, reject the application or return the
44 application to the county commission or governing body of
45 the municipality for further development or review in
46 accordance with instructions of the director of the
47 Development Office. A development or redevelopment
48 district or development or redevelopment project plan may
49 not be adopted by the county commission or the governing
50 body of a municipality until after it has been approved by
51 the executive director of the Development Office.

52 (d) Upon approval of the application by the
53 Development Office, the county commission may enter an
54 order and the governing body of the municipality proposing
55 the district or development or redevelopment project plan
56 may adopt an ordinance, that:

57 (1) Describes the boundaries of a development or
58 redevelopment district sufficiently to identify with ordinary
59 and reasonable certainty the territory included in the district,
60 which boundaries shall create a contiguous district;

61 (2) Creates the development or redevelopment district
62 as of a date provided in the order or ordinance;

63 (3) Assigns a name to the development or
64 redevelopment district for identification purposes.

65 (A) The name may include a geographic or other
66 designation, shall identify the county or municipality
67 authorizing the district and shall be assigned a number,
68 beginning with the number one.

69 (B) Each subsequently created district in the county or
70 municipality shall be assigned the next consecutive number;

71 (4) Contains findings that the real property within the
72 development or redevelopment district will be benefitted by
73 eliminating or preventing the development or spread of
74 slums or blighted, deteriorated or deteriorating areas,
75 discouraging the loss of commerce, industry or
76 employment, increasing employment or any combination
77 thereof;

78 (5) Approves the development or redevelopment project
79 plan, if applicable;

80 (6) Establishes a tax increment financing fund as a
81 separate fund into which all tax increment revenues and
82 other revenues designated by the county commission, or
83 governing body of the municipality, for the benefit of the
84 development or redevelopment district shall be deposited,
85 and from which all project costs shall be paid, which may
86 be assigned to and held by a trustee for the benefit of
87 bondholders if tax increment financing obligations are
88 issued by the county commission or the governing body of
89 the municipality; and

90 (7) Provides that ad valorem property taxes on real and
91 tangible personal property having a tax situs in the
92 development or redevelopment district shall be assessed,
93 collected and allocated in the following manner,
94 commencing upon the date of adoption of such order or
95 ordinance and continuing for so long as any tax increment
96 financing obligations are payable from the tax increment
97 financing fund, hereinafter authorized, are outstanding and
98 unpaid:

99 (A) For each tax year, the county assessor shall record
100 in the land and personal property books both the base
101 assessed value and the current assessed value of the real and
102 tangible personal property having a tax situs in the
103 development or redevelopment district;

104 (B) Ad valorem taxes collected from regular levies upon
105 real and tangible personal property having a tax situs in the
106 district that are attributable to the lower of the base assessed
107 value or the current assessed value of real and tangible
108 personal property located in the development project area
109 shall be allocated to the levying bodies in the same manner
110 as applicable to the tax year in which the development or
111 redevelopment project plan is adopted by order of the
112 county commission or by ordinance adopted by the
113 governing body of the municipality;

114 (C) The tax increment with respect to real and tangible
115 personal property in the development or redevelopment
116 district shall be allocated and paid into the tax increment
117 financing fund and shall be used to pay the principal of and
118 interest on tax increment financing obligations issued to
119 finance the costs of the development or redevelopment
120 projects in the development or redevelopment district. Any
121 levying body having a development or redevelopment
122 district within its taxing jurisdiction shall not receive any
123 portion of the annual tax increment except as otherwise
124 provided in this article; and

125 (D) In no event shall the tax increment include any taxes
126 collected from excess levies, levies for general obligation
127 bonded indebtedness or any levies other than the regular
128 levies provided for in §11-8-1 *et seq.* of this code.

129 (e) Proceeds from tax increment financing obligations
130 issued under this article may only be used to pay for costs
131 of development and redevelopment projects to foster
132 economic development in the development or
133 redevelopment district or land contiguous thereto.

134 (f) Notwithstanding subsection (d) of this section, a
135 county commission may not enter an order approving a
136 development or redevelopment project plan unless the
137 county commission expressly finds and states in the order
138 that the development or redevelopment project is not
139 reasonably expected to occur without the use of tax
140 increment financing.

141 (g) Notwithstanding subsection (d) of this section, the
142 governing body of a municipality may not adopt an
143 ordinance approving a development or redevelopment
144 project plan unless the governing body expressly finds and
145 states in the ordinance that the development or
146 redevelopment project is not reasonably expected to occur
147 without the use of tax increment financing.

148 (h) No county commission shall establish a
149 development or redevelopment district any portion of which
150 is within the boundaries of a Class I, II, III or IV
151 municipality without the formal consent of the governing
152 body of such municipality.

153 (i) A tax increment financing plan that has been
154 approved by a county commission or the governing body of
155 a municipality may be amended by following the
156 procedures set forth in this article for adoption of a new
157 development or redevelopment project plan.

158 (j) The county commission may modify the boundaries
159 of the development or redevelopment district, from time to
160 time, by entry of an order modifying the order creating the
161 development or redevelopment district.

162 (k) The governing body of a municipality may modify
163 the boundaries of the development or redevelopment
164 district, from time to time, by amending the ordinance
165 establishing the boundaries of the district.

166 (l) Before a county commission or the governing body
167 of a municipality may amend such an order or ordinance,
168 the county commission or municipality shall give the public
169 notice, hold a public hearing and obtain the approval of the
170 director of the Development Office, following the
171 procedures for establishing a new development or
172 redevelopment district. In the event any tax increment
173 financing obligations are outstanding with respect to the
174 development or redevelopment district, any change in the
175 boundaries shall not reduce the amount of tax increment
176 available to secure the outstanding tax increment financing
177 obligations.

§7-11B-8. Project plan — approval.

1 (a) The county commission or municipality creating the
2 district shall cause the preparation of a project plan for each
3 development or redevelopment district and the project plan
4 shall be adopted by order of the county commission, or
5 ordinance adopted by the governing body of the
6 municipality, after it is approved by the executive director
7 of the Development Office. This process shall conform to
8 the procedures set forth in this section.

9 (b) Each project plan shall include:

10 (1) A statement listing the kind, number and location of
11 all proposed public works or other improvements within the
12 district and on land outside but contiguous to the district;

13 (2) A cost-benefit analysis showing the economic
14 impact of the plan on each levying body that is at least
15 partially within the boundaries of the development or
16 redevelopment district. This analysis shall show the impact
17 on the economy if the project is not built and is built
18 pursuant to the development or redevelopment plan under
19 consideration. The cost-benefit analysis shall include a
20 fiscal impact study on every affected levying body and
21 sufficient information from the developer for the agency, if
22 any proposing the plan, the county commission be asked to
23 approve the project and the Development Office to evaluate
24 whether the project as proposed is financially feasible;

25 (3) An economic feasibility study;

26 (4) A detailed list of estimated project costs;

27 (5) A description of the methods of financing all
28 estimated project costs, including the issuance of tax
29 increment obligations and the time when the costs or
30 monetary obligations related thereto are to be incurred;

31 (6) A certification by the county assessor of the base
32 assessed value of real and tangible personal property having
33 a tax situs in a development or redevelopment district:
34 *Provided*, That if such certification is made during the
35 months of January or February of each year, the county
36 assessor may certify an estimated base assessed value of real
37 and tangible personal property having a tax situs in a
38 development or redevelopment district: *Provided, however*,
39 That prior to issuance of tax increment obligations, the
40 county assessor shall certify a final base assessed value for
41 the estimated base assessed value permitted by this section;

42 (7) The type and amount of any other revenues that are
43 expected to be deposited to the tax increment financing fund
44 of the development or redevelopment district;

45 (8) A map showing existing uses and conditions of real
46 property in the development or redevelopment district;

47 (9) A map of proposed improvements and uses in the
48 district;

49 (10) Proposed changes of zoning ordinances, if any;

50 (11) Appropriate cross-references to any master plan,
51 map, building codes and municipal ordinances or county
52 commission orders affected by the project plan;

53 (12) A list of estimated nonproject costs;

54 (13) A statement of the proposed method for the
55 relocation of any persons, businesses or organizations to be
56 displaced;

57 (14) A certificate from the executive director of the
58 workers' compensation commission, the commissioner of
59 the Bureau of Employment Programs and the State Tax
60 Commissioner that the project developer is in good standing
61 with the workers' compensation commission, the Bureau of
62 Employment Programs and the state Tax Division; and

63 (15) A certificate from the sheriff of the county or
64 counties in which the development or redevelopment
65 district is located that the project developer is not delinquent
66 on payment of any real and personal property taxes in such
67 county.

68 (c) If the project plan is to include tax increment
69 financing, the tax increment financing portion of the plan
70 shall set forth:

71 (1) The amount of indebtedness to be incurred pursuant
72 to this article;

73 (2) An estimate of the tax increment to be generated as
74 a result of the project;

75 (3) The method for calculating the tax increment, which
76 shall be in conformance with the provisions of this article,

77 together with any provision for adjustment of the method of
78 calculation;

79 (4) Any other revenues, such as payment in lieu of tax
80 revenues, to be used to secure the tax increment financing;
81 and

82 (5) Any other provisions as may be deemed necessary
83 in order to carry out any tax increment financing to be used
84 for the development or redevelopment project.

85 (d) If less than all of the tax increment is to be used to
86 fund a development or redevelopment project or to pay
87 project costs or retire tax increment financing, the project
88 plan shall set forth the portion of the tax increment to be
89 deposited in the tax increment financing fund of the
90 development or redevelopment district and provide for the
91 distribution of the remaining portion of the tax increment to
92 the levying bodies in whose jurisdiction the district lies.

93 (e) The county commission or governing body of the
94 municipality that established the tax increment financing
95 fund shall hold a public hearing at which interested parties
96 shall be afforded a reasonable opportunity to express their
97 views on the proposed project plan being considered by the
98 county commission or the governing body of the
99 municipality.

100 (1) Notice of the hearing shall be published as a Class II
101 legal advertisement in accordance with section two, article
102 three, chapter fifty-nine of this code.

103 (2) At least 30 days prior to this publication, a copy of
104 the notice and a copy of the proposed project plan shall be
105 sent by first-class mail to the chief executive officer of all
106 other levying bodies having the power to levy taxes on
107 property located within the proposed development or
108 redevelopment district.

109 (f) Approval by the county commission or the
110 governing body of a municipality of an initial

111 development or redevelopment project plan must be
112 within one year after the date of the county assessor's
113 certification required by subdivision (6), subsection (b)
114 of this section: *Provided*, That additional development or
115 redevelopment project plans may be approved by the
116 county commission or the governing body of a
117 municipality in subsequent years, so long as the
118 development or redevelopment district continues to exist.
119 The approval shall be by order of the county commission
120 or ordinance of the municipality, which shall contain a
121 finding that the plan is economically feasible.



CHAPTER 235

**(Com. Sub. for H. B. 4022 - By Delegates Hamrick,
Butler, Barrett, Dean, Fast, Hollen, Lovejoy and
Queen)**

[Passed March 2, 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 §11-15-9p, relating to providing an exemption from the consumer sales and service tax for purchases of certain services and tangible personal property sold for the repair, remodeling and maintenance of aircraft operated under a fractional ownership program; defining terms; specifying a method for claiming exemption; authorizing emergency rules and promulgation of legislative rules; and establishing the effective date of the section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9p. Exemption for purchases of services and tangible personal property sold for the repair, remodeling and maintenance of aircraft operated under a fractional ownership program.

1 (a) The following sales are exempt from the consumers
2 sales and service tax: Sales of aircraft repair, remodeling
3 and maintenance services when the services are to an
4 aircraft operated under a fractional ownership program, or
5 to an engine or other component part of an aircraft operated
6 under a fractional ownership program; sales of tangible
7 personal property that is permanently affixed or
8 permanently attached as a component part of an aircraft
9 operated under a fractional ownership program, as part of
10 the repair, remodeling or maintenance service; and sales of
11 machinery, tools or equipment directly used or consumed
12 exclusively in the repair, remodeling or maintenance of
13 aircraft, aircraft engines or aircraft component parts for an
14 aircraft operated under a fractional ownership program, or
15 used exclusively in combination with the purposes specified
16 in this subsection and the purposes specified in §11-15-
17 9(a)(33) of this code.

18 (b) Any person having a right or claim to any exemption
19 set forth in this section shall: First pay to the vendor the tax
20 imposed by this article and then apply to the Tax
21 Commissioner for a refund or credit, or, as provided in §11-
22 15-9d and §11-15a-3d of this code, give to the vendor his or
23 her West Virginia direct pay permit number: *Provided*, That
24 a person having a right or claim to the exemption set forth
25 in this section may apply to the Tax Commissioner for
26 permission to use an exemption certificate. Upon the
27 granting of such permission, a person having a right or claim
28 to the exemption set forth in this section may, in lieu of
29 paying the tax imposed by this article and filing a claim for
30 refund, execute a certificate of exemption, in the form
31 required by the Tax Commissioner, and deliver it to the
32 vendor of the property or service in the manner required by
33 the Tax Commissioner.

34 (c) For purposes of this section, “fractional ownership
35 program” means any system of aircraft ownership and
36 exchange that consists of all of the following:

37 (1) The provision for fractional ownership program
38 management services by a single fractional ownership
39 program manager on behalf of the fractional owners;

40 (2) Two or more airworthy aircraft;

41 (3) One or more fractional owners per program aircraft,
42 with at least one program aircraft having more than one
43 owner;

44 (4) Possession of at least a minimum fractional
45 ownership interest in one or more program aircraft by each
46 fractional owner;

47 (5) A dry-lease aircraft exchange arrangement among
48 all of the fractional owners; and

49 (6) Multi-year program agreements covering the
50 fractional ownership, fractional ownership program
51 management services, and dry-lease aircraft exchange
52 aspects of the program.

53 (d) The tax commissioner shall promulgate emergency
54 rules and shall propose rules for legislative approval in
55 accordance with the provisions of §29A-3-1 *et seq.* of this
56 code to establish eligibility requirements for the exemption
57 established by this section.

58 (e) The provisions of this section shall apply to sales
59 made on and after September 1, 2018.

●

CHAPTER 236

**(Com. Sub. for H. B. 4135 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed February 9, 2018; in effect from passage.]
[Approved by the Governor on February 21, 2018.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

Article 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in
5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the
8 laws of the United States that relate to the determination of
9 income for federal income tax purposes. All amendments
10 made to the laws of the United States after December 31, 2016,
11 but prior to January 1, 2018, shall be given effect in
12 determining the taxes imposed by this article to the same extent
13 those changes are allowed for federal income tax purposes,
14 whether the changes are retroactive or prospective, but no
15 amendment to the laws of the United States made on or after
16 January 1, 2018, shall be given any effect.

17 (b) The term “Internal Revenue Code of 1986” means
18 the Internal Revenue Code of the United States enacted by
19 the federal Tax Reform Act of 1986 and includes the
20 provisions of law formerly known as the Internal Revenue
21 Code of 1954, as amended, and in effect when the federal
22 Tax Reform Act of 1986 was enacted that were not amended
23 or repealed by the federal Tax Reform Act of 1986. Except
24 when inappropriate, any reference in any law, executive
25 order, or other document:

26 (1) To the Internal Revenue Code of 1954 includes a
27 reference to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 includes a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) *Effective date.* — The amendments to this section
32 enacted in the year 2018 are retroactive to the extent
33 allowable under federal income tax law. With respect to
34 taxable years that began prior to January 1, 2018, the law in
35 effect for each of those years shall be fully preserved as to
36 that year, except as provided in this section.

CHAPTER 237

**(H. B. 4146 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed February 9, 2018; in effect from passage.]
[Approved by the Governor on February 21, 2018.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; providing rule for

determining number of personal exemptions; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. WEST VIRGINIA PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of the
5 United States means the provisions of the Internal Revenue
6 Code of 1986, as amended, and any other provisions of the
7 laws of the United States that relate to the determination of
8 income for federal income tax purposes. All amendments
9 made to the laws of the United States after December 31, 2016,
10 but prior to January 1, 2018, shall be given effect in
11 determining the taxes imposed by this article to the same extent
12 those changes are allowed for federal income tax purposes,
13 whether the changes are retroactive or prospective, but no
14 amendment to the laws of the United States made on or after
15 January 1, 2018, may be given any effect.

16 (b) *Medical savings accounts.* — The term “taxable
17 trust” does not include a medical savings account
18 established pursuant to §33-15-20 or §33-16-15 of this code.
19 Employer contributions to a medical savings account
20 established pursuant to those sections are not wages for
21 purposes of withholding under §11-21-71 of this code.

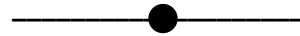
22 (c) *Surtax.* — The term “surtax” means the twenty
23 percent additional tax imposed on taxable withdrawals from
24 a medical savings account under §33-15-20 of this code and
25 the twenty percent additional tax imposed on taxable
26 withdrawals from a medical savings account under §33-16-
27 15 of this code which are collected by the Tax
28 Commissioner as tax collected under this article.

29 (d) *Effective date.* — The amendments to this section
30 enacted in the year 2017 are retroactive to the extent
31 allowable under federal income tax law. With respect to

32 taxable years that began prior to January 1, 2018, the law in
33 effect for each of those years shall be fully preserved as to
34 that year, except as provided in this section.

35 (e) For purposes of the refundable credit allowed to a
36 low income senior citizen for property tax paid on his or her
37 homestead in this state, the term “laws of the United States”
38 as used in subsection (a) of this section means and includes
39 the term “low income” as defined in subsection (b), section
40 twenty-one of this article and as reflected in the poverty
41 guidelines updated periodically in the federal register by the
42 U.S. Department of Health and Human Services under the
43 authority of 42 U.S.C. § 9902(2).

44 (f) For taxable years beginning on and after January 1,
45 2018, whenever § 11-21-1 *et seq.* of this code refers to “each
46 exemption for which he or she is entitled to a deduction for
47 the taxable year for federal income tax purposes” this phrase
48 means the exemption the person would have been allowed
49 to claim for the taxable year had the federal income tax law
50 not been amended to eliminate the personal exemption for
51 federal tax years beginning on or after January 1, 2018.



CHAPTER 238

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

[Passed March 9, 2018; in effect from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to the elimination of the refundable exemption for road construction contractors; prohibiting the transfer of revenues collected from the state’s

consumers sales and service tax and the state's use tax to the State Road Fund; updating references to certain entities; updating references to the code; removing references to obsolete dates; and specifying the effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9. Exemptions.

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.* — A person having a right or claim to any exemption
3 set forth in this subsection may, in lieu of paying the tax
4 imposed by this article and filing a claim for refund, execute
5 a certificate of exemption, in the form required by the Tax
6 Commissioner, and deliver it to the vendor of the property
7 or service in the manner required by the Tax Commissioner.
8 However, the Tax Commissioner may, by rule, specify
9 those exemptions authorized in this subsection for which
10 exemption certificates are not required. The following sales
11 of tangible personal property and services are exempt as
12 provided in this subsection:

13 (1) Sales of gas, steam and water delivered to consumers
14 through mains or pipes and sales of electricity;

15 (2) Sales of textbooks required to be used in any of the
16 schools of this state or in any institution in this state which
17 qualifies as a nonprofit or educational institution subject to
18 the West Virginia Department of Education and the Arts,
19 the Higher Education Policy Commission or the Council for
20 Community and Technical College Education for
21 universities and colleges located in this state;

22 (3) Sales of property or services to this state, its
23 institutions or subdivisions, governmental units, institutions
24 or subdivisions of other states: *Provided*, That the law of the
25 other state provides the same exemption to governmental
26 units or subdivisions of this state and to the United States,

27 including agencies of federal, state or local governments for
28 distribution in public welfare or relief work;

29 (4) Sales of vehicles which are titled by the Division of
30 Motor Vehicles and which are subject to the tax imposed by
31 §11-15-3c of this code or like tax;

32 (5) Sales of property or services to churches which make
33 no charge whatsoever for the services they render:
34 *Provided*, That the exemption granted in this subdivision
35 applies only to services, equipment, supplies, food for meals
36 and materials directly used or consumed by these
37 organizations and does not apply to purchases of gasoline or
38 special fuel;

39 (6) Sales of tangible personal property or services to a
40 corporation or organization which has a current registration
41 certificate issued under §11-12-1 *et seq.* of this code, which
42 is exempt from federal income taxes under Section
43 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
44 amended, and which is:

45 (A) A church or a convention or association of churches
46 as defined in Section 170 of the Internal Revenue Code of
47 1986, as amended;

48 (B) An elementary or secondary school which maintains
49 a regular faculty and curriculum and has a regularly enrolled
50 body of pupils or students in attendance at the place in this
51 state where its educational activities are regularly carried
52 on;

53 (C) A corporation or organization which annually
54 receives more than one half of its support from any
55 combination of gifts, grants, direct or indirect charitable
56 contributions or membership fees;

57 (D) An organization which has no paid employees and
58 its gross income from fundraisers, less reasonable and
59 necessary expenses incurred to raise the gross income (or
60 the tangible personal property or services purchased with

61 the net income), is donated to an organization which is
62 exempt from income taxes under Section 501(c)(3) or (c)(4)
63 of the Internal Revenue Code of 1986, as amended;

64 (E) A youth organization, such as the Girl Scouts of the
65 United States of America, the Boy Scouts of America or the
66 YMCA Indian Guide/Princess Program and the local
67 affiliates thereof, which is organized and operated
68 exclusively for charitable purposes and has as its primary
69 purpose the nonsectarian character development and
70 citizenship training of its members;

71 (F) For purposes of this subsection:

72 (i) The term “support” includes, but is not limited to:

73 (I) Gifts, grants, contributions or membership fees;

74 (II) Gross receipts from fundraisers which include
75 receipts from admissions, sales of merchandise,
76 performance of services or furnishing of facilities in any
77 activity which is not an unrelated trade or business within
78 the meaning of Section 513 of the Internal Revenue Code of
79 1986, as amended;

80 (III) Net income from unrelated business activities,
81 whether or not the activities are carried on regularly as a
82 trade or business;

83 (IV) Gross investment income as defined in Section
84 509(e) of the Internal Revenue Code of 1986, as amended;

85 (V) Tax revenues levied for the benefit of a corporation
86 or organization either paid to or expended on behalf of the
87 organization; and

88 (VI) The value of services or facilities (exclusive of
89 services or facilities generally furnished to the public
90 without charge) furnished by a governmental unit referred
91 to in Section 170(c)(1) of the Internal Revenue Code of
92 1986, as amended, to an organization without charge. This

93 term does not include any gain from the sale or other
94 disposition of property which would be considered as gain
95 from the sale or exchange of a capital asset or the value of
96 an exemption from any federal, state or local tax or any
97 similar benefit;

98 (ii) The term “charitable contribution” means a
99 contribution or gift to or for the use of a corporation or
100 organization, described in Section 170(c)(2) of the Internal
101 Revenue Code of 1986, as amended; and

102 (iii) The term “membership fee” does not include any
103 amounts paid for tangible personal property or specific
104 services rendered to members by the corporation or
105 organization;

106 (G) The exemption allowed by this subdivision does not
107 apply to sales of gasoline or special fuel or to sales of
108 tangible personal property or services to be used or
109 consumed in the generation of unrelated business income as
110 defined in Section 513 of the Internal Revenue Code of
111 1986, as amended. The exemption granted in this
112 subdivision applies only to services, equipment, supplies
113 and materials used or consumed in the activities for which
114 the organizations qualify as tax-exempt organizations under
115 the Internal Revenue Code and does not apply to purchases
116 of gasoline or special fuel which are taxable as provided in
117 §11-14C-1 *et seq.* of this code;

118 (7) An isolated transaction in which any taxable service
119 or any tangible personal property is sold, transferred,
120 offered for sale or delivered by the owner of the property or
121 by his or her representative for the owner’s account, the sale,
122 transfer, offer for sale or delivery not being made in the
123 ordinary course of repeated and successive transactions of
124 like character by the owner or on his or her account by the
125 representative: *Provided*, That nothing contained in this
126 subdivision may be construed to prevent an owner who
127 sells, transfers or offers for sale tangible personal property
128 in an isolated transaction through an auctioneer from

129 availing himself or herself of the exemption provided in this
130 subdivision, regardless of where the isolated sale takes
131 place. The Tax Commissioner may propose a legislative
132 rule for promulgation pursuant to §29A-3-1 *et seq.* of this
133 code which he or she considers necessary for the efficient
134 administration of this exemption;

135 (8) Sales of tangible personal property or of any taxable
136 services rendered for use or consumption in connection with
137 the commercial production of an agricultural product the
138 ultimate sale of which is subject to the tax imposed by this
139 article or which would have been subject to tax under this
140 article: *Provided*, That sales of tangible personal property
141 and services to be used or consumed in the construction of
142 or permanent improvement to real property and sales of
143 gasoline and special fuel are not exempt: *Provided*,
144 *however*, That nails and fencing may not be considered as
145 improvements to real property;

146 (9) Sales of tangible personal property to a person for
147 the purpose of resale in the form of tangible personal
148 property: *Provided*, That sales of gasoline and special fuel
149 by distributors and importers is taxable except when the sale
150 is to another distributor for resale: *Provided, however*, That
151 sales of building materials or building supplies or other
152 property to any person engaging in the activity of
153 contracting, as defined in this article, which is to be installed
154 in, affixed to or incorporated by that person or his or her
155 agent into any real property, building or structure is not
156 exempt under this subdivision;

157 (10) Sales of newspapers when delivered to consumers
158 by route carriers;

159 (11) Sales of drugs, durable medical goods, mobility-
160 enhancing equipment and prosthetic devices dispensed
161 upon prescription and sales of insulin to consumers for
162 medical purposes;

163 (12) Sales of radio and television broadcasting time,
164 preprinted advertising circulars and newspaper and outdoor
165 advertising space for the advertisement of goods or services;

166 (13) Sales and services performed by day care centers;

167 (14) Casual and occasional sales of property or services
168 not conducted in a repeated manner or in the ordinary course
169 of repetitive and successive transactions of like character by
170 a corporation or organization which is exempt from tax
171 under subdivision (6) of this subsection on its purchases of
172 tangible personal property or services. For purposes of this
173 subdivision, the term “casual and occasional sales not
174 conducted in a repeated manner or in the ordinary course of
175 repetitive and successive transactions of like character”
176 means sales of tangible personal property or services at
177 fundraisers sponsored by a corporation or organization
178 which is exempt, under subdivision (6) of this subsection,
179 from payment of the tax imposed by this article on its
180 purchases when the fundraisers are of limited duration and
181 are held no more than six times during any twelve-month
182 period and “limited duration” means no more than eighty-
183 four consecutive hours: *Provided*, That sales for volunteer
184 fire departments and volunteer school support groups, with
185 duration of events being no more than eighty-four
186 consecutive hours at a time, which are held no more than
187 eighteen times in a twelve-month period for the purposes of
188 this subdivision are considered “casual and occasional sales
189 not conducted in a repeated manner or in the ordinary course
190 of repetitive and successive transactions of a like character”;

191 (15) Sales of property or services to a school which has
192 approval from the Higher Education Policy Commission or
193 the Council for Community and Technical College
194 Education to award degrees, which has its principal campus
195 in this state and which is exempt from federal and state
196 income taxes under Section 501(c)(3) of the Internal
197 Revenue Code of 1986, as amended: *Provided*, That sales
198 of gasoline and special fuel are taxable as provided in §11-
199 15-18, §11-15-18b and §11-14C-1 *et seq.* of this code;

200 (16) Sales of lottery tickets and materials by licensed
201 lottery sales agents and lottery retailers authorized by the
202 state Lottery Commission, under the provisions of §29-22-
203 1 *et seq.* of this code;

204 (17) Leases of motor vehicles titled pursuant to the
205 provisions of §17A-3-1 *et seq.* of this code to lessees for a
206 period of thirty or more consecutive days;

207 (18) Notwithstanding the provisions of §11-15-18 or
208 §11-15-18b of this code or any other provision of this article
209 to the contrary, sales of propane to consumers for poultry
210 house heating purposes, with any seller to the consumer
211 who may have prior paid the tax in his or her price, to not
212 pass on the same to the consumer, but to make application
213 and receive refund of the tax from the Tax Commissioner
214 pursuant to rules which are promulgated after being
215 proposed for legislative approval in accordance with chapter
216 29A of this code by the Tax Commissioner;

217 (19) Any sales of tangible personal property or services
218 purchased and lawfully paid for with food stamps pursuant
219 to the federal food stamp program codified in 7 U. S. C.
220 §2011, *et seq.*, as amended, or with drafts issued through the
221 West Virginia special supplement food program for women,
222 infants and children codified in 42 U. S. C. §1786;

223 (20) Sales of tickets for activities sponsored by
224 elementary and secondary schools located within this state;

225 (21) Sales of electronic data processing services and
226 related software: *Provided*, That, for the purposes of this
227 subdivision, “electronic data processing services” means:

228 (A) The processing of another’s data, including all
229 processes incident to processing of data such as
230 keypunching, keystroke verification, rearranging or sorting
231 of previously documented data for the purpose of data entry
232 or automatic processing and changing the medium on which

233 data is sorted, whether these processes are done by the same
234 person or several persons; and

235 (B) Providing access to computer equipment for the
236 purpose of processing data or examining or acquiring data
237 stored in or accessible to the computer equipment;

238 (22) Tuition charged for attending educational summer
239 camps;

240 (23) Dispensing of services performed by one
241 corporation, partnership or limited liability company for
242 another corporation, partnership or limited liability
243 company when the entities are members of the same
244 controlled group or are related taxpayers as defined in
245 Section 267 of the Internal Revenue Code. "Control" means
246 ownership, directly or indirectly, of stock, equity interests
247 or membership interests possessing fifty percent or more of
248 the total combined voting power of all classes of the stock
249 of a corporation, equity interests of a partnership or
250 membership interests of a limited liability company entitled
251 to vote or ownership, directly or indirectly, of stock, equity
252 interests or membership interests possessing fifty percent or
253 more of the value of the corporation, partnership or limited
254 liability company;

255 (24) Food for the following are exempt:

256 (A) Food purchased or sold by a public or private
257 school, school-sponsored student organizations or school-
258 sponsored parent-teacher associations to students enrolled
259 in the school or to employees of the school during normal
260 school hours; but not those sales of food made to the general
261 public;

262 (B) Food purchased or sold by a public or private
263 college or university or by a student organization officially
264 recognized by the college or university to students enrolled
265 at the college or university when the sales are made on a
266 contract basis so that a fixed price is paid for consumption

267 of food products for a specific period of time without respect
268 to the amount of food product actually consumed by the
269 particular individual contracting for the sale and no money
270 is paid at the time the food product is served or consumed;

271 (C) Food purchased or sold by a charitable or private
272 nonprofit organization, a nonprofit organization or a
273 governmental agency under a program to provide food to
274 low-income persons at or below cost;

275 (D) Food sold by a charitable or private nonprofit
276 organization, a nonprofit organization or a governmental
277 agency under a program operating in West Virginia for a
278 minimum of five years to provide food at or below cost to
279 individuals who perform a minimum of two hours of
280 community service for each unit of food purchased from the
281 organization;

282 (E) Food sold in an occasional sale by a charitable or
283 nonprofit organization, including volunteer fire departments
284 and rescue squads, if the purpose of the sale is to obtain
285 revenue for the functions and activities of the organization
286 and the revenue obtained is actually expended for that
287 purpose;

288 (F) Food sold by any religious organization at a social
289 or other gathering conducted by it or under its auspices, if
290 the purpose in selling the food is to obtain revenue for the
291 functions and activities of the organization and the revenue
292 obtained from selling the food is actually used in carrying
293 out those functions and activities: *Provided*, That purchases
294 made by the organizations are not exempt as a purchase for
295 resale; or

296 (G) Food sold by volunteer fire departments and rescue
297 squads that are exempt from federal income taxes under
298 Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
299 1986, as amended, when the purpose of the sale is to obtain
300 revenue for the functions and activities of the organization

301 and the revenue obtained is exempt from federal income tax
302 and actually expended for that purpose;

303 (25) Sales of food by little leagues, midget football
304 leagues, youth football or soccer leagues, band boosters or
305 other school or athletic booster organizations supporting
306 activities for grades kindergarten through twelve and similar
307 types of organizations, including scouting groups and
308 church youth groups, if the purpose in selling the food is to
309 obtain revenue for the functions and activities of the
310 organization and the revenues obtained from selling the
311 food is actually used in supporting or carrying on functions
312 and activities of the groups: *Provided*, That the purchases
313 made by the organizations are not exempt as a purchase for
314 resale;

315 (26) Charges for room and meals by fraternities and
316 sororities to their members: *Provided*, That the purchases
317 made by a fraternity or sorority are not exempt as a purchase
318 for resale;

319 (27) Sales of or charges for the transportation of
320 passengers in interstate commerce;

321 (28) Sales of tangible personal property or services to
322 any person which this state is prohibited from taxing under
323 the laws of the United States or under the Constitution of
324 this state;

325 (29) Sales of tangible personal property or services to
326 any person who claims exemption from the tax imposed by
327 this article or §11-15A-1 *et seq.* of this code, or pursuant to
328 the provision of any other chapter of this code;

329 (30) Charges for the services of opening and closing a
330 burial lot;

331 (31) Sales of livestock, poultry or other farm products
332 in their original state by the producer of the livestock,
333 poultry or other farm products or a member of the
334 producer's immediate family who is not otherwise engaged

335 in making retail sales of tangible personal property; and
336 sales of livestock sold at public sales sponsored by breeders
337 or registry associations or livestock auction markets:
338 *Provided*, That the exemptions allowed by this subdivision
339 may be claimed without presenting or obtaining exemption
340 certificates provided the farmer maintains adequate records;

341 (32) Sales of motion picture films to motion picture
342 exhibitors for exhibition if the sale of tickets or the charge
343 for admission to the exhibition of the film is subject to the
344 tax imposed by this article and sales of coin-operated video
345 arcade machines or video arcade games to a person engaged
346 in the business of providing the machines to the public for a
347 charge upon which the tax imposed by this article is remitted
348 to the Tax Commissioner: *Provided*, That the exemption
349 provided in this subdivision may be claimed by presenting
350 to the seller a properly executed exemption certificate;

351 (33) Sales of aircraft repair, remodeling and
352 maintenance services when the services are to an aircraft
353 operated by a certified or licensed carrier of persons or
354 property, or by a governmental entity, or to an engine or
355 other component part of an aircraft operated by a
356 certificated or licensed carrier of persons or property, or by
357 a governmental entity and sales of tangible personal
358 property that is permanently affixed or permanently
359 attached as a component part of an aircraft owned or
360 operated by a certificated or licensed carrier of persons or
361 property, or by a governmental entity, as part of the repair,
362 remodeling or maintenance service and sales of machinery,
363 tools or equipment directly used or consumed exclusively in
364 the repair, remodeling or maintenance of aircraft, aircraft
365 engines or aircraft component parts for a certificated or
366 licensed carrier of persons or property or for a governmental
367 entity;

368 (34) Charges for memberships or services provided by
369 health and fitness organizations relating to personalized
370 fitness programs;

371 (35) Sales of services by individuals who babysit for a
372 profit: *Provided*, That the gross receipts of the individual
373 from the performance of baby-sitting services do not exceed
374 \$5,000 in a taxable year;

375 (36) Sales of services by public libraries or by libraries
376 at academic institutions or by libraries at institutions of
377 higher learning;

378 (37) Commissions received by a manufacturer's
379 representative;

380 (38) Sales of primary opinion research services when:

381 (A) The services are provided to an out-of-state client;

382 (B) The results of the service activities, including, but
383 not limited to, reports, lists of focus group recruits and
384 compilation of data are transferred to the client across state
385 lines by mail, wire or other means of interstate commerce,
386 for use by the client outside the State of West Virginia; and

387 (C) The transfer of the results of the service activities is
388 an indispensable part of the overall service.

389 For the purpose of this subdivision, the term "primary
390 opinion research" means original research in the form of
391 telephone surveys, mall intercept surveys, focus group
392 research, direct mail surveys, personal interviews and other
393 data collection methods commonly used for quantitative and
394 qualitative opinion research studies;

395 (39) Sales of property or services to persons within the
396 state when those sales are for the purposes of the production
397 of value-added products: *Provided*, That the exemption
398 granted in this subdivision applies only to services,
399 equipment, supplies and materials directly used or
400 consumed by those persons engaged solely in the
401 production of value-added products: *Provided, however*,
402 That this exemption may not be claimed by any one

403 purchaser for more than five consecutive years, except as
404 otherwise permitted in this section.

405 For the purpose of this subdivision, the term “value-
406 added product” means the following products derived from
407 processing a raw agricultural product, whether for human
408 consumption or for other use. For purposes of this
409 subdivision, the following enterprises qualify as processing
410 raw agricultural products into value-added products: Those
411 engaged in the conversion of:

412 (A) Lumber into furniture, toys, collectibles and home
413 furnishings;

414 (B) Fruits into wine;

415 (C) Honey into wine;

416 (D) Wool into fabric;

417 (E) Raw hides into semifinished or finished leather
418 products;

419 (F) Milk into cheese;

420 (G) Fruits or vegetables into a dried, canned or frozen
421 product;

422 (H) Feeder cattle into commonly accepted slaughter
423 weights;

424 (I) Aquatic animals into a dried, canned, cooked or
425 frozen product; and

426 (J) Poultry into a dried, canned, cooked or frozen
427 product;

428 (40) Sales of music instructional services by a music
429 teacher and artistic services or artistic performances of an
430 entertainer or performing artist pursuant to a contract with
431 the owner or operator of a retail establishment, restaurant,
432 inn, bar, tavern, sports or other entertainment facility or any

433 other business location in this state in which the public or a
434 limited portion of the public may assemble to hear or see
435 musical works or other artistic works be performed for the
436 enjoyment of the members of the public there assembled
437 when the amount paid by the owner or operator for the
438 artistic service or artistic performance does not exceed
439 \$3,000: *Provided*, That nothing contained herein may be
440 construed to deprive private social gatherings, weddings or
441 other private parties from asserting the exemption set forth
442 in this subdivision. For the purposes of this exemption,
443 artistic performance or artistic service means and is limited
444 to the conscious use of creative power, imagination and skill
445 in the creation of aesthetic experience for an audience
446 present and in attendance and includes, and is limited to,
447 stage plays, musical performances, poetry recitations and
448 other readings, dance presentation, circuses and similar
449 presentations and does not include the showing of any film
450 or moving picture, gallery presentations of sculptural or
451 pictorial art, nude or strip show presentations, video games,
452 video arcades, carnival rides, radio or television shows or
453 any video or audio taped presentations or the sale or leasing
454 of video or audio tapes, air shows or any other public
455 meeting, display or show other than those specified herein:
456 *Provided, however*, That nothing contained herein may be
457 construed to exempt the sales of tickets from the tax
458 imposed in this article. The State Tax Commissioner shall
459 propose a legislative rule pursuant to §29A-3-1 *et seq.* of
460 this code establishing definitions and eligibility criteria for
461 asserting this exemption which is not inconsistent with the
462 provisions set forth herein: *Provided further*, That nude
463 dancers or strippers may not be considered as entertainers
464 for the purposes of this exemption;

465 (41) Charges to a member by a membership association
466 or organization which is exempt from paying federal
467 income taxes under Section 501(c)(3) or (c)(6) of the
468 Internal Revenue Code of 1986, as amended, for
469 membership in the association or organization, including
470 charges to members for newsletters prepared by the

471 association or organization for distribution primarily to its
472 members, charges to members for continuing education
473 seminars, workshops, conventions, lectures or courses put
474 on or sponsored by the association or organization,
475 including charges for related course materials prepared by
476 the association or organization or by the speaker or speakers
477 for use during the continuing education seminar, workshop,
478 convention, lecture or course, but not including any separate
479 charge or separately stated charge for meals, lodging,
480 entertainment or transportation taxable under this article:
481 *Provided*, That the association or organization pays the tax
482 imposed by this article on its purchases of meals, lodging,
483 entertainment or transportation taxable under this article for
484 which a separate or separately stated charge is not made. A
485 membership association or organization which is exempt
486 from paying federal income taxes under Section 501(c)(3)
487 or (c)(6) of the Internal Revenue Code of 1986, as amended,
488 may elect to pay the tax imposed under this article on the
489 purchases for which a separate charge or separately stated
490 charge could apply and not charge its members the tax
491 imposed by this article or the association or organization
492 may avail itself of the exemption set forth in subdivision (9)
493 of this subsection relating to purchases of tangible personal
494 property for resale and then collect the tax imposed by this
495 article on those items from its member;

496 (42) Sales of governmental services or governmental
497 materials by county assessors, county sheriffs, county clerks
498 or circuit clerks in the normal course of local government
499 operations;

500 (43) Direct or subscription sales by the Division of
501 Natural Resources of the magazine currently entitled
502 *Wonderful West Virginia* and by the Division of Culture and
503 History of the magazine currently entitled *Goldenseal* and
504 the journal currently entitled *West Virginia History*;

505 (44) Sales of soap to be used at car wash facilities;

506 (45) Commissions received by a travel agency from an
507 out-of-state vendor;

508 (46) The service of providing technical evaluations for
509 compliance with federal and state environmental standards
510 provided by environmental and industrial consultants who
511 have formal certification through the West Virginia
512 Department of Environmental Protection or the West
513 Virginia Bureau for Public Health or both. For purposes of
514 this exemption, the service of providing technical
515 evaluations for compliance with federal and state
516 environmental standards includes those costs of tangible
517 personal property directly used in providing such services
518 that are separately billed to the purchaser of such services
519 and on which the tax imposed by this article has previously
520 been paid by the service provider;

521 (47) Sales of tangible personal property and services by
522 volunteer fire departments and rescue squads that are
523 exempt from federal income taxes under Section 501(c)(3)
524 or (c)(4) of the Internal Revenue Code of 1986, as amended,
525 if the sole purpose of the sale is to obtain revenue for the
526 functions and activities of the organization and the revenue
527 obtained is exempt from federal income tax and actually
528 expended for that purpose;

529 (48) Lodging franchise fees, including royalties,
530 marketing fees, reservation system fees or other fees
531 assessed that have been or may be imposed by a lodging
532 franchiser as a condition of the franchise agreement; and

533 (49) Sales of the regulation size United States flag and
534 the regulation size West Virginia flag for display.

535 (b) *Refundable exemptions.* — Any person having a
536 right or claim to any exemption set forth in this subsection
537 shall first pay to the vendor the tax imposed by this article
538 and then apply to the Tax Commissioner for a refund or
539 credit, or as provided in §11-15-9d of this code give to the
540 vendor his or her West Virginia direct pay permit number.

541 The following sales of tangible personal property and
542 services are exempt from tax as provided in this subsection:

543 (1) Sales of property or services to bona fide charitable
544 organizations who make no charge whatsoever for the
545 services they render: *Provided*, That the exemption granted
546 in this subdivision applies only to services, equipment,
547 supplies, food, meals and materials directly used or
548 consumed by these organizations and does not apply to
549 purchases of gasoline or special fuel;

550 (2) Sales of services, machinery, supplies and materials
551 directly used or consumed in the activities of manufacturing,
552 transportation, transmission, communication, production of
553 natural resources, gas storage, generation or production or
554 selling electric power, provision of a public utility service or
555 the operation of a utility service or the operation of a utility
556 business, in the businesses or organizations named in this
557 subdivision and does not apply to purchases of gasoline or
558 special fuel;

559 (3) Sales of property or services to nationally chartered
560 fraternal or social organizations for the sole purpose of free
561 distribution in public welfare or relief work: *Provided*, That
562 sales of gasoline and special fuel are taxable;

563 (4) Sales and services, firefighting or station house
564 equipment, including construction and automotive, made to
565 any volunteer fire department organized and incorporated
566 under the laws of the State of West Virginia: *Provided*, That
567 sales of gasoline and special fuel are taxable; and

568 (5) Sales of building materials or building supplies or
569 other property to an organization qualified under Section
570 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
571 amended, which are to be installed in, affixed to or
572 incorporated by the organization or its agent into real
573 property or into a building or structure which is or will be
574 used as permanent low-income housing, transitional
575 housing, an emergency homeless shelter, a domestic

576 violence shelter or an emergency children and youth shelter
577 if the shelter is owned, managed, developed or operated by
578 an organization qualified under Section 501(c)(3) or (c)(4)
579 of the Internal Revenue Code of 1986, as amended.

580 (c) *Effective date.* – The amendments to this section in
581 2018 shall take effect beginning July 1, 2018, and apply to
582 sales made on and after that date: *Provided*, That the
583 amendments to subdivision (6), subsection (b) of this
584 section takes effect upon passage of this act of the
585 Legislature and shall be construed to prohibit on and after
586 January 1, 2018, all transfers to the State Road Fund
587 established in the State Treasury pursuant to section fifty-
588 two, article six of the Constitution, of the taxes imposed by
589 §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code.

●

CHAPTER 239

**(Com. Sub. for H. B. 4522 - By Delegate Nelson)
[By Request of the Tax Division]**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5dd, relating to allowing certain tax information to be shared with the State Auditor and the chief executive officer of the Enterprise Resource Planning Board and of certain other agencies pursuant to written agreements; and defining terms.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION
ACT.**

§11-10-5dd. Disclosure of certain tax information pursuant to written agreements with state agencies purchasing or leasing goods or services or the Enterprise Resource Planning Board to facilitate purchasing; and the State Auditor.

1 (a) *General.* – Notwithstanding any provision of this
2 code to the contrary, the Tax Commissioner may enter into
3 written agreements with other agencies of this state, as
4 provided in this section, to share certain tax information, as
5 defined in this section.

6 (b) *Contracts with the state.* – Notwithstanding any
7 provision of this article to the contrary, the Tax
8 Commissioner may enter into a written agreement with the
9 chief executive officer of an agency with authority to award
10 public contracts for the purchase or lease of goods or
11 services, or with the chief executive officer of the Enterprise
12 Resource Planning Board to facilitate purchasing or leasing
13 of goods and service, to disclose whether a vendor, or
14 prospective vendor, is in good standing before a public
15 contract is awarded or renewed.

16 (c) *State Auditor.* – The State Auditor is authorized to
17 request from the Tax Commissioner, and the Tax
18 Commissioner shall provide to the State Auditor,
19 confirmation whether a vendor is in good standing with the
20 Tax Commissioner. When the State Auditor provides the
21 Tax Commissioner an electronic file, the Tax
22 Commissioner will determine in a timely manner whether
23 the vendor is in good standing and, if the vendor is not in
24 good standing, electronically advise the State Auditor of the
25 amount of taxes, interest and additions to tax that are then
26 due and owing by that vendor to the Tax Commissioner that
27 should be offset, if any, or that the vendor needs to contact
28 the Tax Commissioner’s office to resolve the issue that
29 prevents the vendor from being in good standing, before the
30 vendor will be paid by the state.

31 (d) As used in §11-10-5dd of this code, the term “good
32 standing” means that the person has a current business

33 registration certificate under §11-12-1 *et seq.* of this code,
34 has filed all required returns for taxes administered under
35 §11-10-1 *et seq.* and has paid all taxes shown to be due on
36 those returns. A person is in “good standing” even though
37 the person may be paying taxes under a payment plan
38 provided the person is in compliance with the terms of the
39 written payment plan agreement; or is contesting an
40 assessment for one or more taxes administered under §11-
41 10-1 *et seq.* before the Office of Tax Appeals or in a court
42 of this state.

43 (e) Exchanges of information under §11-10-5dd of this
44 code shall occur pursuant to memorandums of
45 understanding executed by the Tax Commissioner and the
46 chief executive officer of any agency to award public
47 contracts for the purchase or lease of goods or services; the
48 chief executive officer of the Enterprise Resource Planning
49 Board; or the State Auditor, as the case may be. These
50 memorandums may be amended from time to time.



CHAPTER 240

**(H. B. 4626 - By Delegates Anderson, Nelson, Boggs,
Householder, Ellington, Gearheart, Frich, Ambler,
Bates and Longstreth)**

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §11-13BB-3, §11-13BB-4 and §11-13BB-14 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia innovative mine safety technology tax credit act; requiring that proximity detection systems, cameras and underground safety shelters and the refurbishing thereof be on the list of approved innovative mine safety technology; providing exception to

intent of the Legislature as to description of what should be on the list; extending the tax credit authorized for qualified investment in eligible safety property under the act; and correcting cross-references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX CREDIT ACT.

§11-13BB-3. Definitions.

1 (a) Any term used in this article has the meaning
2 ascribed by this section unless a different meaning is clearly
3 required by the context of its use or by definition in this
4 article.

5 (b) For purposes of this article, the term:

6 (1) “Certified eligible safety property” means eligible
7 safety property in which an eligible taxpayer has made
8 qualified investment for which credit has been certified
9 under this article.

10 (2) “Coal mining company” means:

11 (A) A person subject to tax imposed on the severance of
12 coal by section three, article thirteen-a of this chapter; or

13 (B) A person working as a contract miner of coal,
14 mining coal in this state, under contract with a person
15 subject to tax imposed on the severance of coal by section
16 three, article thirteen-a of this chapter.

17 (3) “Director” means the Director of the Office of
18 Miners’ Health, Safety and Training or West Virginia
19 Office of Miners’ Health, Safety and Training established
20 under article one, chapter twenty two-a of this code.

21 (4) “Eligible safety property” means safety technology
22 equipment that, at the time of acquisition, is on the list of
23 approved innovative mine safety technology: *Provided,*

24 That eligible safety property includes proximity detection
25 systems and cameras used on continuous mining machines
26 and underground haulage equipment and machine mounted
27 methane monitors required by section forty-three, article
28 two, chapter twenty-two-a of this code.

29 (5) “Eligible taxpayer” means a coal mining company
30 that purchases eligible safety property.

31 (6) “List of approved innovative mine safety
32 technology” means the list required to be compiled and
33 maintained by the Board of Coal Mine Health and Safety
34 and approved and published by the director under this
35 article: *Provided*, That proximity detection systems,
36 cameras and underground safety shelters and the
37 refurbishing thereof shall qualify and be on the list whether
38 required or not.

39 (7) “Office of Miners’ Health, Safety and Training” or
40 “West Virginia Office of Miners’ Health, Safety and
41 Training” means the Office of Miners’ Health, Safety and
42 Training established under article one, chapter twenty two-
43 a of this code.

44 (8) “Person” includes any corporation, limited liability
45 company or partnership.

46 (9) “Qualified investment” means the eligible
47 taxpayer’s investment in eligible safety property pursuant to
48 a qualified purchase as qualified and limited by section six
49 of this article.

50 (10) “Qualified purchase” means and includes only
51 acquisitions of eligible safety property for use in this state.

52 (A) A lease of eligible safety property may constitute a
53 qualified purchase if the lease was entered into and became
54 effective at a time when the equipment is on the list of
55 approved innovative mine safety technology and if the
56 primary term of the lease for the eligible safety property is

57 five years or more. Leases having a primary term of less
58 than five years do not qualify.

59 (B) “Qualified purchase” does not include:

60 (i) Purchases or leases of realty or any cost for, or related
61 to, the construction of a building, facility or structure
62 attached to realty;

63 (ii) Purchases or leases of property not exclusively used
64 in West Virginia;

65 (iii) Repair costs including materials used in the repair
66 unless, for federal income tax purposes, the cost of the repair
67 must be capitalized and not expensed;

68 (iv) Motor vehicles licensed by the Division of Motor
69 Vehicles;

70 (v) Clothing;

71 (vi) Airplanes;

72 (vii) Off-premises transportation equipment;

73 (viii) Leases of tangible personal property having a
74 primary term of less than five years;

75 (ix) Property that is used outside this state; and

76 (x) Property that is acquired incident to the purchase of
77 the stock or assets of an industrial taxpayer that was or had
78 been used by the seller in his or her industrial business in
79 this state or in which investment was previously the basis of
80 a credit against tax taken under any other article of this
81 chapter.

82 (C) Acquisitions, including leases, of eligible safety
83 property may constitute qualified purchases for purposes of
84 this article only if:

85 (i) The property is not acquired from a person whose
86 relationship to the person acquiring it would result in the
87 disallowance of deductions under Section 267 or 707(b) of
88 the United States Internal Revenue Code of 1986, as
89 amended;

90 (ii) The property is not acquired from a related person
91 or by one component member of a controlled group from
92 another component member of the same controlled group
93 but the Tax Commissioner may waive this requirement if
94 the property was acquired from a related party for its then
95 fair market value; and

96 (iii) The basis of the property for federal income tax
97 purposes, in the hands of the person acquiring it, is not
98 determined, in whole or in part, by reference to the federal
99 adjusted basis of the property in the hands of the person
100 from whom it was acquired or under Section 1014(e) of the
101 United States Internal Revenue Code of 1986, as amended.

102 (11) “Safety technology” means depreciable tangible
103 personal property and equipment, other than clothing,
104 principally designed to directly minimize workplace
105 injuries and fatalities in coal mines.

106 (12) “Taxpayer” means a person subject to any of the
107 taxes imposed by article thirteen-a, twenty-three or twenty-
108 four of this chapter.

§11-13BB-4. List of approved innovative mine safety technology.

1 (a) *List of approved innovative mine safety technology.* —
2 The Board of Coal Mine Health and Safety, established in
3 section two, article eleven, chapter twenty-two-a of this code,
4 shall annually compile a proposed list of approved innovative
5 mine safety technologies as required by subsection (g), section
6 three, article eleven, chapter twenty-two-a of this code. The list
7 shall be transmitted to the director for approval. The director
8 has thirty days to approve or amend the list. At the expiration
9 of thirty days, the director shall publish the list of approved

10 innovative mine safety technologies. The list shall describe
11 and specifically identify safety equipment for use in West
12 Virginia coal mines which, in the fiscal year when the
13 equipment is added to the list, is not required by the Mine
14 Safety and Health Administration of the United States
15 Department of Labor or the West Virginia Office Of Miners'
16 Health, Safety And Training or any other state or federal
17 agency, to be used in a coal mine or on a mine site or on any
18 other industrial site. Safety equipment shall remain on the list
19 from year to year until the director removes it from the list. The
20 Office of Miners' Health, Safety and Training may establish
21 by legislative rule or interpretive rule a shorter time period for
22 issuance of and updating of the list of approved innovative
23 mine safety technologies.

24 (b) It is the intent of the Legislature that the list of
25 approved innovative mine safety technologies include only
26 safety equipment that is depreciable tangible personal
27 property for federal income tax purposes, which is so new
28 to the industry and so innovative in concept, design,
29 operation or performance that, in the fiscal year when it is
30 added to the list of approved innovative mine safety
31 technologies, the equipment has not yet been adopted by the
32 Federal Mine Safety and Health Administration or the West
33 Virginia Office of Miners' Health, Safety and Training or
34 any other state or federal agency as required equipment to
35 be used in a coal mine or on a mine site or on any other
36 industrial site, except as specified herein.

37 (c) *Delisting.* — (1) If any item of equipment or any line
38 of equipment or class of equipment is listed on the list of
39 approved innovative mine safety technologies in any fiscal
40 year, but then is subsequently adopted by the Federal Mine
41 Safety and Health Administration or the West Virginia
42 Office of Mine Safety or any other state or federal agency
43 as required equipment to be used in a coal mine or on a mine
44 site or on any other industrial site, the equipment shall be
45 removed from the list of approved innovative mine safety

46 technologies compiled and issued for the next succeeding
47 periodic issuance thereafter of the list of approved
48 innovative mine safety technologies.

49 (2) If it is determined by the director that any item of
50 equipment or any line of equipment or class of equipment
51 that is listed on the list of approved innovative mine safety
52 technology has ceased to be innovative in concept, design,
53 operation or performance, or is ineffective, or has failed to
54 meet the expectations of the Board of Coal Mine Health and
55 Safety, or has failed to prove its value in directly minimizing
56 workplace injuries and fatalities in coal mines, the
57 equipment shall be removed from the list of approved
58 innovative mine safety technologies that is compiled and
59 issued for the next succeeding periodic issuance of the list
60 of approved innovative mine safety technologies after the
61 determination has been reached.

62 (3) However, any eligible taxpayer who invested in the
63 equipment as certified eligible safety property during the
64 time the equipment was lawfully listed on the list of
65 approved innovative mine safety technologies, shall not
66 forfeit the credit authorized by this article as a result of the
67 delisting of the equipment under either subdivision (1) or
68 subdivision (2) of this subsection, so long as the
69 requirements of this article are otherwise fulfilled by the
70 taxpayer for entitlement to the credit.

§11-13BB-14. Termination.

1 The tax credit authorized in this article shall terminate
2 December 31, 2025.

●

CHAPTER 241

(Com. Sub. for S. B. 73 - By Senators Weld and Cline)

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §17C-4-1 of the Code of West Virginia, 1931, as amended, relating generally to motor vehicle crashes involving death or personal injuries; defining terms; clarifying circumstances under which a driver may leave the scene of a crash for the purpose of rendering assistance to an injured person in the crash; clarifying essential elements of the offenses of leaving the scene of a crash that causes bodily injury, serious bodily injury, or death; creating the felony offense of leaving the scene of a crash that causes another person serious bodily injury and providing criminal penalties therefor; clarifying knowledge requirement; and clarifying that the offense of leaving the scene of a crash that causes death requires death to occur within one year of the crash.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ACCIDENTS.

§17C-4-1. Crashes involving death or personal injuries; Erin's Law.

- 1 (a) The driver of any vehicle involved in a crash resulting
- 2 in the injury to or death of any person shall immediately stop
- 3 the vehicle at the scene of the crash or as close to the scene as
- 4 possible and return to and remain at the scene of the crash until
- 5 he or she has complied with the requirements of §17C-4-3 of
- 6 this code: *Provided*, That the driver may leave the scene of the
- 7 crash as may reasonably be necessary for the purpose of

8 rendering assistance to any person injured in the crash, as
9 required by §17C-4-3 of this code.

10 (b) Any driver who is involved in a crash in which
11 another person suffers bodily injury and who intentionally
12 violates §17C-4-1(a) of this code when he or she knows or
13 has reason to believe that another person has suffered
14 physical injury in said crash is guilty of a misdemeanor and,
15 upon conviction thereof, shall be fined not more than
16 \$1,000, confined in jail for not more than one year, or both
17 fined and confined.

18 (c) Notwithstanding the provisions of §17C-4-1(b) of
19 this code, any driver who is involved in a crash in which
20 another person suffers serious bodily injury and who
21 intentionally violates §17C-4-1(a) of this code when he or
22 she knows or has reason to believe that another person has
23 suffered physical injury in said crash is guilty of a felony
24 and, upon conviction thereof, shall be fined not more than
25 \$2,500, or imprisoned in a state correctional facility for not
26 less than one year nor more than three years, or both fined
27 and imprisoned.

28 (d) Notwithstanding the provisions of §17C-4-1(b) or
29 §17C-4-1(c) of this code, any driver who is involved in a
30 crash that proximately causes the death of another person
31 who intentionally violates §17C-4-1(a) of this code when he
32 or she knows or has reason to believe that another person
33 has suffered physical injury in said crash is guilty of a felony
34 and, upon conviction thereof, shall be fined not more than
35 \$5,000, or imprisoned in a state correctional facility for not
36 less than one year nor more than five years, or both fined
37 and imprisoned: *Provided*, That any death underlying a
38 prosecution under this subsection must occur within one
39 year of the crash.

40 (e) As used in this section:

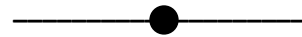
41 (1) "Bodily injury" means injury that causes substantial
42 physical pain, illness, or any impairment of physical
43 condition;

44 (2) “Physical injury” means bodily injury, serious
45 bodily injury or death; and

46 (3) “Serious bodily injury” means bodily injury that
47 creates a substantial risk of death, that causes serious or
48 prolonged disfigurement, prolonged impairment of health,
49 prolonged loss or impairment of the function of any bodily
50 organ, loss of pregnancy, or the morbidity or mortality
51 occurring because of a preterm delivery.

52 (f) The commissioner shall revoke the license or permit
53 or operating privilege to drive of any resident or nonresident
54 person convicted pursuant to the provisions of this section
55 for a period of one year from the date of conviction or the
56 date of release from incarceration, whichever is later.

57 (g) This section may be known and cited as Erin’s Law.



CHAPTER 242

**(Com. Sub. for S. B. 616 - By Senators Boso and
Cline)**

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §17C-17-11 of the Code of West Virginia, 1931, as amended, relating to permitting the Commissioner of Highways to issue a special permit increasing the maximum gross weight for certain wood-bearing vehicles equipped with six axles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. SIZE, WEIGHT, AND LOAD.

§17C-17-11. Permits for excess size and weight.

1 (a) The Commissioner of Highways may, in his or her
2 discretion, upon application in writing and good cause
3 shown issue a special permit in writing authorizing:

4 (1) The applicant, in crossing any highway of this state,
5 to operate or move a vehicle or combination of vehicles of
6 a size or weight or load exceeding the maximum specified
7 in this chapter or otherwise not in conformity with the
8 provisions of this chapter, whether the operation is
9 continuous or not, provided the applicant agrees to
10 compensate the Commissioner of Highways for all damages
11 or expenses incurred in connection with the crossing;

12 (2) The applicant to operate or move a vehicle or
13 combination of vehicles of a size or weight of vehicles or
14 nondivisible load exceeding the maximum specified in this
15 chapter or otherwise not in conformity with the provisions
16 of this chapter; and

17 (3) The applicant to move or operate, for limited or
18 continuous operation, a vehicle hauling containerized cargo
19 in a sealed, seagoing container to or from a seaport or inland
20 waterway port that has or will be transported by marine
21 shipment where the vehicle is not, as a result of hauling the
22 container, in conformity with the provisions of this article
23 relating to weight limitations, upon the conditions that:

24 (A) The container be hauled only on the roadways and
25 highways designated by the Commissioner of Highways;

26 (B) The contents of the container are not changed from
27 the time it is loaded by the consignor or the consignor's
28 agent to the time it is delivered to the consignee or the
29 consignee's agent; and

30 (C) Any additional conditions as the Commissioner of
31 Highways or the Public Service Commission may impose to
32 otherwise ensure compliance with the provisions of this
33 chapter.

34 (b)(1) The Commissioner of Highways may issue a
35 special permit to operate or move a vehicle or combination
36 of vehicles of a size or weight of vehicles or nondivisible
37 load exceeding the maximum specified in this chapter or
38 otherwise not in conformity with the provisions of this
39 chapter over routes designated by the Commissioner of
40 Highways upon terms and restrictions prescribed by the
41 Public Service Commission, together with the
42 Commissioner of Highways.

43 (2) For purposes of this section, nondivisible load means
44 any load exceeding applicable length or weight limits
45 which, if separated into smaller loads or vehicles, would:

46 (A) Compromise the intended use of the vehicle, to the
47 extent that the separation would make it unable to perform
48 the function for which it was intended;

49 (B) Destroy the value of the load or vehicle, to the extent
50 that the separation would make it unusable for its intended
51 purpose; or

52 (C) Require more than eight work hours to dismantle
53 using appropriate equipment: *Provided*, That the applicant
54 for a nondivisible load permit has the burden of proof as to
55 the number of work hours required to dismantle the load.

56 (3) The Commissioner of Highways may, in his or her
57 discretion, upon application in writing and based upon an
58 engineering analysis, issue a special permit in writing
59 authorizing the applicant, when operating upon any
60 highway of this state designated by the commissioner, to
61 operate or move a vehicle or combination of vehicles,
62 hauling commodities manufactured for interstate
63 commerce, of a size or weight or divisible load exceeding
64 the maximum specified in this chapter or otherwise not in
65 conformity with the provisions of this chapter, whether the
66 operation is continuous or not.

67 (A) The engineering analysis must demonstrate that the
68 vehicle permitted under this subdivision does not adversely
69 affect the designated routes when compared to the size,
70 weight, and load provisions of this chapter.

71 (B) The maximum gross vehicle weight permitted under
72 this subsection is 120,000 pounds.

73 (C) The permit may contain any additional conditions
74 the Commissioner of Highways or the Public Service
75 Commission may impose to otherwise ensure compliance
76 with the provisions of this chapter.

77 (4) The Commissioner of Highways may, in his or
78 her discretion, upon application in writing, issue a special
79 permit in writing authorizing the applicant to transport
80 logs, wood chips, timber, other natural raw wood, lumber,
81 paper, wood veneer, wood pellets, or any other wood
82 product of the forest, craft, or manufacturing. The vehicle
83 authorized by the permit shall be a tractor-semitrailer
84 combination with six axles, each axle equipped with
85 brakes, and limited to a maximum gross vehicular weight
86 of 94,000 pounds, without any tolerance. The maximum
87 weight of each axle, beginning with the steering axle
88 commencing rearwards, respectively shall be 15,000
89 pounds, 17,000 pounds, 17,000 pounds, 15,000 pounds,
90 15,000 pounds, and 15,000 pounds. The tractor shall have
91 one steer axle and two drive axles in tandem, and the
92 trailer shall have three trailer axles in tridem. The
93 distance between the last drive axle of the tractor and the
94 first trailer axle shall be a minimum of 29 feet and six
95 inches. Permits under this subdivision will not be issued
96 for any vehicle traveling on interstate routes.

97 (c) The application for any permit other than a special
98 annual permit shall specifically describe the vehicle or
99 vehicles and load to be operated or moved along or across
100 the highway and the particular highway or crossing of the
101 highway for which the permit to operate is requested, and

102 whether the permit is requested for a single trip or for a
103 continuous operation.

104 (d) The Public Service Commission is authorized to
105 issue or withhold a permit at his or her discretion; or, if the
106 permit is issued, to limit the number of trips, or to establish
107 seasonal or other time limitations within which the vehicles
108 described may be operated on or across the highways
109 indicated, or otherwise to limit or prescribe conditions of
110 operation of the vehicle or vehicles, when necessary to
111 assure against undue damage to the road foundations,
112 surface, or structures, and may require the undertaking,
113 bond, or other security considered necessary to compensate
114 for any injury to any roadway structure and to specify the
115 type, number, and the location for escort vehicles for any
116 vehicle: *Provided*, That in establishing limitations on
117 permits issued under this section, the Public Service
118 Commission shall consult with the Commissioner of
119 Highways, and may not issue, limit, or condition a permit in
120 a manner inconsistent with the authority of the
121 Commissioner of Highways.

122 The Public Service Commission may charge a fee for
123 the issuance of a permit for a mobile home and a reasonable
124 fee for the issuance of a permit for any other vehicle under
125 the provisions of this section to pay the administrative costs
126 thereof.

127 (e) Every permit shall be carried in the vehicle or
128 combination of vehicles to which it refers and shall be open
129 to inspection by any police officer or authorized agent of the
130 Commissioner of Highways or the Public Service
131 Commission, and no person shall violate any of the terms or
132 conditions of the special permit.

●

CHAPTER 243

**(Com. Sub. for H. B. 4042 - By Delegates Westfall,
Atkinson, Wagner, Dean and Frich)**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §17C-6-1 of the Code of West Virginia, 1931, as amended, relating to redefining school zone.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.

1 (a) No person may drive a vehicle on a highway at a
2 speed greater than is reasonable and prudent under the
3 existing conditions and the actual and potential hazards. In
4 every event speed shall be controlled as necessary to avoid
5 colliding with any person, vehicle or other conveyance on
6 or entering the highways in compliance with legal
7 requirements and the duty of all persons to use due care.

8 (b) Where no special hazard exists that requires lower
9 speed for compliance with subsection (a) of this section, the
10 speed of any vehicle not in excess of the limits specified in
11 this section or established as authorized in this section is
12 lawful, but any speed in excess of the limits specified in this
13 subsection or established as authorized in this section is
14 unlawful. The following speed limits apply:

15 (1) Fifteen miles per hour in a school zone during school
16 recess or while children are going to or leaving school
17 during opening or closing hours. A school zone is all school

18 property, including school grounds and any street or
19 highway abutting the school grounds and extending one
20 hundred twenty-five feet along the street or highway from
21 the school grounds and, in the case of school property not
22 abutting a street or highway but accessed through a right-of-
23 way granted for entrance to school property, a school zone
24 established by an engineering study conducted by the
25 Division of Highways is all school property, including
26 school grounds and any property within the access right-of-
27 way, and extending one hundred twenty-five feet along the
28 street or highway from the entrance to the access right-of-
29 way. The West Virginia Division of Highways shall erect
30 signage indicating the place of entry and exit of each school
31 zone. Upon a formal vote and a written request by a county
32 board of education to expand a school zone to a road that is
33 adjacent to school property or from the entrance to an access
34 right-of-way, the West Virginia Division of Highways shall
35 expand the school zone by erecting new signage indicating
36 the expanded school zone's location and speed limit within
37 ninety days of receiving the request: *Provided*, That the
38 school zone may not be expanded more than one hundred
39 twenty-five feet along an adjacent road unless the division
40 determines that the additional extension is needed and
41 necessary for the safety of the school children. The speed
42 restriction does not apply to vehicles traveling on a
43 controlled-access highway which is separated from the
44 school or school grounds by a fence or barrier approved by
45 the Division of Highways;

46 (2) Twenty-five miles per hour in any business or
47 residence district; and

48 (3) Fifty-five miles per hour on open country highways,
49 except as otherwise provided by this chapter.

50 The speeds set forth in this section may be altered as
51 authorized in sections two and three of this article.

52 (c) The driver of every vehicle shall, consistent with the
53 requirements of subsection (a) of this section, drive at an

54 appropriate reduced speed when approaching and crossing
55 an intersection or railway grade crossing, when approaching
56 and going around a curve, when approaching a hill crest,
57 when traveling upon any narrow or winding roadway and
58 when a special hazard exists with respect to pedestrians or
59 other traffic or by reason of weather or highway conditions.

60 (d) The speed limit on controlled access highways and
61 interstate highways, where no special hazard exists that
62 requires a lower speed, shall be not less than fifty-five miles
63 per hour and the speed limits specified in subsection (b) of
64 this section do not apply.

65 (e) Unless otherwise provided in this section, any person
66 who violates the provisions of this section is guilty of a
67 misdemeanor and, upon conviction thereof, shall be fined
68 not more than \$100; upon a second conviction within one
69 year thereafter, shall be fined not more than \$200; and, upon
70 a third or subsequent conviction within two years thereafter,
71 shall be fined not more than \$500: *Provided*, That if the third
72 or subsequent conviction is based upon a violation of the
73 provisions of this section where the offender exceeded the
74 speed limit by fifteen miles per hour or more, then upon
75 conviction, shall be fined not more than \$500 or confined in
76 jail for not more than six months, or both fined and
77 confined.

78 (f) Any person who violates the provisions of
79 subdivision (1), subsection (b) of this section is guilty of a
80 misdemeanor and, upon conviction thereof, shall be fined
81 not less than \$100 nor more than \$500: *Provided*, That if the
82 conviction is based upon a violation of the provisions of
83 subdivision (1), subsection (b) of this section where the
84 offender exceeded the speed limit by fifteen miles per hour
85 or more in the presence of one or more children, then upon
86 conviction, shall be fined not less than \$100 nor more than
87 \$500 or confined in jail for not more than six months, or
88 both fined and confined: *Provided, however*, That if the
89 signage required by subdivision (1) is not present in the
90 school zone at the time of the violation, then any person who

91 violates said provision is guilty of a misdemeanor and, upon
92 conviction thereof, shall be fined not more than \$25.

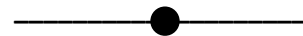
93 (g) If an owner or driver is arrested under the provisions
94 of this section for the offense of driving above the posted
95 speed limit on a controlled access highway or interstate
96 highway and if the evidence shows that the motor vehicle
97 was being operated at ten miles per hour or less above the
98 speed limit, then, upon conviction thereof, that person shall
99 be fined not more than \$5, plus court costs.

100 (h) Any person operating a commercial motor vehicle
101 engaged in the transportation of coal on the coal resource
102 transportation road system who violates subsection (a), (b)
103 or (c) of this section shall, upon conviction, be subject to
104 fines in triple the amount otherwise provided in subsection
105 (e) of this section.

106 (i) If an owner or driver is convicted under the
107 provisions of this section for the offense of driving above
108 the speed limit on a controlled access highway or interstate
109 highway of this state and if the evidence shows that the
110 motor vehicle was being operated at ten miles per hour or
111 less above the speed limit, then notwithstanding the
112 provisions of section four, article three, chapter seventeen-
113 b of this code, a certified abstract of the judgment on the
114 conviction shall not be transmitted to the Division of Motor
115 Vehicles: *Provided*, That the provisions of this subsection
116 do not apply to conviction of owners or drivers who have
117 been issued a commercial driver's license as defined in
118 chapter seventeen-e of this code, if the offense was
119 committed while operating a commercial vehicle.

120 (j) If an owner or driver is convicted in another state for
121 the offense of driving above the maximum speed limit on a
122 controlled access highway or interstate highway and if the
123 maximum speed limit in the other state is less than the
124 maximum speed limit for a comparable controlled access
125 highway or interstate highway in this state, and if the
126 evidence shows that the motor vehicle was being operated

127 at ten miles per hour or less above what would be the
128 maximum speed limit for a comparable controlled access
129 highway or interstate highway in this state, then
130 notwithstanding the provisions of section four, article three,
131 chapter seventeen-b of this code, a certified abstract of the
132 judgment on the conviction shall not be transmitted to the
133 Division of Motor Vehicles or, if transmitted, shall not be
134 recorded by the division, unless within a reasonable time
135 after conviction, the person convicted has failed to pay all
136 fines and costs imposed by the other state: *Provided*, That
137 the provisions of this subsection do not apply to conviction
138 of owners or drivers who have been issued a commercial
139 driver's license as defined in chapter seventeen-e of this
140 code, if the offense was committed while operating a
141 commercial vehicle.



CHAPTER 244

**(S. B. 631 - By Senators Blair, Arvon, Boley, Boso,
Drennan, Facemire, Gaunch, Mann, Maroney,
Palumbo, Plymale, Prezioso, Stollings, Sypolt,
Takubo and Unger)**

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

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

AN ACT to amend and reenact §24C-1-2, §24C-1-3, §24C-1-6, and §24C-1-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §24C-1-2a, §24C-1-2b, §24C-1-9, §24C-1-10, and §24C-1-11, all relating to the one-call system; adding and modifying definitions; creating Underground Damage Prevention Fund; creating Underground Facilities Damage Prevention Board; specifying authority, responsibilities, membership, and liability of board; requiring

reports by board; authorizing actions by Public Service Commission; expanding required membership of one-call system; authorizing cost apportionment and collection from operators; modifying standard color code for temporary markings; exempting local or state government responding to emergency repair or replacement of traffic control device from notice requirements; requiring underground facilities be locatable; and providing for civil enforcement, including citations, orders, hearings, monetary civil penalties, and mandatory training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-2. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 “Board” or “Underground Facilities Damage
4 Prevention Board” means the Underground Facilities
5 Damage Prevention Board created in this article.

6 “Commission” or “Public Service Commission” means
7 the Public Service Commission of West Virginia.

8 “Damage” means any impact or contact with or
9 weakening of the support for, or the partial or complete
10 destruction of, an underground facility, its appurtenances,
11 protective casing, coating or housing, which, according to
12 the operation practices of the operator or state or federal
13 regulation, requires repair or replacement.

14 “Demolish” or “demolition” means any operation by
15 which a structure or mass of material is wrecked, razed,
16 rendered, moved, or removed by means of any tools,
17 equipment or discharge of explosives which could damage
18 underground facilities: *Provided*, That “demolish” and
19 “demolition” do not include earth-disturbing activities

20 authorized pursuant to the provisions of §22-3-1 *et seq.* or
21 §22A-2-1 *et seq.* of this code.

22 “Emergency” means:

23 (1) A condition constituting a clear and present danger
24 to life, health, or property by reason of escaping toxic,
25 corrosive, or explosive product, oil or oil-gas, or natural gas
26 hydrocarbon product, exposed wires, or other breaks or
27 defects in an underground facility; or

28 (2) A condition that requires immediate correction to
29 assure the safety of the general public and operator
30 personnel.

31 “Equipment operator” means any individual in physical
32 control of powered equipment or explosives when being
33 used to perform excavation work or demolition work.

34 “Excavate” or “excavation” means any operation in
35 which earth, rock, or other material in the ground is moved,
36 removed, or otherwise displaced by means of any tools,
37 equipment, or explosives, and includes, without limitation,
38 boring, backfilling, grading, trenching, trenchless
39 technology, digging, ditching, dredging, drilling, auguring,
40 tunneling, moleing, scraping, cable or pipe plowing and
41 driving, wrecking, razing, rendering, moving, or removing
42 any structure or mass of material, but does not include
43 underground or surface mining operations or related
44 activities or the tilling of soil for agricultural purposes or for
45 domestic gardening. Further, for purposes of this article, the
46 terms “excavate” and “excavation” do not include routine
47 maintenance of paved public roads or highways by
48 employees of state, county, or municipal entities or
49 authorities which:

50 (1) Perform all work within the confines of the traveled
51 portion of the paved public way; and

52 (2) Do not excavate to a depth greater than 12 inches
53 measured from the top of the paved road surface.

54 “Excavator” means any person intending to engage or
55 engaged in excavation or demolition work.

56 “Fund” or “Underground Damage Prevention Fund”
57 means the fund created in §24C-1-2b of this code.

58 “Member” means a member of the one-call system as
59 authorized by this article.

60 “One-call system” means a communication system that
61 receives notification from excavators of intended
62 excavation work and prepares and transmits such
63 notification to operators of underground facilities in
64 accordance with this article.

65 “Operator” means any person who operates an
66 underground facility.

67 “Person” means any individual, firm, joint venture,
68 partnership, corporation, association, state agency, county,
69 municipality, cooperative association, or joint stock
70 association, and any trustee, receiver, assignee, agency, or
71 personal representative thereof.

72 “Powered equipment” means any equipment energized
73 by an engine, motor or hydraulic, pneumatic, or electrical
74 device and used in excavation or demolition work.

75 “Underground facility” means any underground
76 pipeline facility owned by a utility and regulated by the
77 Public Service Commission, which is used in the
78 transportation or distribution of gas, oil, or a hazardous
79 liquid; any underground pipeline facility, owned by a
80 company subject to the jurisdiction of the federal energy
81 regulatory commission, which is used in the gathering,
82 transportation, or distribution of gas, oil, or a hazardous
83 liquid; any underground production or gathering pipeline
84 for gas, oil, or any hazardous substance with a nominal
85 inside diameter in excess of four inches and that is not
86 otherwise subject to one-call reporting requirements under
87 federal or state law; any underground facility used as a water

88 main, storm sewer, sanitary sewer, or steam line; any
89 underground facility used for electrical power transmission
90 or distribution; any underground cable, conductor,
91 waveguide, glass fiber, or facility used to transport
92 telecommunications, optical, radio, telemetry, television, or
93 other similar transmissions; and any facility used in
94 connection with any of the foregoing facilities on a bridge,
95 a pole or other span, or on the surface of the ground, any
96 appurtenance, device, cathodic protection system, conduit,
97 protective casing, or housing used in connection with any of
98 the foregoing facilities: *Provided*, That “underground
99 facility” does not include underground or surface coal mine
100 operations.

101 “Workday” means any day except Saturday, Sunday, or
102 a federal or state legal holiday.

103 “Work site” means the location of excavation or
104 demolition work as described by an excavator, operator, or
105 person or persons performing the work.

§24C-1-2a. Underground Facilities Damage Prevention Board.

1 (a) There is hereby created an Underground Facilities
2 Damage Prevention Board for the purpose of enforcing this
3 article.

4 (b) It is the intent of the Legislature that the board and
5 its enforcement activities shall not be funded by
6 appropriations from the state budget. All civil penalties
7 imposed and collected by the board shall not revert to the
8 General Fund but shall be retained for the exclusive use of
9 the board pursuant to this article.

10 (c) The board shall have the power and authority to
11 investigate damage to underground facilities caused by an
12 excavator. The board may consult with the Public Service
13 Commission as needed regarding investigation of damages
14 to underground facilities under its jurisdiction. The
15 commission shall collect from the board any expenses
16 incurred during the consultation. The board shall furnish to

17 the commission at least annually electronic copies of all
18 reports of investigations and enforcement activities
19 conducted by or on behalf of the board.

20 (d) The board shall be composed of 10 voting members
21 who shall be appointed by the Governor to serve four-year
22 terms in accordance with West Virginia law. The board
23 shall be empowered to establish one or more subcommittees
24 in performing its tasks. Appointments to the board shall be
25 made as follows:

26 (1) The President of Miss Utility of West Virginia or the
27 president's designee;

28 (2) One representative of the excavation, utility, or site
29 construction industry;

30 (3) One representative of the natural resource extraction
31 industry;

32 (4) The Executive Director of the West Virginia
33 Municipal League or its designee;

34 (5) The Executive Director of the West Virginia Rural
35 Water Association or its designee;

36 (6) One representative of the natural gas transmission or
37 distribution or hazardous liquid industry;

38 (7) One representative of the electric, cable, or
39 communications industry;

40 (8) One representative of the privately owned water
41 and/or wastewater services industry;

42 (9) One representative from the general public; and

43 (10) The Chairman of the Public Service Commission
44 or the chairman's designee.

45 (e) The board shall meet not less than twice per year,
46 with a date and time to be set by its chairman upon at least

47 five days' notice provided by United States mail, electronic
48 mail, or personal delivery to every board member. The
49 board may hold meetings and vote by telephone, video
50 connection, computer, or other electronic means.

51 (f) Six members of the board shall constitute a quorum,
52 and a majority vote of those present and voting at any one
53 meeting shall be necessary to transact business.

54 (g) In the absence of willful misconduct, the members
55 of the board shall be immune, individually and jointly, from
56 civil liability for any act or omission done or made in the
57 performance of their duties while serving as members of the
58 board.

59 (h) Members of the board shall serve without
60 compensation and without reimbursement for expenses.
61 Nothing contained in this section shall be construed to
62 prevent any sponsoring organization for compensating its
63 representative on the board for salary, expenses, or other
64 compensation considered as a condition for their
65 employment.

66 (i) Every two years, the board shall elect a chair and
67 other officers from among its members as the board deems
68 necessary.

§24C-1-2b. Underground Damage Prevention Fund.

1 (a) There is hereby created an Underground Damage
2 Prevention Fund to be administered and used by the
3 Underground Damage Facilities Prevention Board for the
4 purpose of carrying out its duties under this article. All
5 sources of funds collected by the board under this article,
6 including, but not limited to, grants, assessments, and civil
7 penalties collected pursuant to this article, shall be deposited
8 into the fund. Any moneys remaining in the fund at the end
9 of the fiscal year shall not revert to the General Fund, but
10 shall remain in the fund for the exclusive use of the board.
11 The expenditure of moneys in the fund shall be at the

12 discretion of the board to carry out its duties under this
13 article. Excess funds shall be used for purposes related to
14 damage prevention, including, but not limited to, public
15 awareness programs, training, and educational programs for
16 excavators, operators, line locators, and persons to reduce
17 the number and severity of violations of this article.

18 (b) The Public Service Commission or the board, or
19 both, may apply for available grants, including those
20 awarded by the United States Department of
21 Transportation's Pipeline and Hazardous Materials and
22 Safety Administration. The board shall comply with any
23 restrictions placed on any grant received from a government
24 agency. Grants may be used to fund the cost of services
25 associated with this article or for the purposes stated in each
26 grant.

27 (c) In the event that the annual cost of services
28 associated with this article exceed the funds available in the
29 fund, the annual operating costs shall be apportioned in a
30 proportional manner and collected by the one-call system
31 from the operators in an amount equal to the amount
32 necessary to offset the cost of investigative and
33 administrative services. Under no circumstances shall any
34 operating costs or liabilities of the board be ultimately
35 deducted or paid from Public Service Commission special
36 revenue funds.

**§24C-1-3. Duties and responsibilities of operators of
underground facilities; failure of operator to comply.**

1 (a) Each operator of an underground facility in this state
2 shall be a member of a one-call system for the area in which
3 the underground facility is located.

4 (b) Each member shall provide the following
5 information to the one-call system on forms developed and
6 provided for that purpose by the one-call system:

7 (1) The name of the member;

8 (2) The geographic location of the member's
9 underground facilities as prescribed by the one-call system;
10 and

11 (3) The member's office address and telephone number
12 to which inquiries may be directed as to the locations of the
13 operator's underground facilities.

14 (c) Each member shall revise in writing the information
15 required by §24C-1-3(b) of this code as soon as reasonably
16 practicable, but not to exceed 180 days, after any change.

17 (d) Within 48 hours, excluding Saturdays, Sundays, and
18 legal federal or state holidays, after receipt of a notification
19 by the one-call system from an excavator of a specific area
20 where excavation or demolition will be performed, the
21 operator of underground facilities shall:

22 (1) Respond to such notification by providing to the
23 excavator the approximate location, within two feet
24 horizontally from the outside walls of such facilities, and
25 type of underground facilities at the site;

26 (2) Use the color code prescribed in §24C-1-6 of this
27 code when providing temporary marking of the approximate
28 location of underground facilities; and

29 (3) Notify the excavator that the operator did not leave
30 a temporary marking of the location of underground
31 facilities because there are no lines in the area of the
32 proposed excavation or demolition.

33 (e) Failure of an operator who is required to be a
34 member to comply with the provisions of this article may
35 not prevent the excavator from proceeding but shall bar the
36 operator from recovery of any costs associated with damage
37 to its underground facilities resulting from such failure,
38 except for damage caused by the willful or intentional act of
39 the excavator.

40 (f) Notwithstanding the provisions of §24C-1-3(e) of
41 this code, a member is not barred from recovery under
42 §24C-1-3(e) of this code for failure to comply with §24C-1-
43 3(d)(1) of this code, but shall have his or her right to recover,
44 if any, determined by common law, if the operator
45 responded to one-call notification in a timely manner, but
46 was unable to accurately locate lines because such lines
47 were nonmetallic and had no locating wire or other marker.

§24C-1-6. Standard color code for temporary markings.

1 Temporary marking provided by operators and
2 excavators to indicate the approximate location of
3 underground facilities and work site boundaries shall utilize
4 the following color code per facility type:

5 (1) WHITE: Proposed excavation.

6 (2) PINK: Temporary survey markings.

7 (3) RED: Electric power lines, cables, conduit, and
8 lighting cables.

9 (4) YELLOW: Gas, oil, steam, petroleum, or gaseous
10 materials.

11 (5) ORANGE: Communication, alarm or signal lines,
12 cables, or conduit.

13 (6) BLUE: Potable water.

14 (7) PURPLE: Reclaimed water, irrigation, or slurry
15 lines.

16 (8) GREEN: Sewer or drain lines.

§24C-1-7. Exceptions during emergencies.

1 (a) Compliance with the notification requirements of
2 §24C-1-5 of this code is not required of any person engaging
3 in excavation or demolition in the event of an emergency:
4 *Provided*, That the person gives oral notification of the

5 emergency work as soon as reasonably practicable to the
6 one-call system.

7 (b) During any emergency, excavation or demolition
8 may begin immediately: *Provided*, That reasonable
9 precautions are taken to protect underground facilities:
10 *Provided, however*, That such precautions may not serve to
11 relieve the excavator from liability for damage to
12 underground facilities. The one-call system shall accept all
13 emergency notifications and shall provide immediate notice
14 to the affected members and indicate the emergency nature
15 of the notice.

16 (c) Repair or replacement of an existing traffic control
17 device at the existing location and existing depth shall be
18 considered an emergency, and compliance with the notice
19 requirements of this section shall not be required of any
20 local or state government responding to the emergency
21 repair or replacement of a traffic control device.

§24C-1-9. Civil enforcement.

1 (a) Any person who violates this article by failure to
2 notify the one-call system, or who violates the rules
3 proposed or promulgated under this article, shall be subject
4 to civil penalty as follows:

5 (1) For a first violation, the violator shall complete a
6 course of training concerning compliance with this article
7 as determined by the board;

8 (2) For a second violation occurring within a five-year
9 period, the violator shall complete a course of training
10 concerning compliance with this article as determined by
11 the board or pay a civil penalty in an amount set by the
12 board, not to exceed \$500 per incident, or both;

13 (3) For a third or subsequent violation occurring within
14 a five-year period, the violator shall pay a civil penalty in an
15 amount set by the board, not to exceed \$2,500 per incident;
16 and

17 (4) Notwithstanding this section, if any violation was
18 the result of gross negligence or willful or wanton
19 misconduct as determined by the board, the board shall
20 require the violator to complete a course of training
21 concerning compliance with this article as determined by
22 the board and pay a civil penalty not to exceed \$5,000 per
23 incident.

24 (b) Any person who is required to complete a course of
25 training under this section shall be responsible for the cost
26 of the training. As used in this section, “course of training”
27 means training developed by or under the direction of the
28 board.

29 (c) Any excavator who violates this article by failing to
30 notify the one-call system of the intended excavation or
31 demolition may be required to cease work on any
32 excavation, or not start a proposed excavation, until the
33 excavator complies with this article.

34 (d) Nothing in this article shall limit any person’s right
35 to pursue any additional civil remedy otherwise allowed by
36 law.

37 (e)(1) If the person to whom the citation is issued
38 under this section does not pay the citation or submit to
39 training as ordered or both, within 30 days, the board shall
40 appoint a hearing officer to conduct a hearing and issue
41 an initial order pursuant to the State Administrative
42 Procedures Act. The hearing shall be held at the time and
43 place set forth in the citation notice of hearing in the
44 county where excavation referenced in the citation
45 occurred, unless otherwise agreed to by the person to
46 whom the citation was issued.

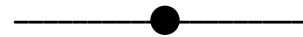
47 (2) A person aggrieved by the final order may, within
48 30 days, file a petition for judicial review pursuant to §29A-
49 1-1 *et seq.* of this code.

§24C-1-10. Scope of authority.

1 Nothing in this article shall restrict or expand the
2 jurisdiction of the Public Service Commission.

§24C-1-11. Underground utilities to be locatable.

1 All underground facilities owned by an operator that are
2 installed on or after July 1, 2018, shall be installed in a
3 manner that will make those underground facilities
4 locatable using a generally accepted locating method.



CHAPTER 245

**(Com. Sub. for H. B. 4233 - By Delegates Storch,
Hamrick, Ferro, Barrett and Ellington)**

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

AN ACT to amend and reenact §40-1A-1, §40-1A-2, §40-1A-4, §40-1A-5, §40-1A-6, and §40-1A-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §40-1A-13, §40-1A-14, and §40-1A-15, all relating generally to fraudulent transfers and voidable transactions; establishing that a presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence; providing that a creditor making a claim for relief has the burden of proving the elements of the claim for relief by a preponderance of the evidence; setting forth rules regarding the defenses, liability and protection of transferees; establishing the governing law; providing for application to series organizations; defining terms; providing that each series organization and each protected series of the

organization is a separate person; providing that a series organization includes a foreign series limited liability company; providing for the limiting, modifying or superseding of the federal Electronic Signatures in Global and National Commerce Act; and adding and modifying definitions and headings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. UNIFORM VOIDABLE TRANSACTIONS ACT.

§40-1A-1. Definitions.

1 As used in this article:

2 (a) “Affiliate” means:

3 (1) A person that directly or indirectly owns, controls or
4 holds with power to vote, 20 percent or more of the
5 outstanding voting securities of the debtor, other than a
6 person who holds the securities;

7 (i) As a fiduciary or agent without sole discretionary
8 power to vote the securities; or

9 (ii) Solely to secure a debt, if the person has not
10 exercised the power to vote;

11 (2) A corporation 20 percent or more of whose
12 outstanding voting securities are directly or indirectly
13 owned, controlled, or held with power to vote, by the debtor
14 or a person who directly or indirectly owns, controls or
15 holds, with power to vote, 20 percent or more of the
16 outstanding voting securities of the debtor, other than a
17 person who holds the securities:

18 (i) As a fiduciary or agent without sole power to vote
19 the securities; or

20 (ii) Solely to secure a debt, if the person has not in fact
21 exercised the power to vote;

22 (3) A person whose business is operated by the debtor
23 under a lease or other agreement, or a person substantially
24 all of whose assets are controlled by the debtor; or

25 (4) A person who operates the debtor's business under
26 a lease or other agreement or controls substantially all of the
27 debtor's assets.

28 (b) "Asset" means property of a debtor, but the term
29 does not include:

30 (1) Property to the extent it is encumbered by a valid
31 lien;

32 (2) Property to the extent it is generally exempt under
33 nonbankruptcy law; or

34 (3) An interest in property held in tenancy by the
35 entireties to the extent it is not subject to process by a
36 creditor holding a claim against only one tenant.

37 (c) "Claim," except as used in "claim for relief," means
38 a right to payment, whether or not the right is reduced to
39 judgment, liquidated, unliquidated, fixed, contingent,
40 matured, unmatured, disputed, undisputed, legal, equitable,
41 secured or unsecured.

42 (d) "Creditor" means a person who has a claim.

43 (e) "Debt" means liability on a claim.

44 (f) "Debtor" means a person who is liable on a claim.

45 (g) "Electronic" means relating to technology having
46 electrical, digital, magnetic, wireless, optical,
47 electromagnetic, or similar capabilities.

48 (h) "Insider" includes:

49 (1) If the debtor is an individual:

50 (i) A relative of the debtor or of a general partner of the
51 debtor;

52 (ii) A partnership in which the debtor is a general
53 partner;

54 (iii) A general partner in a partnership described in
55 subparagraph (ii) of this paragraph; or

56 (iv) A corporation of which the debtor is a director,
57 officer or person in control;

58 (2) If the debtor is a corporation:

59 (i) A director of the debtor;

60 (ii) An officer of the debtor;

61 (iii) A person in control of the debtor;

62 (iv) A partnership in which the debtor is a general
63 partner;

64 (v) A general partner in a partnership described in
65 subparagraph (iv) of this paragraph; or

66 (vi) A relative of a general partner, director, officer or
67 person in control of the debtor;

68 (3) If the debtor is a partnership:

69 (i) A general partner in the debtor;

70 (ii) A relative of a general partner in, a general partner
71 of, or a person in control of the debtor;

72 (iii) Another partnership in which the debtor is a general
73 partner;

74 (iv) A general partner in a partnership described in
75 subparagraph (iii) of this paragraph; or

76 (v) A person in control of the debtor;

77 (4) An affiliate, or an insider of an affiliate as if the
78 affiliate were the debtor; and

79 (5) A managing agent of the debtor.

80 (i) “Lien” means a charge against or an interest in
81 property to secure payment of a debt or performance of an
82 obligation, and includes a security interest created by
83 agreement, a judicial lien obtained by legal or equitable
84 process or proceedings, a common-law lien or a statutory
85 lien.

86 (j) “Organization” means a person other than an
87 individual.

88 (k) “Person” means an individual, partnership,
89 association, trust, business or nonprofit entity, public
90 corporation, government or governmental subdivision or
91 agency, business trust, estate, trust or any other legal or
92 commercial entity.

93 (l) “Property” means anything that may be the subject
94 of ownership.

95 (m) “Record” means information that is inscribed on a
96 tangible medium or that is stored in an electronic or other
97 medium and is retrievable in perceivable form.

98 (n) “Relative” means an individual related by
99 consanguinity within the third degree as determined by the
100 common law, a spouse or an individual related to a spouse
101 within the third degree as so determined, and includes an
102 individual in an adoptive relationship within the third
103 degree.

104 (o) “Sign” means, with present intent to authenticate or
105 adopt a record:

106 (1) To execute or adopt a tangible symbol; or

107 (2) To attach to or logically associate with the record an
108 electronic symbol, sound, or process.

109 (p) "Transfer" means every mode, direct or indirect,
110 absolute or conditional, voluntary or involuntary, of
111 disposing of or parting with an asset or an interest in an
112 asset, and includes payment of money, release, lease,
113 license, and creation of a lien or other encumbrance.

114 (q) "Valid lien" means a lien that is effective against the
115 holder of a judicial lien subsequently obtained by legal or
116 equitable process or proceedings.

§40-1A-2. Insolvency.

1 (a) A debtor is insolvent if the sum of the debtor's debts
2 is greater than all of the debtor's assets at a fair valuation.

3 (b) A debtor who is generally not paying his or her debts
4 as they become due, other than as a result of a bona fide
5 dispute, is presumed to be insolvent. The presumption
6 imposes on the party against which the presumption is
7 directed the burden of proving that the nonexistence of
8 insolvency is more probable than its existence.

9 (c) A partnership is insolvent under subsection (a) of
10 this section if the sum of the partnership's debts is greater
11 than the aggregate, at a fair valuation, of all the partnership's
12 assets and the sum of the excess of the value of each general
13 partner's nonpartnership assets over the partner's
14 nonpartnership debts.

15 (d) Assets under this section do not include property that
16 has been transferred, concealed or removed with intent to
17 hinder, delay or defraud creditors or that has been
18 transferred in a manner making the transfer voidable under
19 this article.

20 (e) Debts under this section do not include an obligation
21 to the extent it is secured by a valid lien on property of the
22 debtor not included as an asset.

§40-1A-4. Transfers fraudulent as to present and future creditors.

1 (a) A transfer made or obligation incurred by a debtor is
2 fraudulent as to a creditor, whether the creditor's claim
3 arose before or after the transfer was made or the obligation
4 was incurred, if the debtor made the transfer or incurred the
5 obligation:

6 (1) With actual intent to hinder, delay or defraud any
7 creditor of the debtor; or

8 (2) Without receiving a reasonably equivalent value in
9 exchange for the transfer or obligation and the debtor:

10 (i) Was engaged or was about to engage in a business or
11 a transaction for which the remaining assets of the debtor
12 were unreasonably small in relation to the business or
13 transaction; or

14 (ii) Intended to incur, or believed or reasonably should
15 have believed that he or she would incur, debts beyond his
16 or her ability to pay as they became due.

17 (b) In determining actual intent under subdivision (1),
18 subsection (a) of this section, consideration may be given,
19 among other factors, to whether:

20 (1) The transfer or obligation was to an insider;

21 (2) The debtor retained possession or control of the
22 property transferred after the transfer;

23 (3) The transfer or obligation was disclosed or
24 concealed;

25 (4) Before the transfer was made or obligation was
26 incurred, the debtor had been sued or threatened with suit;

27 (5) The transfer was of substantially all the debtor's
28 assets;

29 (6) The debtor absconded;

30 (7) The debtor removed or concealed assets;

31 (8) The value of the consideration received by the debtor
32 was reasonably equivalent to the value of the asset
33 transferred or the amount of the obligation incurred;

34 (9) The debtor was insolvent or became insolvent
35 shortly after the transfer was made or the obligation was
36 incurred;

37 (10) The transfer occurred shortly before or shortly after
38 a substantial debt was incurred; and

39 (11) The debtor transferred the essential assets of the
40 business to a lienor who transferred the assets to an insider
41 of the debtor.

42 (c) A creditor making a claim for relief under
43 subsection (a) of this section has the burden of proving the
44 elements of the claim for relief by a preponderance of the
45 evidence.

§40-1A-5. Transfers fraudulent as to present creditors.

1 (a) A transfer made or obligation incurred by a debtor is
2 fraudulent as to a creditor whose claim arose before the
3 transfer was made or the obligation was incurred if the
4 debtor made the transfer or incurred the obligation without
5 receiving a reasonably equivalent value in exchange for the
6 transfer or obligation and the debtor was insolvent at that
7 time or the debtor became insolvent as a result of the
8 transfer or obligation.

9 (b) A transfer made by a debtor is fraudulent as to a
10 creditor whose claim arose before the transfer was made if
11 the transfer was made to an insider for an antecedent debt,
12 the debtor was insolvent at that time and the insider had
13 reasonable cause to believe that the debtor was insolvent.

14 (c) Subject to the provisions of §40-1A-2(b) of this
15 code, a creditor making a claim for relief under subsection

16 (a) or (b) of this section has the burden of proving the
17 elements of the claim for relief by a preponderance of the
18 evidence.

§40-1A-6. When transfer is made or obligation is incurred.

1 For the purposes of this article:

2 (a) A transfer is made:

3 (1) With respect to an asset that is real property other
4 than a fixture, but including the interest of a seller or
5 purchaser under a contract for the sale of the asset, when the
6 transfer is so far perfected that a good-faith purchaser of the
7 asset from the debtor against whom applicable law permits
8 the transfer to be perfected cannot acquire an interest in the
9 asset that is superior to the interest of the transferee; and

10 (2) With respect to an asset that is not real property or
11 that is a fixture, when the transfer is so far perfected that a
12 creditor on a simple contract cannot acquire a judicial lien
13 otherwise than under this article that is superior to the
14 interest of the transferee;

15 (b) If applicable law permits the transfer to be perfected
16 as provided in subdivision (a) of this subsection and the
17 transfer is not so perfected before the commencement of an
18 action for relief under this article, the transfer is considered
19 made immediately before the commencement of this action;

20 (c) If applicable law does not permit the transfer to be
21 perfected as provided in subdivision (a) of this subsection,
22 the transfer is made when it becomes effective between the
23 debtor and the transferee; and

24 (d) A transfer is not made until the debtor has acquired
25 rights in the asset transferred and an obligation is incurred.

26 (e) If the obligation incurred is oral, a transfer is made
27 when the obligation becomes effective. If the obligation
28 incurred is evidenced by a writing, the obligation becomes

29 effective when the writing is delivered to or for the benefit
30 of the obligee.

§40-1A-8. Defenses, liability and protection of transferee.

1 (a) A transfer or obligation is not voidable under §40-
2 1A-4(a)(1) of this code, against a person who took in good
3 faith and for a reasonably equivalent value or against any
4 subsequent transferee or obligee.

5 (b) Except as otherwise provided in this section, to the
6 extent a transfer is voidable in an action by a creditor under
7 §40-1A-7(a)(1) of this code, the creditor may recover
8 judgment for the value of the asset transferred, as adjusted
9 under subsection (c) of this section, or the amount necessary
10 to satisfy the creditor's claim, whichever is less. The
11 judgment may be entered against:

12 (1) The first transferee of the asset or the person for
13 whose benefit the transfer was made; or

14 (2) Any subsequent transferee other than a good faith
15 transferee who took for value or from any subsequent
16 transferee.

17 (c) If the judgment under subsection (b) of this section
18 is based upon the value of the asset transferred, the
19 judgment must be for an amount equal to the value of the
20 asset at the time of the transfer, subject to adjustment as the
21 equities may require.

22 (d) Notwithstanding voidability of a transfer or an
23 obligation under this article, a good-faith transferee or
24 obligee is entitled, to the extent of the value given the debtor
25 for the transfer or obligation, to:

26 (1) A lien on or a right to retain any interest in the asset
27 transferred;

28 (2) Enforcement of any obligation incurred; or

29 (3) A reduction in the amount of the liability on the
30 judgment.

31 (e) A transfer is not voidable under §40-1A-4(a)(2) or
32 §40-1A-5(a)(2) of this code if the transfer results from:

33 (1) Termination of a lease upon default by the debtor
34 when the termination is pursuant to the lease and applicable
35 law; or

36 (2) Enforcement of a security interest in compliance
37 with §46-9-1 *et seq.* of this code.

38 (f) A transfer is not voidable under §40-1A-5(b) of this
39 code:

40 (1) To the extent the insider gave new value to or for the
41 benefit of the debtor after the transfer was made unless the
42 new value was secured by a valid lien;

43 (2) If made in the ordinary course of business or
44 financial affairs of the debtor and the insider; or

45 (3) If made pursuant to a good-faith effort to rehabilitate
46 the debtor and the transfer secured present value given for
47 that purpose as well as an antecedent debt of the debtor.

48 (g) The following rules determine the burden of proving
49 matters referred to in this section:

50 (1) A party that seeks to invoke subsection (a), (d), (e)
51 or (f) of this section has the burden of proving the
52 applicability of that subsection.

53 (2) Except as otherwise provided by this subsection, the
54 creditor has the burden of proving each applicable element
55 of subsection (b) or (c) of this section.

56 (3) The transferee has the burden of proving the
57 applicability to the transferee of subdivision (1) or (2),
58 subsection (b) of this section.

59 (4) A party that seeks adjustment under subsection (c)
60 of this section has the burden of proving the adjustment.

61 (h) The standard of proof required to establish matters
62 referred to in this section is preponderance of the evidence.

§40-1A-13. Governing law.

1 (a) In this section, the following rules determine a
2 debtor's location:

3 (1) A debtor who is an individual is located at the
4 individual's principal residence.

5 (2) A debtor that is an organization and has only one
6 place of business is located at its place of business.

7 (3) A debtor that is an organization and has more than
8 one place of business is located at its chief executive office.

9 (b) A claim for relief in the nature of a claim for relief
10 under this article is governed by the local law of the
11 jurisdiction in which the debtor is located when the transfer
12 is made or the obligation is incurred.

§40-1A-14. Application to and recognition of a foreign series organization.

1 (a) In this section:

2 "Protected series" means an arrangement, however
3 denominated, created by a series organization that, pursuant
4 to the law under which the series organization is organized,
5 has the characteristics set forth in the definition of a series
6 organization in §40-1A-14 of this code.

7 "Series organization" means an organization that,
8 pursuant to the law under which it is organized, has the
9 following characteristics:

10 (A) The organic record of the organization provides for
11 creation by the organization of one or more protected series,

12 however denominated, with respect to specified property of
13 the organization, and for records to be maintained for each
14 protected series that identify the property of or associated
15 with the protected series.

16 (B) Debt incurred or existing with respect to the
17 activities of, or property of or associated with, a particular
18 protected series is enforceable against the property of or
19 associated with the protected series only, and not against the
20 property of or associated with the organization or other
21 protected series of the organization.

22 (C) Debt incurred or existing with respect to the
23 activities or property of the organization is enforceable
24 against the property of the organization only, and not
25 against the property of or associated with a protected series
26 of the organization.

27 (b) A series organization and each protected series of
28 the organization is a separate person for purposes of this
29 article even if for other purposes a protected series is not a
30 person separate from the organization or other protected
31 series of the organization.

32 (c) A series organization includes a foreign series
33 limited liability company, or one or more protected series
34 thereof, which is organized as a series organization under
35 the laws of another state or jurisdiction, and shall be
36 recognized as a foreign series limited liability company in
37 this state pursuant to, and in compliance with the provisions
38 of §31B-10-1 *et seq.* of this code.

§40-1A-15. Relation to Electronic Signatures In Global And National Commerce Act.

1 This article modifies, limits, or supersedes the Electronic
2 Signatures in Global and National Commerce Act, 15 U.S.C.
3 Section 7001 *et seq.*, but does not modify, limit, or supersede
4 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
5 authorize electronic delivery of any of the notices described in
6 Section 103(b) of that act, 15 U.S.C. Section 7003(b).

●

CHAPTER 246

(Com. Sub. for S. B. 82 - By Senators Ferns and Cline)

[Passed March 9, 2018; in effect ninety days from passage.]

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

AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to whom Workers' Compensation Fund is disbursed; including rebuttable presumptions for certain injuries and diseases for professional firefighters; setting eligibility criteria for rebuttable presumptions; setting expiration of rebuttable presumption regarding leukemia, lymphoma, or multiple myeloma arising out of, and in the course of, employment as a firefighter on July 1, 2023, absent legislative action to the contrary; and eliminating outdated and obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases; rebuttable presumption for cardiovascular injury and disease or pulmonary disease for firefighters.

- 1 (a) Subject to the provisions and limitations elsewhere
- 2 in this chapter, workers' compensation benefits shall be paid
- 3 the Workers' Compensation Fund, to the employees of
- 4 employers subject to this chapter who have received
- 5 personal injuries in the course of and resulting from their
- 6 covered employment or to the dependents, if any, of the

7 employees in case death has ensued, according to the
8 provisions hereinafter made: *Provided*, That in the case of
9 any employees of the state and its political subdivisions,
10 including: Counties; municipalities; cities; towns; any
11 separate corporation or instrumentality established by one
12 or more counties, cities or towns as permitted by law; any
13 corporation or instrumentality supported in most part by
14 counties, cities or towns; any public corporation charged by
15 law with the performance of a governmental function and
16 whose jurisdiction is coextensive with one or more counties,
17 cities or towns; any agency or organization established by
18 the Department of Mental Health, or its successor agencies,
19 for the provision of community health or intellectual and
20 developmental disability services and which is supported, in
21 whole or in part, by state, county, or municipal funds; board,
22 agency, commission, department, or spending unit,
23 including any agency created by rule of the Supreme Court
24 of Appeals, who have received personal injuries in the
25 course of and resulting from their covered employment, the
26 employees are ineligible to receive compensation while the
27 employees are at the same time and for the same reason
28 drawing sick leave benefits. The state employees may only
29 use sick leave for nonjob-related absences consistent with
30 sick leave use and may draw workers' compensation
31 benefits only where there is a job-related injury. This
32 proviso does not apply to permanent benefits: *Provided*,
33 *however*, That the employees may collect sick leave benefits
34 until receiving temporary total disability benefits. The
35 Division of Personnel shall propose rules for legislative
36 approval pursuant to §29A-3-1 *et seq.* of this code relating
37 to use of sick leave benefits by employees receiving
38 personal injuries in the course of and resulting from covered
39 employment: *Provided further*, That in the event an
40 employee is injured in the course of and resulting from
41 covered employment and the injury results in lost time from
42 work and the employee for whatever reason uses or obtains
43 sick leave benefits and subsequently receives temporary
44 total disability benefits for the same time period, the
45 employee may be restored sick leave time taken by him or

46 her as a result of the compensable injury by paying to his or
47 her employer the temporary total disability benefits received
48 or an amount equal to the temporary total disability benefits
49 received. The employee shall be restored sick leave time on
50 a day-for-day basis which corresponds to temporary total
51 disability benefits paid to the employer: *And provided*
52 *further*, That since the intent of this subsection is to prevent
53 an employee of the state or any of its political subdivisions
54 from collecting both temporary total disability benefits and
55 sick leave benefits for the same time period, nothing in this
56 subsection prevents an employee of the state or any of its
57 political subdivisions from electing to receive either sick
58 leave benefits or temporary total disability benefits, but not
59 both.

60 (b) For the purposes of this chapter, the terms “injury”
61 and “personal injury” include occupational pneumoconiosis
62 and any other occupational disease, as hereinafter defined,
63 and workers’ compensation benefits shall be paid to the
64 employees of the employers in whose employment the
65 employees have been exposed to the hazards of
66 occupational pneumoconiosis or other occupational disease
67 and have contracted occupational pneumoconiosis or other
68 occupational disease, or have suffered a perceptible
69 aggravation of an existing pneumoconiosis or other
70 occupational disease, or to the dependents, if any, of the
71 employees, in case death has ensued, according to the
72 provisions hereinafter made: *Provided*, That compensation
73 is not payable for the disease of occupational
74 pneumoconiosis, or death resulting from the disease, unless
75 the employee has been exposed to the hazards of
76 occupational pneumoconiosis in the State of West Virginia
77 over a continuous period of not less than two years during
78 the 10 years immediately preceding the date of his or her
79 last exposure to such hazards, or for any five of the 15 years
80 immediately preceding the date of his or her last exposure.
81 An application for benefits on account of occupational
82 pneumoconiosis shall set forth the name of the employer or
83 employers and the time worked for each. The commission

84 may allocate to and divide any charges resulting from such
85 claim among the employers by whom the claimant was
86 employed for as much as 60 days during the period of three
87 years immediately preceding the date of last exposure to the
88 hazards of occupational pneumoconiosis. The allocation
89 shall be based upon the time and degree of exposure with
90 each employer.

91 (c) For the purposes of this chapter, disability or death
92 resulting from occupational pneumoconiosis, as defined in
93 §23-4-1(d) of this code, shall be treated and compensated as
94 an injury by accident.

95 (d) Occupational pneumoconiosis is a disease of the
96 lungs caused by the inhalation of minute particles of dust
97 over a period of time due to causes and conditions arising
98 out of and in the course of the employment. The term
99 "occupational pneumoconiosis" includes, but is not limited
100 to, such diseases as silicosis, anthracosilicosis, coal
101 worker's pneumoconiosis, commonly known as black lung
102 or miner's asthma, silicotuberculosis (silicosis accompanied
103 by active tuberculosis of the lungs), coal worker's
104 pneumoconiosis accompanied by active tuberculosis of the
105 lungs, asbestosis, siderosis, anthrax, and any and all other
106 dust diseases of the lungs and conditions and diseases
107 caused by occupational pneumoconiosis which are not
108 specifically designated in this section meeting the definition
109 of occupational pneumoconiosis set forth in this subsection.

110 (e) In determining the presence of occupational
111 pneumoconiosis, x-ray evidence may be considered, but
112 may not be accorded greater weight than any other type of
113 evidence demonstrating occupational pneumoconiosis.

114 (f) For the purposes of this chapter, occupational disease
115 means a disease incurred in the course of and resulting from
116 employment. No ordinary disease of life to which the
117 general public is exposed outside of the employment is
118 compensable except when it follows as an incident of
119 occupational disease as defined in this chapter. Except in the

120 case of occupational pneumoconiosis, a disease is
121 considered to have been incurred in the course of or to have
122 resulted from the employment only if it is apparent to the
123 rational mind, upon consideration of all the circumstances:
124 (1) That there is a direct causal connection between the
125 conditions under which work is performed and the
126 occupational disease; (2) that it can be seen to have followed
127 as a natural incident of the work as a result of the exposure
128 occasioned by the nature of the employment; (3) that it can
129 be fairly traced to the employment as the proximate cause;
130 (4) that it does not come from a hazard to which workmen
131 would have been equally exposed outside of the
132 employment; (5) that it is incidental to the character of the
133 business and not independent of the relation of employer
134 and employee; and (6) that it appears to have had its origin
135 in a risk connected with the employment and to have flowed
136 from that source as a natural consequence, though it need
137 not have been foreseen or expected before its contraction:
138 *Provided*, That compensation is not payable for an
139 occupational disease or death resulting from the disease
140 unless the employee has been exposed to the hazards of the
141 disease in the State of West Virginia over a continuous
142 period that is determined to be sufficient, by rule of the
143 board of managers, for the disease to have occurred in the
144 course of and resulting from the employee's employment.
145 An application for benefits on account of an occupational
146 disease shall set forth the name of the employer or
147 employers and the time worked for each. The commission
148 may allocate to and divide any charges resulting from the
149 claim among the employers by whom the claimant was
150 employed. The allocation shall be based upon the time and
151 degree of exposure with each employer.

152 (g) No award may be made under the provisions of this
153 chapter for any occupational disease contracted prior to July
154 1, 1949. An employee has contracted an occupational
155 disease within the meaning of this subsection if the disease
156 or condition has developed to such an extent that it can be
157 diagnosed as an occupational disease.

158 (h) (1) For purposes of this chapter, a rebuttable
159 presumption that a professional firefighter who has
160 developed a cardiovascular or pulmonary disease or
161 sustained a cardiovascular injury or who has developed
162 leukemia, lymphoma, or multiple myeloma arising out of
163 and in the course of employment as a firefighter has
164 received an injury or contracted a disease arising out of and
165 in the course of his or her employment exists if: (A) The
166 person has been actively employed by a fire department as
167 a professional firefighter for a minimum of two years prior
168 to the cardiovascular injury or onset of a cardiovascular or
169 pulmonary disease or death; (B) the injury or onset of the
170 disease or death occurred within six months of having
171 participated in firefighting or a training or drill exercise
172 which actually involved firefighting; and (C) in the case of
173 the development of leukemia, lymphoma, or multiple
174 myeloma the person has been actively employed by a fire
175 department as a professional firefighter for a minimum of
176 five years in the state prior to the development of leukemia,
177 lymphoma, or multiple myeloma, has not used tobacco
178 products for at least 10 years, and is not over the age of 65
179 years. When the above conditions are met, it shall be
180 presumed that sufficient notice of the injury, disease, or
181 death has been given and that the injury, disease, or death
182 was not self inflicted.

183 (2) The amendments made to this section during the
184 2018 regular session of the Legislature to include leukemia,
185 lymphoma, or multiple myeloma arising out of and in the
186 course of employment as a firefighter as a rebuttable
187 presumption shall expire on July 1, 2023, unless extended
188 by the Legislature.

189 (i) Claims for occupational disease as defined in §23-4-
190 1(f) of this code, except occupational pneumoconiosis for
191 all workers and pulmonary disease and cardiovascular
192 injury and disease for professional firefighters, shall be
193 processed in like manner as claims for all other personal
194 injuries.

●

CHAPTER 247

**(H. B. 4628 - By Delegates Nelson, C. Miller, Boggs,
Westfall, Espinosa, Ambler, Frich, Hartman and
Storch)**

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended, relating to authorizing the redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to January 1, 2019; terminating the surcharges and assessments after December 31, 2018; and terminating the provisions of the section beginning on and after January 1, 2019, and exceptions thereto.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-3. Creation of employers' mutual insurance company as successor organization of the West Virginia Workers' Compensation Commission.

1 (a) (1) On or before July 1, 2005, the executive director
2 may take such actions as are necessary to establish an
3 employers' mutual insurance company as a domestic,
4 private, nonstock corporation to:

5 (A) Insure employers against liability for injuries and
6 occupational diseases for which their employees may be
7 entitled to receive compensation pursuant to this chapter
8 and federal Longshore and Harbor Workers' Compensation
9 Act, 33 U. S. C. §901, *et seq.*;

10 (B) Provide employer's liability insurance incidental to,
11 and provided in connection with, the insurance specified in
12 paragraph (A) of this subdivision, including coal workers'
13 pneumoconiosis coverage and employer excess liability
14 coverage as provided in this chapter; and

15 (C) Transact other kinds of property and casualty
16 insurance for which the company is otherwise qualified
17 under the provisions of this code.

18 (2) The company may not sell, assign or transfer
19 substantial assets or ownership of the company.

20 (b) If the executive director establishes a domestic
21 mutual insurance company pursuant to subsection (a) of this
22 section:

23 (1) As soon as practical, the company established
24 pursuant to the provisions of this article shall, through a vote
25 of a majority of its provisional board, file its corporate
26 charter and bylaws with the Insurance Commissioner and
27 apply for a license with the Insurance Commissioner to
28 transact insurance in this state. Notwithstanding any other
29 provision of this code, the Insurance Commissioner shall act
30 on the documents within fifteen days of the filing by the
31 company.

32 (2) In recognition of the workers' compensation
33 insurance liability insurance crisis in this state at the time of
34 enactment of this article and the critical need to expedite the
35 initial operation of the company, the Legislature authorizes
36 the Insurance Commissioner to review the documentation
37 submitted by the company and to determine the initial
38 capital and surplus requirements of the company,
39 notwithstanding the provisions of section five-b, article
40 three, chapter thirty-three of this code. The company shall
41 furnish the Insurance Commissioner with all information
42 and cooperate in all respects necessary for the Insurance
43 Commissioner to perform the duties set forth in this section
44 and in other provisions of this chapter and chapter thirty-

45 three of this code. The Insurance Commissioner shall
46 monitor the economic viability of the company during its
47 initial operation on not less than a monthly basis, until the
48 commissioner, in his or her discretion, determines that
49 monthly reporting is not necessary. In all other respects the
50 company shall comply with the applicable provisions of
51 chapter thirty-three of this code.

52 (3) Subject to the provisions of subdivision (4) of this
53 subsection, the Insurance Commissioner may waive other
54 requirements imposed on mutual insurance companies by
55 the provisions of chapter thirty-three of this code the
56 Insurance Commissioner determines are necessary to enable
57 the company to begin insuring employers in this state at the
58 earliest possible date.

59 (4) Within forty months of the date of the issuance of its
60 license to transact insurance, the company shall comply
61 with the capital and surplus requirements set forth in
62 subsection (a), section five-b, article three, chapter thirty-
63 three of this code in effect on the effective date of this
64 enactment, unless the deadline is extended by the Insurance
65 Commissioner.

66 (c) For the duration of its existence, the company is not
67 a department, unit, agency or instrumentality of the state for
68 any purpose. All debts, claims, obligations and liabilities of
69 the company, whenever incurred, are the debts, claims,
70 obligations and liabilities of the company only and not of
71 the state or of any department, unit, agency, instrumentality,
72 officer or employee of the state.

73 (d) The moneys of the company are not part of the
74 General Revenue Fund of the state. The debts, claims,
75 obligations and liabilities of the company are not a debt of
76 the state or a pledge of the credit of the state.

77 (e) The company is not subject to provisions of article
78 nine-a, chapter six of this code; the provisions of article two,
79 chapter six-c of this code; the provisions of chapter twenty-

80 nine-b of this code; the provisions of article three, chapter
81 five-a of this code; the provisions of article six, chapter
82 twenty-nine of this code; or the provisions of chapter twelve
83 of this code.

84 (f) If the commission has been terminated, effective
85 upon the termination, private carriers, including the
86 company, are not subject to payment of premium taxes,
87 surcharges and credits contained in article three, chapter
88 thirty-three of this code on premiums received for coverage
89 under this chapter. In lieu thereof, the workers'
90 compensation insurance market is subject to the following:

91 (1) (A) Each fiscal year, the Insurance Commissioner
92 shall calculate a percentage surcharge to be collected by
93 each private carrier from its policyholders. The surcharge
94 percentage shall be calculated by dividing the previous
95 fiscal year's total premiums collected plus deductible
96 payments by all employers into the portion of the Insurance
97 Commissioner's budget amount attributable to regulation of
98 the private carrier market. This resulting percentage shall be
99 applied to each policyholder's premium payment and
100 deductible payments as a surcharge and remitted to the
101 Insurance Commissioner. Said surcharge shall be remitted
102 within ninety days of receipt of premium payments;

103 (B) With respect to fiscal years beginning on and after
104 July 1, 2008, in lieu of the surcharge set forth in the
105 preceding paragraph, each private carrier shall collect a
106 surcharge in the amount of five and five-tenths percent of
107 the premium collected plus the total of all premium
108 discounts based on deductible provisions that were applied:
109 *Provided*, That prior to June 30, 2013, and every five years
110 thereafter, the commissioner shall review the percentage
111 surcharge and determine a new percentage as he or she
112 deems necessary;

113 (C) The amounts required to be collected under
114 paragraph (B) of this subdivision shall be remitted to the
115 Insurance Commissioner on or before the twenty-fifth day

116 of the month succeeding the end of the quarter in which they
117 are collected, except for the fourth quarter for which the
118 surcharge shall be remitted on or before March 1 of the
119 succeeding year.

120 (2) Each fiscal year, the Insurance Commissioner shall
121 calculate a percentage surcharge to be remitted on a quarterly
122 basis by self-insured employers and said percentage shall be
123 calculated by dividing previous year's self-insured payroll in
124 the state into the portion of the Insurance Commissioner's
125 budget amount attributable to regulation of the self-insured
126 employer market. This resulting percentage shall be applied to
127 each self-insured employer's payroll and the resulting amount
128 shall be remitted as a regulatory surcharge by each self-insured
129 employer. The Industrial Council may promulgate a rule for
130 implementation of this section. The company, all other private
131 carriers and all self-insured employers shall furnish the
132 Insurance Commissioner with all required information and
133 cooperate in all respects necessary for the Insurance
134 Commissioner to perform the duties set forth in this section
135 and in other provisions of this chapter and chapter thirty-three
136 of this code. The surcharge shall be calculated so as to only
137 defray the costs associated with the administration of this
138 chapter and the funds raised shall not be used for any other
139 purpose except as set forth in subdivision (4) of this subsection.

140 (3) (A) Each private carrier shall collect a premiums
141 surcharge from its policyholders as annually determined, by
142 May 1 of each year, by the Insurance Commissioner to
143 produce \$45 million annually, of each policyholder's periodic
144 premium amount for workers' compensation insurance:
145 *Provided*, That the surcharge rate on policies issued or
146 renewed on or after July 1, 2008, shall be nine percent of the
147 premium collected plus the total of all premium discounts
148 based on deductible provisions that were applied.

149 (B) By May 1 each year, the self-insured employer
150 community shall be assessed a cumulative total of \$9 million.
151 The methodology for the assessment shall be fair and equitable
152 and determined by exempt legislative rule issued by the

153 Industrial Council. The amount collected pursuant to this
154 subdivision shall be remitted to the Insurance Commissioner
155 for deposit in the Workers' Compensation Debt Reduction
156 Fund created in section five, article two-d of this chapter:
157 *Provided*, That, notwithstanding any provision of this
158 subdivision or any other provision of this code to the contrary,
159 if the budget shortfall, as determined by the state Budget Office
160 as of December 1, 2015, is greater than \$100 million, then the
161 Governor may, by Executive Order, redirect deposits of the
162 amount collected pursuant to this subdivision, for any period
163 commencing after February 29, 2016, and ending before July
164 1, 2016, to the General Revenue Fund, instead of to the fund
165 otherwise mandated in this subdivision, in article two-d,
166 chapter twenty-three of this code or in any other provision of
167 this code: *Provided, however*, That, notwithstanding any
168 provision of this subdivision or any other provision of this code
169 to the contrary, the Governor may, by Executive Order,
170 redirect one-half of the deposits of the amount collected
171 pursuant to this subdivision, for any period commencing after
172 June 30, 2016, and ending before July 1, 2017, to the General
173 Revenue Fund, instead of to the funds otherwise mandated in
174 this subdivision, in article two-d, chapter twenty-three of this
175 code or in any other provision of this code, until certification
176 of the Governor to the Legislature that an independent actuary
177 has determined that the unfunded liability of the Old Fund, as
178 defined in chapter twenty-three of this code, has been paid or
179 provided for in its entirety: *Provided further*, That,
180 notwithstanding any provision of this subdivision or any other
181 provision of this code to the contrary, the Governor may, by
182 Executive Order, redirect seventy-five percent of the deposits
183 of the amount collected pursuant to this subdivision, for any
184 period commencing after June 30, 2017, and ending before
185 July 1, 2018, to the General Revenue Fund, instead of to the
186 funds otherwise mandated in this subdivision, in article two-d,
187 chapter twenty-three of this code or in any other provision of
188 this code, until certification of the Governor to the Legislature
189 that an independent actuary has determined that the unfunded
190 liability of the Old Fund, as defined in chapter twenty-three of
191 this code, has been paid or provided for in its entirety: *And*

192 *provided further*, That, notwithstanding any provision of this
193 subdivision or any other provision of this code to the contrary,
194 seventy-five percent of the deposits of the amount collected
195 pursuant to this subdivision, for any period commencing after
196 June 30, 2018, and ending before January 1, 2019, shall be
197 deposited into the General Revenue Fund instead of to the
198 funds otherwise mandated in this subdivision, in article two-d,
199 chapter twenty-three of this code or in any other provision of
200 this code, until certification of the Governor to the Legislature
201 that an independent actuary has determined that the unfunded
202 liability of the Old Fund, as defined in chapter twenty-three of
203 this code, has been paid or provided for in its entirety.

204 (4) On or before July 1, 2009, the Insurance
205 Commissioner shall make a one-time lump sum transfer of
206 \$40 million generated from the surcharges assessed
207 pursuant to paragraph (B), subdivision (1) of this subsection
208 and subdivision (2) of this subsection to the Bureau of
209 Employment Programs' Commissioner for deposit with the
210 Secretary of the Treasury of the United States as a credit of
211 this state in the Unemployment Trust Fund Account
212 maintained pursuant to section four, article eight, chapter
213 twenty-one-a of this code.

214 (g) The new premiums surcharge imposed by
215 paragraphs (A) and (B), subdivision (3), subsection (f) of
216 this section sunset and are not collectible with respect to
217 workers' compensation insurance premiums paid when the
218 policy is renewed on or after the first day of the month
219 following the month in which the Governor certifies to the
220 Legislature that the revenue bonds issued pursuant to article
221 two-d of this chapter have been retired and that the unfunded
222 liability of the Old Fund has been paid or has been provided
223 for in its entirety, whichever occurs last.

224 (h) Notwithstanding any other provisions of this section
225 to the contrary, after December 31, 2018, no surcharges may
226 be assessed under subdivision (3), subsection (f) of this
227 section or subsection (g) of this section. Except as
228 otherwise provided in this subsection, the provisions of

229 subdivision (3), subsection (f) of this section and subsection
230 (g) of this section are terminated and shall be of no force or
231 effect beginning on and after January 1, 2019: *Provided,*
232 That liability for surcharges assessed under subdivision (3),
233 subsection (f) of this section for periods prior to January 1,
234 2019, shall continue until paid.



CHAPTER 248

(S. B. 585 - By Senators Romano, Facemire, Trump and Weld)

[Passed March 9, 2018; in effect from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to attach to Harrison County an area of Doddridge County so as to place all of the grounds of the Salem Correctional Center, formerly the West Virginia Industrial Home, within the boundary of Harrison County and to change the boundary line between said counties in conformity therewith.

Be it enacted by the Legislature of West Virginia:

THE BOUNDARY LINE BETWEEN DODDRIDGE COUNTY AND HARRISON COUNTY.

§1. The boundary line between Doddridge and Harrison Counties.

1 That the following bounded and described area of land
2 now a part of the county of Doddridge and adjoining the
3 county of Harrison shall be and is hereby severed from said
4 county of Doddridge and attached to the county of Harrison,
5 state of West Virginia. The boundary line between
6 Doddridge and Harrison Counties is and shall be modified
7 so that all property of the Salem Correctional Center,

8 formerly the West Virginia Industrial Home, shall be within
9 Harrison County as follows:

10 Beginning at a point in the chain link fence on the line
11 between Doddridge County and Harrison County, West
12 Virginia, being the northwest corner of the tract of land
13 herein described, and bearing, South 46 degrees 40 minutes
14 09 seconds East, a distance of 127.43 feet from a 3/4" iron
15 rebar and cap now set at an angle point on said county line
16 between Doddridge and Harrison Counties, said point being
17 on the lands of West Virginia State Industrial Home (Tax
18 Map 301 Parcel 32, Deed Book 101 Page 570) (Harrison
19 County);

20 Thence, running with said county line and through said
21 West Virginia State Industrial Home (Parcel 32), lands,
22 South 46 degrees 40 minutes 09 seconds East, for a distance
23 of 407.12 feet to a MAG nail now set;

24 Thence, partially through said West Virginia State
25 Industrial Home (Parcel 32), lands and other lands of the
26 State of West Virginia (Tax Map 22 Parcel 40) (Doddridge
27 County), South 21 degrees 20 minutes 14 seconds West,
28 passing a chain link fence at a distance of 491.50 feet, for a
29 total distance of 645.89 feet to a point in said chain link
30 fence, which bears, North 21 degrees 20 minutes 14 seconds
31 East, a distance of 442.94 feet from a MAG nail now set in
32 Harrison County Route 50/29 and Doddridge County Route
33 38;

34 Thence, leaving said county line between said
35 Doddridge and Harrison Counties, and through said State of
36 West Virginia (Parcel 40) (Doddridge County) and with
37 said chain link fence, South 68 degrees 39 minutes 55
38 seconds West, a distance of 114.17 feet to a point;

39 Thence, South 04 degrees 41 minutes 59 seconds East,
40 a distance of 30.17 feet to a point;

41 Thence, South 01 degrees 18 minutes 54 seconds East,
42 a distance of 10.28 feet to a point;

43 Thence, South 03 degrees 43 minutes 27 seconds West,
44 a distance of 10.10 feet to a point;

45 Thence, South 12 degrees 11 minutes 09 seconds West,
46 a distance of 20.48 feet to a point;

47 Thence, South 55 degrees 59 minutes 51 seconds West,
48 a distance of 37.73 feet to a point;

49 Thence, South 44 degrees 19 minutes 41 seconds West,
50 a distance of 20.08 feet to a point;

51 Thence, South 47 degrees 36 minutes 07 seconds West,
52 a distance of 10.05 feet to a point;

53 Thence, South 52 degrees 08 minutes 56 seconds West,
54 a distance of 40.38 feet to a point;

55 Thence, South 64 degrees 50 minutes 32 seconds West,
56 a distance of 10.40 feet to a point;

57 Thence, South 60 degrees 52 minutes 42 seconds West,
58 a distance of 159.19 feet to a point;

59 Thence, North 88 degrees 14 minutes 48 seconds West,
60 a distance of 29.94 feet to a point;

61 Thence, South 84 degrees 54 minutes 06 seconds West,
62 a distance of 38.29 feet to a point;

63 Thence, South 79 degrees 27 minutes 07 seconds West,
64 a distance of 80.87 feet to a point;

65 Thence, South 81 degrees 09 minutes 06 seconds West,
66 a distance of 9.85 feet to a point;

67 Thence, South 87 degrees 05 minutes 26 seconds West,
68 a distance of 9.99 feet to a point;

69 Thence, North 84 degrees 40 minutes 59 seconds West,
70 a distance of 10.30 feet to a point;

71 Thence, North 01 degrees 54 minutes 25 seconds East,
72 a distance of 19.89 feet to a point;

73 Thence, North 77 degrees 48 minutes 02 seconds West,
74 a distance of 9.53 feet to a point;

75 Thence, North 70 degrees 19 minutes 32 seconds West,
76 a distance of 8.19 feet to a point;

77 Thence, North 63 degrees 03 minutes 51 seconds West,
78 a distance of 8.36 feet to a point;

79 Thence, North 55 degrees 42 minutes 57 seconds West,
80 a distance of 9.10 feet to a point;

81 Thence, North 48 degrees 39 minutes 56 seconds West,
82 a distance of 10.24 feet to a point;

83 Thence, North 38 degrees 36 minutes 40 seconds West,
84 a distance of 39.22 feet to a point;

85 Thence, North 39 degrees 39 minutes 58 seconds West,
86 a distance of 39.85 feet to a point;

87 Thence, North 39 degrees 47 minutes 57 seconds West,
88 a distance of 94.34 feet to a point;

89 Thence, North 34 degrees 34 minutes 50 seconds West,
90 a distance of 49.99 feet to a point;

91 Thence, North 34 degrees 17 minutes 51 seconds West,
92 a distance of 60.62 feet to a point;

93 Thence, North 33 degrees 07 minutes 52 seconds West,
94 a distance of 88.90 feet to a point;

95 Thence, North 33 degrees 22 minutes 22 seconds West,
96 a distance of 69.52 feet to a point;

97 Thence, North 28 degrees 27 minutes 37 seconds East,
98 a distance of 10.45 feet to a point;

99 Thence, North 54 degrees 04 minutes 14 seconds East,
100 a distance of 30.48 feet to a point;

101 Thence, North 57 degrees 37 minutes 32 seconds East,
102 a distance of 19.94 feet to a point;

103 Thence, North 64 degrees 35 minutes 58 seconds East,
104 a distance of 19.96 feet to a point;

105 Thence, North 68 degrees 13 minutes 15 seconds East,
106 a distance of 19.08 feet to a point;

107 Thence, North 71 degrees 59 minutes 48 seconds East,
108 a distance of 40.17 feet to a point;

109 Thence, North 74 degrees 21 minutes 11 seconds East,
110 a distance of 164.94 feet to a point;

111 Thence, North 48 degrees 23 minutes 34 seconds East,
112 a distance of 9.24 feet to a point;

113 Thence, North 37 degrees 13 minutes 32 seconds East,
114 a distance of 81.25 feet to a point;

115 Thence, North 27 degrees 50 minutes 49 seconds East,
116 a distance of 198.04 feet to a point;

117 Thence, North 56 degrees 53 minutes 52 seconds East,
118 a distance of 66.32 feet to a point;

119 Thence, North 44 degrees 13 minutes 13 seconds East,
120 a distance of 20.63 feet to a point;

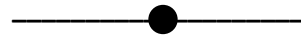
121 Thence, North 35 degrees 45 minutes 02 seconds East,
122 a distance of 54.35 feet to a point;

123 Thence, North 41 degrees 32 minutes 03 seconds West,
124 a distance of 70.20 feet to a point;

125 Thence, North 31 degrees 14 minutes 26 seconds East,
126 a distance of 278.48 feet to a point;

127 Thence, North 81 degrees 03 minutes 31 seconds East,
128 a distance of 130.95 feet to the Point of Beginning,
129 containing 14.20 acres, MORE OR LESS, as shown on an
130 exhibit attached hereto and made a part of this description.

131 The tract or parcel of land herein described being part
132 of the same lands conveyed to West Virginia State Industrial
133 Home in Deed Book 101 Page 570 at the Office of the Clerk,
134 Harrison County, West Virginia and State of West Virginia
135 as recorded in at the Office of the Clerk, Doddridge County,
136 West Virginia.



CHAPTER 249

**(Com. Sub. for S. B. 500 - By Senators Baldwin,
Mann, Gaunch, Jeffries, Woelfel and Plymale)**

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

AN ACT to amend and reenact section one, chapter 180, Acts of the Legislature, regular session, 1985, authorizing the City of White Sulphur Springs, Greenbrier County, West Virginia, to expend both principal and interest from a special interest-bearing fund.

Be it enacted by the Legislature of West Virginia:

WHITE SULPHUR SPRINGS CAPITAL IMPROVEMENT FUND.

§1. Governing body of City of White Sulphur Springs authorized to establish an interest-bearing capital improvement fund and to expend money as needed therefrom.

1 The governing body of the City of White Sulphur
2 Springs is hereby authorized and empowered to establish a

3 special interest bearing fund and to transfer and deposit in
4 the special fund all moneys received by the City of White
5 Sulphur Springs from the sale and exchange of real estate in
6 a deed of exchange between CSX Hotels, Inc., a West
7 Virginia corporation and the City of White Sulphur Springs,
8 dated December 27, 1984, and recorded in the office of the
9 Clerk of the County Commission of Greenbrier County,
10 West Virginia. The governing body is further authorized
11 and empowered to expend both principal and interest from
12 the fund for capital improvements and infrastructure
13 maintenance for the City of White Sulphur Springs.

LEGISLATURE OF WEST VIRGINIA

CONSTITUTIONAL
AMENDMENT

REGULAR SESSION, 2018

SENATE JOINT RESOLUTION 3

**(Com. Sub. for Com. Sub. for SJR 3 - By Senators
Boso and Cline)**

[Adopted by the Legislature March 10, 2018.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section 51, article VI thereof, relating to the state budget and related matters; providing that total general revenue appropriations to the judiciary may be decreased in the budget bill; providing that the Legislature may not decrease the total general revenue appropriations to the judiciary in the budget bill to an amount that is less than 85 percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget without a separate vote of the Legislature approved by a two-thirds vote of the members elected to each house, determined by yeas and nays and entered on the journals; providing rights and duties of the Chief Justice of the Supreme Court of Appeals relating to appearances before the Legislature and answering inquiries with respect to any budget bill; amending and adding language regarding when the Governor shall submit the budget to the Legislature and matters that may be considered during an extended session to

conform the section to more recent amendments to the constitution; making technical corrections to gender-related language; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2018, which proposed amendment is that section 51, article VI thereof be amended to read as follows:

ARTICLE VI.

§51. Budget and supplementary appropriation bills.

1 The Legislature shall not appropriate any money out of
2 the treasury except in accordance with the provisions of this
3 section.

4 Subsection A – Appropriation Bills

5 (1) Every appropriation bill shall be either a budget bill,
6 or a supplementary appropriation bill, as hereinafter
7 provided.

8 Subsection B – Budget Bills

9 (2) On the second Wednesday of February in the year
10 2021 and every fourth year thereafter and on the second
11 Wednesday of January in all other years, unless a later time
12 in any year be fixed by the Legislature, the Governor shall
13 submit to the Legislature a budget for the next ensuing fiscal
14 year. The budget shall contain a complete plan of proposed
15 expenditures and estimated revenues for the fiscal year and
16 shall show the estimated surplus or deficit of revenues at the
17 end of each fiscal year. Accompanying each budget shall
18 be a statement showing: (a) An estimate of the revenues and

19 expenditures for the current fiscal year, including the actual
20 revenues and actual expenditures to the extent available, and
21 the revenues and expenditures for the next preceding fiscal
22 year; (b) the current assets, liabilities, reserves, and surplus
23 or deficit of the state; (c) the debts and funds of the state; (d)
24 an estimate of the state's financial condition as of the
25 beginning and end of the fiscal year covered by the budget;
26 and (e) any explanation the Governor may desire to make as
27 to the important features of the budget and any suggestions
28 as to methods for reduction or increase of the state's
29 revenue.

30 (3) Each budget shall embrace an itemized estimate of
31 the appropriations, in such form and detail as the Governor
32 shall determine or as may be prescribed by law: (a) For the
33 Legislature as certified to the Governor in the manner
34 hereinafter provided; (b) for the executive department; (c)
35 for the judiciary department, as provided by law, certified to
36 the Governor by the Auditor; (d) for payment and discharge
37 of the principal and interest of any debt of the state created
38 in conformity with the constitution, and all laws enacted in
39 pursuance thereof; (e) for the salaries payable by the state
40 under the constitution and laws of the state; and (f) for such
41 other purposes as are set forth in the constitution and in laws
42 made in pursuance thereof.

43 (4) The Governor shall deliver to the presiding officer
44 of each house the budget and a bill for all the proposed
45 appropriations of the budget clearly itemized and classified,
46 in such form and detail as the Governor shall determine or
47 as may be prescribed by law; and the presiding officer of
48 each house shall promptly cause the bill to be introduced
49 therein, and such bill shall be known as the "Budget Bill".
50 The Governor may, with the consent of the Legislature,
51 before final action thereon by the Legislature, amend or
52 supplement the budget to correct an oversight, or to provide
53 funds contingent on passage of pending legislation, and in
54 case of an emergency, he or she may deliver such an
55 amendment or supplement to the presiding officers of both

56 houses; and the amendment or supplement shall thereby
57 become a part of the budget bill as an addition to the items
58 of the bill or as a modification of or a substitute for any item
59 of the bill the amendment or supplement may affect.

60 (5) The Legislature shall not amend the budget bill so as
61 to create a deficit but may amend the bill by increasing or
62 decreasing any item therein: *Provided*, That the Legislature
63 may not decrease the total general revenue appropriations to
64 the judiciary in the budget bill to an amount that is less than
65 85 percent of the amount of the total general revenue
66 appropriations to the judiciary in the most recently enacted
67 budget without a separate vote of the Legislature approved
68 by a two-thirds vote of the members elected to each house,
69 determined by yeas and nays and entered on the journals.
70 Except as otherwise provided in this constitution, the salary
71 or compensation of any public officer shall not be increased
72 or decreased during his or her term of office: *Provided*,
73 *however*, That the Legislature shall not increase the estimate
74 of revenue submitted in the budget without the approval of
75 the Governor.

76 (6) The Chief Justice of the Supreme Court of Appeals,
77 the Governor, and such representatives of the executive
78 departments, boards, officers, and commissions of the state
79 expending or applying for state moneys as have been
80 designated by the Governor for this purpose, shall have the
81 right, and when requested by either house of the Legislature
82 it shall be their duty, to appear and be heard with respect to
83 any budget bill, and to answer inquiries relative thereto.

84 **Subsection C – Supplementary Appropriation Bills**

85 (7) Neither house shall consider other appropriations
86 until the budget bill has been finally acted upon by both
87 houses, and no such other appropriations shall be valid
88 except: in accordance with the provisions following (a)
89 Every such appropriation shall be embodied in a separate
90 bill limited to some single work, object, or purpose therein
91 stated and called therein a supplementary appropriation bill;

92 (b) each supplementary appropriation bill shall provide the
93 revenue necessary to pay the appropriation thereby made by
94 a tax, direct or indirect, to be laid and collected as directed
95 in the bill unless it appears from such budget that there is
96 sufficient revenue available.

97 **Subsection D – General Provisions**

98 (8) If the budget bill shall not have been finally acted
99 upon by the Legislature three days before the expiration of
100 its regular session, the Governor shall issue a proclamation
101 extending the session for such further period as may, in his
102 or her judgment, be necessary for the passage of the bill; but
103 no matter other than the bill shall be considered during such
104 an extension of a session except the matters detailed in
105 section 14, article VII of this constitution and a provision
106 for the cost thereof.

107 (9) For the purpose of making up the budget, the
108 Governor shall have the power and it shall be his or her duty,
109 to require from the proper state officials, including herein
110 all executive departments, all executive and administrative
111 officers, bureaus, boards, commissions, and agencies
112 expending or supervising the expenditure of, and all
113 institutions applying for state moneys and appropriations,
114 such itemized estimates and other information, in such form
115 and at such times as he or she shall direct. The estimates for
116 the legislative department, certified by the presiding officer
117 of each house, and for the judiciary, as provided by law,
118 certified by the Auditor, shall be transmitted to the
119 Governor in such form and at such times as he or she shall
120 direct and shall be included in the budget.

121 (10) The Governor may provide for public hearings on
122 all estimates and may require the attendance at such
123 hearings of representatives of all agencies and all
124 institutions applying for state moneys. After such public
125 hearings he or she may, in his or her discretion, revise all
126 estimates except those for the legislative and judiciary
127 departments.

128 (11) Every budget bill or supplementary appropriation
129 bill passed by a majority of the members elected to each
130 house of the Legislature shall, before it becomes a law, be
131 presented to the Governor. The Governor may veto the bill,
132 or he or she may disapprove or reduce items or parts of items
133 contained therein. If he or she approves, he or she shall sign
134 it and thereupon, it shall become a law. The bill, items or
135 parts thereof, disapproved or reduced by the Governor, shall
136 be returned with his or her objections to each house of the
137 Legislature.

138 Each house shall enter the objections at large upon its
139 journal and proceed to reconsider. If, after reconsideration,
140 two thirds of the members elected to each house agree to
141 pass the bill, or such items or parts thereof, as were
142 disapproved or reduced, the bill, items or parts thereof,
143 approved by two thirds of such members, shall become law,
144 notwithstanding the objections of the Governor. In all such
145 cases, the vote of each house shall be determined by yeas
146 and nays to be entered on the journal.

147 A bill, item or part thereof, which is not returned by the
148 Governor within five days (Sundays excepted) after the bill
149 has been presented to him or her shall become a law in like
150 manner as if he or she had signed the bill, unless the
151 Legislature, by adjournment, prevents such return, in which
152 case it shall be filed in the office of the Secretary of State,
153 within five days after such adjournment, and shall become
154 a law; or it shall be so filed within such five days with the
155 objections of the governor, in which case it shall become
156 law to the extent not disapproved by the Governor.

157 (12) The Legislature may, from time to time, enact such
158 laws, not inconsistent with this section, as may be necessary
159 and proper to carry out its provisions.

160 (13) In the event of any inconsistency between any of
161 the provisions of this section and any of the other provisions
162 of the constitution, the provisions of this section shall
163 prevail. But nothing herein shall be construed as preventing

164 the Governor from calling extraordinary sessions of the
 165 Legislature, as provided by section 19 of this article, or as
 166 preventing the Legislature at such extraordinary sessions
 167 from considering any emergency appropriation or
 168 appropriations.

169 (14) If any item of any appropriation bill passed under
 170 the provisions of this section shall be held invalid upon any
 171 ground, such invalidity shall not affect the legality of the bill
 172 or of any other item of such bill or bills.

173 *Resolved further*, That in accordance with the
 174 provisions of article eleven, chapter three of the Code of
 175 West Virginia, 1931, as amended, such amendment is
 176 hereby numbered “Amendment No. 1” and designated as
 177 the “Judicial Budget Oversight Amendment” and the
 178 purpose of the proposed amendment is summarized as
 179 follows: “Providing that the total general revenue
 180 appropriations to the judiciary may be reduced in the budget
 181 bill, and setting forth the required procedures to be followed
 182 by the Legislature to enact any decrease in the total general
 183 revenue appropriations to the judiciary to an amount that is
 184 less than 85 percent of the amount of the total general
 185 revenue appropriations to the judiciary in the most recently
 186 enacted budget; providing that when requested by the
 187 Legislature, the Chief Justice of the Supreme Court of
 188 Appeals must appear and be heard and answer inquiries
 189 relative any budget bill; and conforming language relating
 190 to the introduction of the budget and matters that may be
 191 taken up during extended sessions to more recent
 192 amendments to the constitution.

LEGISLATURE OF WEST VIRGINIA

**CONSTITUTIONAL
AMENDMENT**

REGULAR SESSION, 2018

SENATE JOINT RESOLUTION 12

**(Com. Sub. for SJR 12 - By Senators Rucker, Arvon,
Azinger, Blair, Boley, Boso, Cline, Ferns, Gaunch,
Karnes, Mann, Maynard, Smith, Swope, Sypolt and
Maroney)**

[Adopted by the Legislature March 5, 2018.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article VI thereof, by adding thereto a new section, designated section 57, relating to clarifying that nothing in the Constitution secures or protects a right to abortion, and nothing in the Constitution requires the funding of an abortion; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2018, which proposed amendment is that article VI thereof be amended by adding thereto a new section, designated section 57, to read as follows:

ARTICLE VI. THE LEGISLATURE.**§57. No constitutional right to abortion.**

1 Nothing in this Constitution secures or protects a right
2 to abortion or requires the funding of abortion.

3 *Resolved further,* That in accordance with the
4 provisions of article eleven, chapter three of the Code of
5 West Virginia, 1931, as amended, such proposed
6 amendment is hereby numbered “Amendment No. 1” and
7 designated as “No Constitutional right to abortion
8 Amendment”, and the purpose of the proposed amendment
9 is summarized as follows: “To amend the West Virginia
10 Constitution to clarify that nothing in the Constitution of
11 West Virginia secures or protects a right to abortion or
12 requires the funding of abortion”.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2018

CHAPTER 1

**(Com. Sub. for H. B. 108 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed May 21, 2018; in effect from passage.]
[Approved by the Governor on May 24, 2018.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, Adjutant General – State Militia, fund 0433, fiscal year 2018, organization 0603, and to the Department of Military Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2018, organization 0620, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Fund, General Revenue, dated May 20, 2018, 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, It appears from the Statement of the State Fund, General Revenue, 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 total appropriation for the fiscal year ending June 30, 2018, to fund 0433, fiscal year 2018, organization 0603, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 62 – *Adjutant General* –

6 *State Militia*

7 (WV Code Chapter 15)

8 Fund 0433 FY 2018 Org 0603

9	10	11	Appropriation	General Revenue Fund
12	6a Military Authority –	13	Surplus (R)	74899 \$ 555,000

14 Any unexpended balance remaining in the appropriation
15 for Military Authority – Surplus (fund 0433, appropriation
16 74899) at the close of the fiscal year 2018 is hereby
17 reappropriated for expenditure during the fiscal year 2019.

18 And, That the total appropriation for the fiscal year
19 ending June 30, 2018, to fund 0546, fiscal year 2018,
20 organization 0620, be supplemented and amended by
21 adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
 4 AND PUBLIC SAFETY
 5 *70 – Division of Justice and Community Services*
 6 (WV Code Chapter 15)
 7 Fund 0546 FY 2018 Org 0620

8		General
9	Appro-	Revenue
10	priation	Fund
11 13a Law Enforcement Training –		
12 Surplus (R)	83899	\$ 495,000

13 Any unexpended balance remaining in the appropriation
 14 for Law Enforcement Training – Surplus (fund 0546,
 15 appropriation 83899) at the close of the fiscal year 2018 is
 16 hereby reappropriated for expenditure during the fiscal year
 17 2019.



CHAPTER 2

**(Com. Sub. for S. B. 1007 - By Senators Carmichael
 (Mr. President) and Prezioso)
 [By Request of the Executive]**

[Passed May 21, 2018; in effect from passage.]
 [Approved by the Governor on May 24, 2018.]

AN ACT supplementing and amending 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 Health – Central Office, fund 0407, fiscal year 2019, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the General Revenue Fund, State of Revenues by Source, FY 2019 Official Estimate Revised, dated May 1, 2018, and submitted a Statement of the State Fund, General Revenue, dated May 20, 2018, setting forth therein the estimated cash balance as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, there will remain an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0407, fiscal year 2019, organization 0506, be supplemented and amended to read as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF HEALTH
4 AND HUMAN RESOURCES

5 *57 – Division of Health –*

6 *Central Office*

7 (WV Code Chapter 16)

8 Fund 0407 FY 2019 Org 0506

9 10 11		Appro- piation	General Revenue Fund
12	1 Personal Services and		
13	Employee Benefits	00100	\$ 12,446,690

14	2	Chief Medical Examiner.....	04500	6,618,003
15	3	Unclassified	09900	671,795
16	4	Current Expenses.....	13000	4,677,059
17	5	State Aid for Local and Basic		
18		Public Health Services.....	18400	12,652,756
19	6	Safe Drinking Water		
20		Program (R).....	18700	2,188,827
21	7	Women, Infants and Children	21000	38,621
22	8	Early Intervention.....	22300	8,134,060
23	9	Cancer Registry	22500	200,682
24	10	Statewide EMS		
25		Program Support (R)	38300	1,835,429
26	11	Black Lung Clinics	46700	170,885
27	12	Vaccine for Children	55100	335,423
28	13	Tuberculosis Control	55300	372,366
29	14	Maternal and Child Health Clinics,		
30		Clinicians		
31	15	Medical Contracts		
32		and Fees (R)	57500	6,335,115
33	16	Epidemiology Support.....	62600	1,513,869
34	17	Primary Care Support	62800	4,245,849
35	18	Sexual Assault Intervention		
36		and Prevention.....	72300	125,000
37	19	Health Right Free Clinics	72700	2,750,000
38	20	Capital Outlay and		
39		Maintenance (R).....	75500	100,000
40	21	Maternal Mortality Review	83400	47,712
41	22	Diabetes Education		
42		and Prevention.....	87300	97,125
43	23	BRIM Premium	91300	169,791
44	24	State Trauma and Emergency		
45		Care System.....	91800	<u>2,004,450</u>
46		Total.....		\$ 67,731,507

47 Any unexpended balances remaining in the appropriations
48 for Safe Drinking Water Program (fund 0407, appropriation
49 18700), Statewide EMS Program Support (fund 0407,
50 appropriation 38300), Maternal and Child Health Clinics,
51 Clinicians and Medical Contracts and Fees (fund 0407,

52 appropriation 57500), Capital Outlay and Maintenance (fund
53 0407, appropriation 75500), Emergency Response Entities –
54 Special Projects (fund 0407, appropriation 82200), and
55 Tobacco Education Program (fund 0407, appropriation 90600)
56 at the close of the fiscal year 2018 are hereby reappropriated
57 for expenditure during the fiscal year 2019.

58 From the above appropriation for Current Expenses
59 (fund 0407, appropriation 13000), an amount not less than
60 \$100,000 is for the West Virginia Cancer Coalition;
61 \$50,000 shall be expended for the West Virginia Aids
62 Coalition; \$100,000 is for Adolescent Immunization
63 Education; \$73,065 is for informal dispute resolution
64 relating to nursing home administrative appeals; and
65 \$50,000 is for Hospital Hospitality House of Huntington.

66 From the above appropriation for Maternal and Child
67 Health Clinics, Clinicians and Medical Contracts and Fees
68 (fund 0407, appropriation 57500) up to \$400,000 may be
69 transferred to the Breast and Cervical Cancer Diagnostic
70 Treatment Fund (fund 5197) and \$11,000 is for the Marshall
71 County Health Department for dental services.



CHAPTER 3

**(Com. Sub. for H. B. 101 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed May 21, 2018; in effect June 8, 2018.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §5F-2-1 of the Code of West Virginia, 1931, as amended, as contained in Chapter 105, Acts of the Legislature, Regular Session, 2018; and to amend and reenact §29-1-1 and §29-1-2 of said code, all relating to the

Division of Culture and History continuing as the Department of Arts, Culture and History; providing that the Library Commission and the West Virginia Educational Broadcasting Authority shall be organized within the Department of Arts, Culture and History for administrative support; providing that any references throughout this code to the “Commissioner of Culture and History” means the “Curator of Arts, Culture and History” and any references throughout this code to the “Division of Culture and History” means the “Department of Arts, Culture and History”; organizing the Department of Arts, Culture and History as a separate independent agency within the Executive Branch; continuing the Commissioner of Culture and History as the Curator of Arts, Culture and History; specifying that the curator reports directly to Governor in furtherance of purposes and duties of the department; specifying the role of the curator; specifying that the curator is to represent the department as a full participating member in meetings of department secretaries convened by the Governor.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5F. REORGANIZATION OF THE
EXECUTIVE BRANCH OF STATE GOVERNMENT.**

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; and

68 (10) Division of Rehabilitation Services provided in
69 §18-10A-1 *et seq.* of this code.

70 (c) The Economic Development Authority provided in
71 §31-15-1 *et seq.* of this code is continued as an independent
72 agency within the executive branch.

73 (d) The Water Development Authority and the Water
74 Development Authority Board provided in §22C-1-1 *et seq.*
75 of this code is continued as an independent agency within
76 the executive branch.

77 (e) The West Virginia Educational Broadcasting
78 Authority provided in §10-5-1 *et seq.* of this code and the
79 State Library Commission provided in §10-1-1 *et seq.* of
80 this code are each continued as separate independent
81 agencies within the Department of Arts, Culture and
82 History, which shall provide administrative support for both
83 entities.

84 (f) The Division of Culture and History as established
85 in §29-1-1 *et seq.* of this code is continued as a separate
86 independent agency within the Executive Branch as the
87 Department of Arts, Culture and History. All references
88 throughout this code to the “Division of Culture and
89 History” means the “Department of Arts, Culture and
90 History”.

91 (g) The following agencies and boards, including all of
92 the allied, advisory, and affiliated entities, are transferred to
93 the Department of Environmental Protection for purposes of
94 administrative support and liaison with the Office of the
95 Governor:

96 (1) Air Quality Board provided in §22B-2-1 *et seq.* of
97 this code;

98 (2) Solid Waste Management Board provided in §22C-
99 3-1 *et seq.* of this code;

100 (3) Environmental Quality Board, or its successor
101 board, provided in §22B-3-1 *et seq.* of this code;

102 (4) Surface Mine Board provided in §22B-4-1 *et seq.* of
103 this code;

104 (5) Oil and Gas Inspectors' Examining Board provided
105 in §22C-7-1 *et seq.* of this code;

106 (6) Shallow Gas Well Review Board provided in §22C-
107 8-1 *et seq.* of this code; and

108 (7) Oil and Gas Conservation Commission provided in
109 §22C-9-1 *et seq.* of this code.

110 (h) The following agencies and boards, including all of
111 the allied, advisory, affiliated, or related entities and funds
112 associated with any agency or board, are incorporated in and
113 administered as a part of the Department of Health and
114 Human Resources:

115 (1) Human Rights Commission provided in §5-11-1 *et*
116 *seq.* of this code;

117 (2) Bureau for Public Health provided in §16-1-1 *et seq.*
118 of this code;

119 (3) Office of Emergency Medical Services and the
120 Emergency Medical Service Advisory Council provided in
121 §16-4C-1 *et seq.* of this code;

122 (4) Health Care Authority provided in §16-29B *et seq.*
123 of this code;

124 (5) State Commission on Intellectual Disability
125 provided in §29-15-1 *et seq.* of this code;

126 (6) Women's Commission provided in §29-20-1 *et seq.*
127 of this code; and

128 (7) Bureau for Child Support Enforcement provided in
129 chapter 48 of this code.

130 (i) The following agencies and boards, including all of
131 the allied, advisory, affiliated, or related entities and funds
132 associated with any agency or board, are incorporated in and
133 administered as a part of the Department of Military Affairs
134 and Public Safety:

135 (1) Adjutant General's Department provided in §15-1A-
136 1 *et seq.* of this code;

137 (2) State Armory Board provided in §15-6-1 *et seq.* of
138 this code;

139 (3) Military Awards Board provided in §15-1G-1 *et seq.*
140 of this code;

141 (4) West Virginia State Police provided in §15-2-1 *et*
142 *seq.* of this code;

143 (5) Division of Homeland Security and Emergency
144 Management and Disaster Recovery Board provided in §15-
145 5-1 *et seq.* of this code and Emergency Response
146 Commission provided in §15-5A-1 *et seq.* of this code;

147 (6) Sheriffs' Bureau provided in §15-8-1 *et seq.* of this
148 code;

149 (7) Division of Justice and Community Services
150 provided in §15-9A-1 *et seq.* of this code;

151 (8) Division of Corrections provided in chapter 25 of
152 this code;

153 (9) Fire Commission provided in §29-3-1 *et seq.* of this
154 code;

155 (10) Regional Jail and Correctional Facility Authority
156 provided in §31-20-1 *et seq.* of this code; and

157 (11) Board of Probation and Parole provided in §62-12-
158 1 *et seq.* of this code.

159 (j) The following agencies and boards, including all of
160 the allied, advisory, affiliated or related entities and funds
161 associated with any agency or board, are incorporated in and
162 administered as a part of the Department of Revenue:

163 (1) Tax Division provided in chapter 11 of this code;

164 (2) Racing Commission provided in §19-23-1 *et seq.* of
165 this code;

166 (3) Lottery Commission and position of Lottery
167 Director provided in §29-22-1 of this code;

168 (4) Insurance Commissioner provided in §33-2-1 *et seq.*
169 of this code;

170 (5) West Virginia Alcohol Beverage Control
171 Commissioner provided in §11-16-1 *et seq.* of this code and
172 §60-2-1 *et seq.* of this code;

173 (6) Board of Banking and Financial Institutions
174 provided in §31A-3-1 *et seq.* of this code;

175 (7) Lending and Credit Rate Board provided in chapter
176 47A of this code;

177 (8) Division of Financial Institutions provided in §31A-
178 2-1 *et seq.* of this code;

179 (9) The State Budget Office provided in §11B-2-1 *et*
180 *seq.* of this code;

181 (10) The Municipal Bond Commission provided in §13-
182 3-1 *et seq.* of this code;

183 (11) The Office of Tax Appeals provided in §11-10A-1
184 of this code; and

185 (12) The State Athletic Commission provided in §29-
186 5A-1 *et seq.* of this code.

187 (k) The following agencies and boards, including all of
188 the allied, advisory, affiliated, or related entities and funds
189 associated with any agency or board, are incorporated in and
190 administered as a part of the Department of Transportation:

191 (1) Division of Highways provided in §17-2A-1 *et seq.*
192 of this code;

193 (2) Parkways Authority provided in §17-16A-1 *et seq.*
194 of this code;

195 (3) Division of Motor Vehicles provided in §17A-2-1 *et*
196 *seq.* of this code;

197 (4) Driver's Licensing Advisory Board provided in
198 §17B-2-1 *et seq.* of this code;

199 (5) Aeronautics Commission provided in §29-2A-1 *et*
200 *seq.* of this code;

201 (6) State Rail Authority provided in §29-18-1 *et seq.* of
202 this code; and

203 (7) Public Port Authority provided in §17-16B-1 *et seq.*
204 of this code.

205 (l) Effective July 1, 2011, the Veterans' Council
206 provided in §9A-1-1 *et seq.* of this code, including all of the
207 allied, advisory, affiliated, or related entities and funds
208 associated with it, is incorporated in and administered as a
209 part of the Department of Veterans' Assistance.

210 (m) Except for powers, authority and duties that have
211 been delegated to the secretaries of the departments by the
212 provisions of §5F-2-2 of this code, the position of
213 administrator and the powers, authority, and duties of each
214 administrator and agency are not affected by the enactment
215 of this chapter.

216 (n) Except for powers, authority and duties that have
217 been delegated to the secretaries of the departments by the
218 provisions of §5F-2-2 of this code, the existence, powers,
219 authority, and duties of boards and the membership, terms
220 and qualifications of members of the boards are not affected
221 by the enactment of this chapter. All boards that are
222 appellate bodies or are independent decision makers shall
223 not have their appellate or independent decision-making
224 status affected by the enactment of this chapter.

225 (o) Any department previously transferred to and
226 incorporated in a department by prior enactment of this
227 section means a division of the appropriate department.
228 Wherever reference is made to any department transferred
229 to and incorporated in a department created in §5F-1-2 of
230 this code, the reference means a division of the appropriate
231 department and any reference to a division of a department
232 so transferred and incorporated means a section of the
233 appropriate division of the department.

234 (p) When an agency, board, or commission is
235 transferred under a bureau or agency other than a
236 department headed by a secretary pursuant to this section,
237 that transfer is solely for purposes of administrative support
238 and liaison with the Office of the Governor, a department
239 secretary or a bureau. Nothing in this section extends the
240 powers of department secretaries under §5F-2-2 of this code
241 to any person other than a department secretary and nothing
242 limits or abridges the statutory powers and duties of
243 statutory commissioners or officers pursuant to this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DEPARTMENT OF ARTS, CULTURE AND HISTORY.

§29-1-1. Division of Culture and History continued as the Department of Arts, Culture and History; sections and commissions; purposes; definitions; effective date.

1 (a) The Division of Culture and History and the office
2 of Commissioner of Culture and History heretofore created
3 are hereby continued as the Department of Arts, Culture and
4 History. The Governor shall nominate and, by and with the
5 advice and consent of the Senate, appoint the Curator of
6 Arts, Culture and History, who shall be the chief executive
7 officer of the department and shall be paid an annual salary
8 as provided in §6-7-2a of this code. The curator so
9 appointed shall have: (1) A bachelor's degree in one of the
10 fine arts, social sciences, library science or a related field;
11 or (2) four years' experience in the administration of
12 museum management, public administration, arts, history or
13 a related field.

14 (b) The department shall consist of five sections as
15 follows:

16 (1) The arts section;

17 (2) The archives and history section;

18 (3) The museums section;

19 (4) The historic preservation section; and

20 (5) The administrative section.

21 (c) The department shall also consist of two citizens
22 commissions as follows:

23 (1) A Commission on the Arts; and

24 (2) A Commission on Archives and History.

25 (d) The curator shall exercise control and supervision of
26 the department and shall be responsible for the projects,
27 programs and actions of each of its sections. The purpose
28 and duty of the department is to advance, foster and promote
29 the creative and performing arts and crafts, including both
30 indoor and outdoor exhibits and performances; to advance,
31 foster, promote, identify, register, acquire, mark and care for

32 historical, prehistorical, archaeological and significant
33 architectural sites, structures and objects in the state; to
34 encourage the promotion, preservation and development of
35 significant sites, structures and objects through the use of
36 economic development activities such as loans, subsidies,
37 grants and other incentives; to coordinate all cultural,
38 historical and artistic activities in state government and at
39 state-owned facilities; to acquire, preserve and classify
40 books, documents, records and memorabilia of historical
41 interest or importance; and, in general, to do all things
42 necessary or convenient to preserve and advance the arts,
43 humanities, culture and history of the state. In the
44 furtherance of these purposes and duties, the curator shall
45 report directly to the Governor as a curator for both the
46 intrinsic and extrinsic value for individuals, communities
47 and the economy of the arts, humanities, culture and history
48 in West Virginia. As such, the curator shall represent the
49 Department of Arts, Culture and History as a full
50 participating member in meetings of the secretaries of the
51 departments created in §5F-1-2 of this code that are
52 convened at the call of the Governor.

53 (e) The department shall have jurisdiction and control
54 and may set and collect fees for the use of all space in the
55 building presently known as the West Virginia Science and
56 Culture Center, including the deck and courtyards forming
57 an integral part thereof; the building presently known as
58 West Virginia Independence Hall in Wheeling, including all
59 the grounds and appurtenances thereof; “Camp Washington
60 Carver” in Fayette County, as provided in §29-1-14 of this
61 code; and any other sites as may be transferred to or
62 acquired by the department. Notwithstanding any provision
63 of this code to the contrary, including the provisions of
64 article one, chapter five-b of this code, beginning on and
65 after July 1, 2018, the department shall have responsibility
66 for, and control of, all visitor touring and visitor tour guide
67 activities within the state Capitol Building at Charleston.

68 (f) For the purposes of this article, “commissioner” or
69 “curator” means the Curator of Arts, Culture and History,
70 and “division” or “department” means the Department of
71 Arts, Culture and History. References throughout this code
72 to the “Commissioner of Culture and History” mean the
73 “Curator of Arts, Culture and History”, and references
74 throughout this code to the “Division of Culture and
75 History” mean the “Department of Arts, Culture and
76 History”.

77 (g) Nothing in this article or any other provision of this
78 code may be construed to mean that the Department of Arts,
79 Culture and History is an executive department created
80 pursuant to §5F-1-2 of this code, nor that the curator is the
81 secretary of an executive department created pursuant to
82 that section.

§29-1-2. General powers of curator.

1 The curator shall assign and allocate space in all
2 facilities assigned to the department and all space in the
3 building presently known as the West Virginia Science and
4 Culture Center, and any other buildings or sites under the
5 control of the curator, and may, in accordance with the
6 provisions of chapter twenty-nine-a of this code, prescribe
7 rules, regulations and fees for the use and occupancy of said
8 facilities, including tours.

9 The curator shall coordinate the operations and affairs
10 of the sections and commissions of the department and
11 assign each section or commission responsibilities
12 according to criteria the curator deems most efficient,
13 productive and best calculated to carry out the purposes of
14 this article. The curator shall provide to the fullest extent
15 possible for centralization and coordination of the
16 bookkeeping, personnel, purchasing, printing, duplicating,
17 binding and other services which can be efficiently
18 combined. The curator may establish such other sections for
19 such purposes as he or she deems necessary, and may
20 appoint directors thereof. The curator may appoint a director

21 of the West Virginia Science and Culture Center. The
22 curator shall serve as the state historic preservation officer.

23 After consultation with the section directors and the
24 commissions, the curator shall prepare a proposed
25 department budget for submission to the Governor for each
26 fiscal year.

27 No contract, agreement or undertaking may be entered
28 into by any section of the department which involves the
29 expenditure of funds without the express written approval
30 of the curator as to fiscal responsibility.

31 The curator shall prepare and submit to the Governor an
32 annual report in accordance with the provisions of §5-1-20
33 of this code, which report shall include a detailed account of
34 the activities of each section and commission of the
35 department.

36 The curator shall employ all personnel for the sections,
37 except for persons in the professional positions established
38 within the sections as provided in this article; and shall
39 supply support services to the commissions and to the
40 Governor's Mansion Advisory Committee.

CHAPTER 4

**(Com. Sub. for H. B. 103 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed May 21, 2018; in effect June 5, 2018.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §5A-12-5, §5A-12-6, §5A-12-7,
and §5A-12-10 of the Code of West Virginia, 1931, as
amended, as contained in Chapter 106, Acts of the

Legislature, Regular Session, 2018; and to amend and reenact §17A-3-23, §17A-3-25, and §17A-3-26 of said code, as contained in Chapter 106, Acts of the Legislature, Regular Session, 2018, all relating to the management and inventory of state vehicles; requiring spending units to prepare and maintain a list of all employees provided a state vehicle that sets forth the specific bona fide noncompensatory business reasons for which the state vehicle is being provided to each employee and submit such list to the fleet management division; modifying vehicle log requirements; modifying reporting requirements; eliminating language related to perjury penalties; and eliminating provisions related to traffic citations.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 12. FLEET MANAGEMENT DIVISION.

§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 use;

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, shall maintain the
2 vehicle logs to the level of detail required by the division
3 through legislative rules, and as may be required by the
4 spending unit.

5 (b) Each operator of a state vehicle shall comply with
6 the laws, rules, and policies governing state vehicle use,
7 including spending unit rules and policies.

8 (c) Prior to operating a state vehicle, each operator shall
9 be required to take such training courses as may be required
10 by the Board of Risk and Insurance Management, the Travel
11 Management Office, the Fleet Management Division, and
12 the spending unit.

13 (d) If any public employee or public official fails to
14 comply with any rule or regulation for state vehicle use, the
15 spending unit may require that the individual attend
16 training, be restricted from using state vehicles, or be
17 prohibited from using state vehicles: *Provided*, That
18 nothing in this section authorizes the division to restrict the
19 use of state vehicles except for those employees under its
20 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.

13 (c) Every spending unit shall prepare and maintain a list
14 of all employees who are provided a state vehicle. The list
15 shall set forth the specific bona fide noncompensatory
16 business reasons for which the state vehicle is being
17 provided to each employee. Spending units shall submit the
18 list required by this section to the division, which shall act
19 solely as a repository for the information, on or before July
20 1, 2018, and shall update the list on or before July 1 of each
21 year thereafter.

§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 an
3 employee for personal vehicle use, shall annually report the
4 Fleet Management Division, beginning on or before

5 October 31, 2018, and on or before October 31 each year
6 thereafter, in the manner required by this article and by
7 legislative rule.

8 (b) Each spending unit that owns or leases a state
9 vehicle or rents or reimburses an employee for personal
10 vehicle use, shall periodically compile and maintain the
11 individual specific vehicle records of each state vehicle, and
12 all records of vehicle rental and private vehicle use
13 expenditures, for not less than three years, or as may be
14 required by the division or the State Auditor pursuant to
15 §5A-12-13 of this code.

**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
5 eight 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 nonstate
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-3-25 of this code. The naming
146 convention adopted shall be consistent with the naming
147 convention adopted for the centralized accounting system as
148 maintained by the Enterprise Resource Planning Board for
149 the purpose of creating and maintaining an accurate and up
150 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 that the
182 vehicle is a state asset recorded in the central accounting
183 system as maintained by the Enterprise Resource Planning
184 Board, and the same has been verified by the commissioner,
185 as required by §17A-3-25 of this code. When new
186 registrations are issued pursuant to this article and for
187 subsequent, non-Class A registrations of state owned or
188 leased vehicles, the state vehicle registration plate and
189 certificate shall be valid for a period of not more than 24
190 months and shall be required to be renewed every two years.

191 (v) The commissioner is authorized to prepare and
192 promulgate emergency rules, pursuant to §29A-3-1 *et seq.* of
193 this code in order to implement amendments to this section.

194 (w) Any person who violates the provisions of this
195 section is guilty of a misdemeanor and, upon conviction
196 thereof, shall be fined not less than \$50 nor more than \$100.
197 Magistrates have concurrent jurisdiction with circuit courts
198 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 system,
22 and the centralized state vehicle inventory system. The
23 commissioner shall propose legislative and emergency rules,
24 pursuant to §29A-3-1 *et seq.* of this code, establishing those
25 standard naming conventions for the registration, titling, and
26 licensing of every state vehicle, and assigning by rule a list of
27 the standardized naming conventions for each spending unit
28 for the purpose of issuing new title, registration, and license
29 plates to each state vehicle by December 31, 2018.

30 (c) Once the commissioner has promulgated legislative
31 and emergency rules as authorized pursuant to subsection (b)

32 of this section, and not later than September 1, 2018, the
33 division shall begin to issue the standardized title, registration,
34 and state vehicle license plates for all state vehicles.

35 (d) Any spending unit applying to license or relicense a
36 state vehicle pursuant to this section shall include with the
37 application an affirmative statement that the vehicle is a
38 state asset recorded in the central accounting system as
39 maintained by the Enterprise Resource Planning Board
40 before the commissioner is required to issue any motor
41 vehicle registration plates: *Provided*, That for leased
42 vehicles, the spending unit shall affirm to the commissioner
43 that the vehicle is leased and not required to be recorded in
44 the state central accounting system.

45 (e) The commissioner shall confirm that each vehicle
46 for which an agency applies for a license, title, or
47 registration is properly listed within the centralized
48 accounting system as being a vehicle owned by a state
49 agency before processing the application.

50 (f) The commissioner is authorized, by legislative and
51 emergency rule, to establish a procedure whereby the
52 commissioner shall reject the application for a state vehicle
53 title, registration and state vehicle license plate if that
54 application does not conform to the standard naming
55 convention requirements. The commissioner shall provide
56 by rule for the reasonable remedy, correcting of errors, or to
57 compel compliance with the standard naming conventions.

58 (g) At midnight on December 31, 2018, all green state
59 vehicle license plates with white lettering affixed to vehicles
60 shall expire. The commissioner, in coordination with the Fleet
61 Management Division, shall provide notice to each spending
62 unit, and advertise as deemed appropriate, to inform the fleet
63 coordinators, as defined in §5A-12-3 of this code, that such
64 license plates expire and the procedure for being issued new
65 titles, registrations, and license plates pursuant to this article.
66 The head of each spending unit with state vehicles shall
67 cooperate and comply with the requirements of the State
68 Vehicle Title, Registration, and Relicensing Project of 2018,
69 and the centralized accounting system.

70 (h) Upon receipt of the new title, registration, and
71 license plates, each spending unit shall enter the appropriate
72 information into the state's central accounting system
73 maintained by the Enterprise Resource Planning Board, in
74 such detail and specificity as required by the board, the Fleet
75 Management Division established pursuant to §5A-12-1 *et*
76 *seq.* of this code.

§17A-3-26. Enforcement; report.

1 Beginning January 1, 2019, any state vehicle in this state
2 with a green state license plate with white lettering is in
3 violation of this article.

CHAPTER 5

**(Com. Sub. for S. B. 1005 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed May 21, 2018; in effect e 7, 2018.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §30-41-2 of the Code of West Virginia, 1931, as amended, as contained in Chapter 177, Acts of the Legislature, Regular Session, 2018, related to creating the Physical Therapy Licensure Compact Act; establishing commission rule-making authority; providing for legal enforcement of compact rules and provisions; establishing proper venue; and retaining sovereign immunity.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 41. PHYSICAL THERAPY LICENSURE
COMPACT ACT.**

§30-41-2. Authority to execute compact.

1 The West Virginia Board of Physical Therapy, on behalf
2 of the State of West Virginia, is hereby authorized to
3 execute a compact in substantially the following form with
4 any one or more of the states of the United States, and the
5 Legislature hereby signifies in advance its approval and
6 ratification of such compact:

7 “PHYSICAL THERAPY LICENSURE COMPACT

8 SECTION 1. PURPOSE

9 The purpose of this Compact is to facilitate interstate
10 practice of physical therapy with the goal of improving
11 public access to physical therapy services. The practice of
12 physical therapy occurs in the state where the patient/client
13 is located at the time of the patient/client encounter. The
14 Compact preserves the regulatory authority of states to
15 protect public health and safety through the current system
16 of state licensure.

17 This Compact is designed to achieve the following
18 objectives:

- 19 1. Increase public access to physical therapy services by
20 providing for the mutual recognition of other member state
21 licenses;
- 22 2. Enhance the states’ ability to protect the public’s
23 health and safety;
- 24 3. Encourage the cooperation of member states in
25 regulating multi-state physical therapy practice;
- 26 4. Support spouses of relocating military members;
- 27 5. Enhance the exchange of licensure, investigative, and
28 disciplinary information between member states; and
- 29 6. Allow a remote state to hold a provider of services
30 with a compact privilege in that state accountable to that
31 state’s practice standards.

32 SECTION 2. DEFINITIONS

33 As used in this Compact, and except as otherwise
34 provided, the following definitions shall apply:

35 1. 'Active duty military' means full-time duty status in
36 the active uniformed service of the United States, including
37 members of the National Guard and Reserve on active duty
38 orders pursuant to 10 U.S.C. §§ 1209 and 1211.

39 2. 'Adverse action' means disciplinary action taken by
40 a physical therapy licensing board based upon misconduct,
41 unacceptable performance, or a combination of both.

42 3. 'Alternative program' means a non-disciplinary
43 monitoring or practice remediation process approved by a
44 physical therapy licensing board. This includes, but is not
45 limited to, substance abuse issues.

46 4. 'Compact privilege' means the authorization granted
47 by a remote state to allow a licensee from another member
48 state to practice as a physical therapist or work as a physical
49 therapist assistant in the remote state under its laws and
50 rules. The practice of physical therapy occurs in the member
51 state where the patient/client is located at the time of the
52 patient/client encounter.

53 5. 'Continuing competence' means a requirement, as a
54 condition of license renewal, to provide evidence of
55 participation in, and/or completion of, educational and
56 professional activities relevant to practice or area of work.

57 6. 'Data system' means a repository of information
58 about licensees, including examination, licensure,
59 investigative, compact privilege, and adverse action.

60 7. 'Encumbered license' means a license that a physical
61 therapy licensing board has limited in any way.

62 8. 'Executive Board' means a group of directors elected
63 or appointed to act on behalf of, and within the powers
64 granted to them by, the Commission.

65 9. 'Home state' means the member state that is the
66 licensee's primary state of residence.

67 10. 'Investigative information' means information,
68 records, and documents received or generated by a physical
69 therapy licensing board pursuant to an investigation.

70 11. 'Jurisprudence requirement' means the assessment
71 of an individual's knowledge of the laws and rules
72 governing the practice of physical therapy in a state.

73 12. 'Licensee' means an individual who currently holds
74 an authorization from the state to practice as a physical
75 therapist or to work as a physical therapist assistant.

76 13. 'Member state' means a state that has enacted the
77 Compact.

78 14. 'Party state' means any member state in which a
79 licensee holds a current license or compact privilege or is
80 applying for a license or compact privilege.

81 15. 'Physical therapist' means an individual who is
82 licensed by a state to practice physical therapy.

83 16. 'Physical therapist assistant' means an individual
84 who is licensed/certified by a state and who assists the
85 physical therapist in selected components of physical
86 therapy.

87 17. 'Physical therapy,' 'physical therapy practice,' and
88 'the practice of physical therapy' mean the care and services
89 provided by or under the direction and supervision of a
90 licensed physical therapist.

91 18. 'Physical Therapy Compact Commission' or
92 'Commission' means the national administrative body

93 whose membership consists of all states that have enacted
94 the Compact.

95 19. ‘Physical therapy licensing board’ or ‘licensing
96 board’ means the agency of a state that is responsible for the
97 licensing and regulation of physical therapists and physical
98 therapist assistants.

99 20. ‘Remote state’ means a member state other than the
100 home state, where a licensee is exercising or seeking to
101 exercise the compact privilege.

102 21. ‘Rule’ means a regulation, principle, or directive
103 promulgated by the Commission that has the force of law.

104 22. ‘State’ means any state, commonwealth, district, or
105 territory of the United States of America that regulates the
106 practice of physical therapy.

107 SECTION 3. STATE PARTICIPATION IN THE COMPACT

108 A. To participate in the Compact, a state must:

109 1. Participate fully in the Commission’s data system,
110 including using the Commission’s unique identifier as
111 defined in rules;

112 2. Have a mechanism in place for receiving and
113 investigating complaints about licensees;

114 3. Notify the Commission, in compliance with the terms
115 of the Compact and rules, of any adverse action or the
116 availability of investigative information regarding a
117 licensee;

118 4. Fully implement a criminal background check
119 requirement, within a time frame established by rule, by
120 receiving the results of the Federal Bureau of Investigation
121 record search on criminal background checks and use the
122 results in making licensure decisions in accordance with
123 Section 3B;

124 5. Comply with the rules of the Commission;

125 6. Utilize a recognized national examination as a
126 requirement for licensure pursuant to the rules of the
127 Commission; and

128 7. Have continuing competence requirements as a
129 condition for license renewal.

130 B. Upon adoption of this statute, the member state shall
131 have the authority to obtain biometric-based information
132 from each physical therapy licensure applicant and to
133 submit this information to the Federal Bureau of
134 Investigation for a criminal background check in
135 accordance with 28 U.S.C. § 534 and 42 U.S.C. § 14616.

136 C. A member state shall grant the compact privilege to
137 a licensee holding a valid unencumbered license in another
138 member state in accordance with the terms of the Compact
139 and rules.

140 D. Member states may charge a fee for granting a
141 compact privilege.

142 SECTION 4. COMPACT PRIVILEGE

143 A. To exercise the compact privilege under the terms
144 and provisions of the Compact, the licensee shall:

145 1. Hold a license in the home state;

146 2. Have no encumbrance on any state license;

147 3. Be eligible for a compact privilege in any member
148 state in accordance with Section 4D, G and H;

149 4. Have not had any adverse action against any license
150 or compact privilege within the previous 2 years;

151 5. Notify the Commission that the licensee is seeking
152 the compact privilege within a remote state(s);

153 6. Pay any applicable fees, including any state fee, for
154 the compact privilege;

155 7. Meet any jurisprudence requirements established by
156 the remote state(s) in which the licensee is seeking a
157 compact privilege; and

158 8. Report to the Commission adverse action taken by
159 any non-member state within 30 days from the date the
160 adverse action is taken.

161 B. The compact privilege is valid until the expiration
162 date of the home license. The licensee must comply with the
163 requirements of Section 4A to maintain the compact
164 privilege in the remote state.

165 C. A licensee providing physical therapy in a remote
166 state under the compact privilege shall function within the
167 laws and regulations of the remote state.

168 D. A licensee providing physical therapy in a remote
169 state is subject to that state's regulatory authority. A remote
170 state may, in accordance with due process and that state's
171 laws, remove a licensee's compact privilege in the remote
172 state for a specific period of time, impose fines, and/or take
173 any other necessary actions to protect the health and safety
174 of its citizens. The licensee is not eligible for a compact
175 privilege in any state until the specific time for removal has
176 passed and all fines are paid.

177 E. If a home-state license is encumbered, the licensee
178 shall lose the compact privilege in any remote state until the
179 following occur:

180 1. The home state license is no longer encumbered; and

181 2. Two years have elapsed from the date of the adverse
182 action.

183 F. Once an encumbered license in the home state is
184 restored to good standing, the licensee must meet the

185 requirements of Section 4A to obtain a compact privilege in
186 any remote state.

187 G. If a licensee's compact privilege in any remote state
188 is removed, the individual shall lose the compact privilege
189 in any remote state until the following occur:

190 1. The specific period of time for which the compact
191 privilege was removed has ended;

192 2. All fines have been paid; and

193 3. Two years have elapsed from the date of the adverse
194 action.

195 H. Once the requirements of Section 4G have been met,
196 the license must meet the requirements in Section 4A to
197 obtain a compact privilege in a remote state.

198 SECTION 5. ACTIVE DUTY MILITARY PERSONNEL 199 OR THEIR SPOUSES

200 A licensee who is active duty military or is the spouse
201 of an individual who is active duty military may designate
202 one of the following as the home state:

203 A. Home of record;

204 B. Permanent Change of Station (PCS); or

205 C. State of current residence if it is different than the
206 PCS state or home of record.

207 SECTION 6. ADVERSE ACTIONS

208 A. A home state shall have exclusive power to impose
209 adverse action against a license issued by the home state.

210 B. A home state may take adverse action based on the
211 investigative information of a remote state, so long as the
212 home state follows its own procedures for imposing adverse
213 action.

214 C. Nothing in this Compact shall override a member
215 state's decision that participation in an alternative program
216 may be used in lieu of adverse action and that such
217 participation shall remain non-public if required by the
218 member state's laws. Member states must require licensees
219 who enter any alternative programs in lieu of discipline to
220 agree not to practice in any other member state during the
221 term of the alternative program without prior authorization
222 from such other member state.

223 D. Any member state may investigate actual or alleged
224 violations of the statutes and rules authorizing the practice
225 of physical therapy in any other member state in which a
226 physical therapist or physical therapist assistant holds a
227 license or compact privilege.

228 E. A remote state shall have the authority to:

229 1. Take adverse actions as set forth in Section 4D
230 against a licensee's compact privilege in the state;

231 2. Issue subpoenas for both hearings and investigations
232 that require the attendance and testimony of witnesses and
233 the production of evidence. Subpoenas issued by a physical
234 therapy licensing board in a party state for the attendance
235 and testimony of witnesses, and/or the production of
236 evidence from another party state, shall be enforced in the
237 latter state by any court of competent jurisdiction, according
238 to the practice and procedure of that court applicable to
239 subpoenas issued in proceedings pending before it. The
240 issuing authority shall pay any witness fees, travel expenses,
241 mileage, and other fees required by the service statutes of
242 the state where the witnesses and/or evidence are located;
243 and

244 3. If otherwise permitted by state law, recover from the
245 licensee the costs of investigations and disposition of cases
246 resulting from any adverse action taken against that
247 licensee.

248 F. Joint Investigations:

249 1. In addition to the authority granted to a member state
250 by its respective physical therapy practice act or other
251 applicable state law, a member state may participate with
252 other member states in joint investigations of licensees.

253 2. Member states shall share any investigative,
254 litigation, or compliance materials in furtherance of any
255 joint or individual investigation initiated under the
256 Compact.

257 SECTION 7. ESTABLISHMENT OF THE PHYSICAL
258 THERAPY COMPACT COMMISSION.

259 A. The Compact member states hereby create and
260 establish a joint public agency known as the Physical
261 Therapy Compact Commission:

262 1. The Commission is an instrumentality of the Compact
263 states.

264 2. Venue is proper and judicial proceedings by or
265 against the Commission shall be brought solely and
266 exclusively in a court of competent jurisdiction where the
267 principal office of the Commission is located. The
268 Commission may waive venue and jurisdictional defenses
269 to the extent it adopts or consents to participate in alternative
270 dispute resolution proceedings.

271 3. Nothing in this Compact shall be construed to be a
272 waiver of sovereign immunity.

273 B. Membership, Voting, and Meetings:

274 1. Each member state shall have and be limited to one
275 delegate selected by that member state's licensing board.

276 2. The delegate shall be a current member of the
277 licensing board, who is a physical therapist, physical

278 therapist assistant, public member, or the board
279 administrator.

280 3. Any delegate may be removed or suspended from
281 office as provided by the law of the state from which the
282 delegate is appointed.

283 4. The member state board shall fill any vacancy
284 occurring in the Commission.

285 5. Each delegate shall be entitled to one vote with regard
286 to the promulgation of rules and creation of bylaws and shall
287 otherwise have an opportunity to participate in the business
288 and affairs of the Commission.

289 6. A delegate shall vote in person or by such other means
290 as provided in the bylaws. The bylaws may provide for
291 delegates' participation in meetings by telephone or other
292 means of communication.

293 7. The Commission shall meet at least once during each
294 calendar year. Additional meetings shall be held as set forth
295 in the bylaws.

296 C. The Commission shall have the following powers
297 and duties:

298 1. Establish the fiscal year of the Commission;

299 2. Establish bylaws;

300 3. Maintain its financial records in accordance with the
301 bylaws;

302 4. Meet and take such actions as are consistent with the
303 provisions of this Compact and the bylaws;

304 5. Promulgate uniform rules to facilitate and coordinate
305 implementation and administration of this Compact. The
306 rules shall have the force and effect of law and shall be
307 binding in all member states;

308 6. Bring and prosecute legal proceedings or actions in
309 the name of the Commission, provided that the standing of
310 any state physical therapy licensing board to sue or be sued
311 under applicable law shall not be affected;

312 7. Purchase and maintain insurance and bonds;

313 8. Borrow, accept, or contract for services of personnel,
314 including, but not limited to, employees of a member state;

315 9. Hire employees, elect or appoint officers, fix
316 compensation, define duties, grant such individuals
317 appropriate authority to carry out the purposes of the
318 Compact and to establish the Commission's personnel
319 policies and programs relating to conflicts of interest,
320 qualifications of personnel, and other related personnel
321 matters;

322 10. Accept any and all appropriate donations and grants
323 of money, equipment, supplies, materials, and services, and
324 to receive, utilize, and dispose of the same; provided that at
325 all times the Commission shall avoid any appearance of
326 impropriety and/or conflict of interest;

327 11. Lease, purchase, accept appropriate gifts or
328 donations of, or otherwise to own, hold, improve or use any
329 property, real, personal or mixed; provided that at all times
330 the Commission shall avoid any appearance of impropriety;

331 12. Sell, convey, mortgage, pledge, lease, exchange,
332 abandon, or otherwise dispose of any property real,
333 personal, or mixed;

334 13. Establish a budget and make expenditures;

335 14. Borrow money;

336 15. Appoint committees, including standing committees
337 comprising of members, state regulators, state legislators or
338 their representatives, and consumer representatives, and

339 such other interested persons as may be designated in this
340 Compact and the bylaws;

341 16. Provide and receive information from, and
342 cooperate with, law-enforcement agencies;

343 17. Establish and elect an Executive Board; and

344 18. Perform such other functions as may be necessary
345 or appropriate to achieve the purposes of this Compact
346 consistent with the state regulation of physical therapy
347 licensure and practice.

348 D. The Executive Board

349 The Executive Board shall have the power to act on
350 behalf of the Commission according to the terms of this
351 Compact:

352 1. The Executive Board shall be comprised of nine
353 members:

354 a. Seven voting members who are elected by the
355 Commission from the current membership of the
356 Commission;

357 b. One ex-officio, nonvoting member from a recognized
358 national physical therapy professional association; and

359 c. One ex-officio, nonvoting member from a recognized
360 membership organization of the physical therapy licensing
361 boards.

362 2. The ex-officio members will be selected by their
363 respective organizations.

364 3. The Commission may remove any member of the
365 Executive Board as provided in bylaws.

366 4. The Executive Board shall meet at least annually.

367 5. The Executive Board shall have the following duties
368 and responsibilities:

369 a. Recommend to the entire Commission changes to the
370 rules or bylaws, changes to this Compact legislation, fees
371 paid by Compact member states such as annual dues, and
372 any commission Compact fee charged to licensees for the
373 compact privilege;

374 b. Ensure Compact administration services are
375 appropriately provided, contractual or otherwise;

376 c. Prepare and recommend the budget;

377 d. Maintain financial records on behalf of the
378 Commission;

379 e. Monitor Compact compliance of member states and
380 provide compliance reports to the Commission;

381 f. Establish additional committees as necessary; and

382 g. Other duties as provided in rules or bylaws.

383 E. Meetings of the Commission:

384 1. All meetings shall be open to the public, and public
385 notice of meetings shall be given in the same manner as
386 required under the rulemaking provisions in Section 9.

387 2. The Commission or the Executive Board or other
388 committees of the Commission may convene in a closed,
389 non-public meeting if the Commission or Executive Board
390 or other committees of the Commission must discuss:

391 a. Non-compliance of a member state with its
392 obligations under the Compact;

393 b. The employment, compensation, discipline or other
394 matters, practices or procedures related to specific
395 employees, or other matters related to the Commission's
396 internal personnel practices and procedures;

397 c. Current, threatened, or reasonably anticipated
398 litigation;

399 d. Negotiation of contracts for the purchase, lease, or
400 sale of goods, services, or real estate;

401 e. Accusing any person of a crime or formally censuring
402 any person;

403 f. Disclosure of trade secrets or commercial or financial
404 information that is privileged or confidential;

405 g. Disclosure of information of a personal nature where
406 disclosure would constitute a clearly unwarranted invasion
407 of personal privacy;

408 h. Disclosure of investigative records compiled for law-
409 enforcement purposes;

410 i. Disclosure of information related to any investigative
411 reports prepared by or on behalf of or for use of the
412 Commission or other committee charged with responsibility
413 of investigation or determination of compliance issues
414 pursuant to the Compact; or

415 j. Matters specifically exempted from disclosure by
416 federal or member state statute.

417 3. If a meeting, or portion of a meeting, is closed
418 pursuant to this provision, the Commission's legal counsel
419 or designee shall certify that the meeting may be closed and
420 shall reference each relevant exempting provision.

421 4. The Commission shall keep minutes that fully and
422 clearly describe all matters discussed in a meeting and shall
423 provide a full and accurate summary of actions taken and
424 the reasons therefore, including a description of the views
425 expressed. All documents considered in connection with an
426 action shall be identified in such minutes. All minutes and
427 documents of a closed meeting shall remain under seal,

428 subject to release by a majority vote of the Commission or
429 order of a court of competent jurisdiction.

430 F. Financing of the Commission:

431 1. The Commission shall pay, or provide for the
432 payment of, the reasonable expenses of its establishment,
433 organization, and ongoing activities.

434 2. The Commission may accept any and all appropriate
435 revenue sources, donations, and grants of money,
436 equipment, supplies, materials, and services.

437 3. The Commission may levy on and collect an annual
438 assessment from each member state or impose fees on other
439 parties to cover the cost of the operations and activities of
440 the Commission and its staff, which must be in a total
441 amount sufficient to cover its annual budget as approved
442 each year for which revenue is not provided by other
443 sources. The aggregate annual assessment amount shall be
444 allocated based upon a formula to be determined by the
445 Commission, which shall promulgate a rule binding upon
446 all member states.

447 4. The Commission shall not incur obligations of any
448 kind prior to securing the funds adequate to meet the same;
449 nor shall the Commission pledge the credit of any of the
450 member states, except by and with the authority of the
451 member state.

452 5. The Commission shall keep accurate accounts of all
453 receipts and disbursements. The receipts and disbursements
454 of the Commission shall be subject to the audit and
455 accounting procedures established under its bylaws.
456 However, all receipts and disbursements of funds handled
457 by the Commission shall be audited yearly by a certified or
458 licensed public accountant, and the report of the audit shall
459 be included in and become part of the annual report of the
460 Commission.

461 G. Qualified Immunity, Defense, and Indemnification:

462 1. The members, officers, executive director,
463 employees, and representatives of the Commission shall be
464 immune from suit and liability, either personally or in their
465 official capacity, for any claim for damage to or loss of
466 property or personal injury or other civil liability caused by
467 or arising out of any actual or alleged act, error, or omission
468 that occurred, or that the person against whom the claim is
469 made had a reasonable basis for believing occurred within
470 the scope of Commission employment, duties, or
471 responsibilities; provided that nothing in this paragraph
472 shall be construed to protect any such person from suit
473 and/or liability for any damage, loss, injury, or liability
474 caused by the intentional or willful or wanton misconduct
475 of that person.

476 2. The Commission shall defend any member, officer,
477 executive director, employee, or representative of the
478 Commission in any civil action seeking to impose liability
479 arising out of any actual or alleged act, error, or omission
480 that occurred within the scope of Commission employment,
481 duties, or responsibilities, or that the person against whom
482 the claim is made had a reasonable basis for believing
483 occurred within the scope of Commission employment,
484 duties, or responsibilities; provided that nothing herein shall
485 be construed to prohibit that person from retaining his or her
486 own counsel; and provided further, that the actual or alleged
487 act, error, or omission did not result from that person's
488 intentional or willful or wanton misconduct.

489 3. The Commission shall indemnify and hold harmless
490 any member, officer, executive director, employee, or
491 representative of the Commission for the amount of any
492 settlement or judgment obtained against that person arising
493 out of any actual or alleged act, error, or omission that
494 occurred within the scope of Commission employment,
495 duties, or responsibilities, or that such person had a
496 reasonable basis for believing occurred within the scope of
497 Commission employment, duties, or responsibilities,
498 provided that the actual or alleged act, error, or omission did

499 not result from the intentional or willful or wanton
500 misconduct of that person.

501 SECTION 8. DATA SYSTEM

502 A. The Commission shall provide for the development,
503 maintenance, and utilization of a coordinated database and
504 reporting system containing licensure, adverse action, and
505 investigative information on all licensed individuals in
506 member states.

507 B. Notwithstanding any other provision of state law to
508 the contrary, a member state shall submit a uniform data set
509 to the data system on all individuals to whom this Compact
510 is applicable as required by the rules of the Commission,
511 including:

512 1. Identifying information;

513 2. Licensure data;

514 3. Adverse actions against a license or compact
515 privilege;

516 4. Non-confidential information related to alternative
517 program participation;

518 5. Any denial of application for licensure, and the
519 reason(s) for such denial; and

520 6. Other information that may facilitate the
521 administration of this Compact, as determined by the rules
522 of the Commission.

523 C. Investigative information pertaining to a licensee in
524 any member state will only be available to other party states.

525 D. The Commission shall promptly notify all member
526 states of any adverse action taken against a licensee or an
527 individual applying for a license. Adverse action
528 information pertaining to a licensee in any member state
529 will be available to any other member state.

530 E. Member states contributing information to the data
531 system may designate information that may not be shared
532 with the public without the express permission of the
533 contributing state.

534 F. Any information submitted to the data system that is
535 subsequently required to be expunged by the laws of the
536 member state contributing the information shall be removed
537 from the data system.

538 SECTION 9. RULEMAKING

539 A. The Commission shall exercise its rulemaking
540 powers pursuant to the criteria set forth in this section and
541 the rules adopted thereunder. Rules and amendments shall
542 become binding as of the date specified in each rule or
543 amendment.

544 B. If a majority of the legislatures of the member states
545 rejects a rule, by enactment of a statute, resolution, or
546 refusal to adopt the rules as promulgated by the state
547 licensing authority, in the same manner used to adopt the
548 Compact, within four years of the date of adoption of the
549 rule, then such rule shall have no further force and effect in
550 any member state.

551 C. Rules or amendments to the rules shall be adopted at
552 a regular or special meeting of the Commission.

553 D. Prior to promulgation and adoption of a final rule or
554 rules by the Commission, and at least 30 days in advance of
555 the meeting at which the rule will be considered and voted
556 upon, the Commission shall file a Notice of Proposed
557 Rulemaking:

558 1. On the website of the Commission or other publicly
559 accessible platform; and

560 2. On the website of each member state physical therapy
561 licensing board or other publicly accessible platform or the

562 publication in which each state would otherwise publish
563 proposed rules.

564 E. The Notice of Proposed Rulemaking shall include:

565 1. The proposed time, date, and location of the meeting
566 in which the rule will be considered and voted upon;

567 2. The text of the proposed rule or amendment and the
568 reason for the proposed rule;

569 3. A request for comments on the proposed rule from
570 any interested person; and

571 4. The manner in which interested persons may submit
572 notice to the Commission of their intention to attend the
573 public hearing and any written comments.

574 F. Prior to adoption of a proposed rule, the Commission
575 shall allow persons to submit written data, facts, opinions,
576 and arguments, which shall be made available to the public.

577 G. The Commission shall grant an opportunity for a
578 public hearing before it adopts a rule or amendment if a
579 hearing is requested by:

580 1. At least 25 persons;

581 2. A state or federal governmental subdivision or
582 agency; or

583 3. An association having at least 25 members.

584 H. If a hearing is held on the proposed rule or
585 amendment, the Commission shall publish the place, time,
586 and date of the scheduled public hearing. If the hearing is
587 held via electronic means, the Commission shall publish the
588 mechanism for access to the electronic hearing:

589 1. All persons wishing to be heard at the hearing shall
590 notify the executive director of the Commission or other
591 designated member in writing of their desire to appear and

592 testify at the hearing no fewer than five business days before
593 the scheduled date of the hearing.

594 2. Hearings shall be conducted in a manner providing
595 each person who wishes to comment a fair and reasonable
596 opportunity to comment orally or in writing.

597 3. All hearings will be recorded. A copy of the recording
598 will be made available on request.

599 4. Nothing in this section shall be construed as requiring
600 a separate hearing on each rule. Rules may be grouped for
601 the convenience of the Commission at hearings required by
602 this section.

603 I. Following the scheduled hearing date, or by the close
604 of business on the scheduled hearing date if the hearing was
605 not held, the Commission shall consider all written and oral
606 comments received.

607 J. If no written notice of intent to attend the public
608 hearing by interested parties is received, the Commission
609 may proceed with promulgation of the proposed rule
610 without a public hearing.

611 K. The Commission shall, by majority vote of all
612 members, take final action on the proposed rule and shall
613 determine the effective date of the rule, if any, based on the
614 rulemaking record and the full text of the rule.

615 L. Upon determination that an emergency exists, the
616 Commission may consider and adopt an emergency rule
617 without prior notice, opportunity for comment or hearing,
618 provided that the usual rulemaking procedures provided in
619 the Compact and in this section shall be retroactively
620 applied to the rule as soon as reasonably possible, in no
621 event later than 90 days after the effective date of the rule.
622 For the purposes of this provision, an emergency rule is one
623 that must be adopted immediately in order to:

624 1. Meet an imminent threat to public health, safety, or
625 welfare;

626 2. Prevent a loss of Commission or member state funds;

627 3. Meet a deadline for the promulgation of an
628 administrative rule that is established by federal law or rule;
629 or

630 4. Protect public health and safety.

631 M. The Commission or an authorized committee of the
632 Commission may direct revisions to a previously adopted
633 rule or amendment for purposes of correcting typographical
634 errors, errors in format, errors in consistency, or
635 grammatical errors. Public notice of any revisions shall be
636 posted on the website of the Commission. The revision shall
637 be subject to challenge by any person for a period of 30 days
638 after posting. The revision may be challenged only on
639 grounds that the revision results in a material change to a
640 rule. A challenge shall be made in writing and delivered to
641 the chair of the Commission prior to the end of the notice
642 period. If no challenge is made, the revision will take effect
643 without further action. If the revision is challenged, the
644 revision may not take effect without the approval of the
645 Commission.

646 SECTION 10. OVERSIGHT, DISPUTE RESOLUTION,
647 AND ENFORCEMENT

648 A. Oversight:

649 1. The executive, legislative, and judicial branches of
650 state government in each member state shall enforce this
651 Compact and take all actions necessary and appropriate to
652 effectuate the Compact's purposes and intent. The
653 provisions of this Compact and the rules promulgated
654 hereunder shall have standing as statutory law subject to the
655 limitations set forth herein.

656 2. All courts shall take judicial notice of the Compact
657 and the rules, if approved by the Legislature, in any judicial
658 or administrative proceeding in a member state pertaining
659 to the subject matter of this Compact which may affect the
660 powers, responsibilities, or actions of the Commission.

661 3. The Commission shall be entitled to receive service
662 of process in any such proceeding, and shall have standing
663 to intervene in such a proceeding for all purposes. Failure to
664 provide service of process to the Commission shall render a
665 judgment or order void as to the Commission, this Compact,
666 or promulgated rules.

667 B. Default, Technical Assistance, and Termination:

668 1. If the Commission determines that a member state has
669 defaulted in the performance of its obligations or
670 responsibilities under this Compact or the promulgated
671 rules, the Commission shall:

672 a. Provide written notice to the defaulting state and other
673 member states of the nature of the default, the proposed
674 means of curing the default and/or any other action to be
675 taken by the Commission; and

676 b. Provide remedial training and specific technical
677 assistance regarding the default.

678 2. If a state in default fails to cure the default, the
679 defaulting state may be terminated from, the Compact upon
680 an affirmative vote of a majority of the member states, and
681 all rights, privileges and benefits conferred by this Compact
682 may be terminated on the effective date of termination. A
683 cure of the default does not relieve the offending state of
684 obligations or liabilities incurred during the period of
685 default.

686 3. Termination of membership in the Compact shall be
687 imposed only after all other means of securing compliance
688 have been exhausted. Notice of intent to suspend or
689 terminate shall be given by the Commission to the governor,

690 the majority and minority leaders of the defaulting state's
691 legislature, and each of the member states.

692 4. A state that has been terminated is responsible for all
693 assessments, obligations, and liabilities incurred through the
694 effective date of termination, including obligations that
695 extend beyond the effective date of termination.

696 5. The Commission shall not bear any costs related to a
697 state that is found to be in default or that has been terminated
698 from the Compact, unless agreed upon in writing between
699 the Commission and the defaulting state.

700 6. The defaulting state may appeal the action of the
701 Commission by petitioning the U.S. District Court for the
702 District of Columbia or the federal district where the
703 Commission has its principal offices. The prevailing
704 member shall be awarded all costs of such litigation,
705 including reasonable attorneys' fees.

706 C. Dispute Resolution:

707 1. Upon request by a member state, the Commission
708 shall attempt to resolve disputes related to the Compact that
709 arise among member states and between member and non-
710 member states.

711 2. The Commission shall promulgate a rule providing
712 for both mediation and binding dispute resolution for
713 disputes as appropriate.

714 D. Enforcement:

715 1. The Commission, in the reasonable exercise of its
716 discretion, shall enforce the provisions and rules of this
717 Compact.

718 2. By majority vote, the Commission may initiate legal
719 action in the United States District Court for the District of
720 Columbia or the federal district where the Commission has
721 its principal offices against a member state in default, in

722 order to enforce compliance with the provisions of the
723 Compact, its promulgated rules, and bylaws. The relief
724 sought may include both injunctive relief and damages. In
725 the event judicial enforcement is necessary, the prevailing
726 member shall be awarded all costs of such litigation,
727 including reasonable attorneys' fees.

728 3. The remedies herein shall not be the exclusive
729 remedies of the Commission. The Commission may pursue
730 any other remedies available under federal or state law.

731 SECTION 11. DATE OF IMPLEMENTATION OF THE
732 INTERSTATE COMMISSION FOR PHYSICAL
733 THERAPY PRACTICE; ASSOCIATED RULES,
734 WITHDRAWAL, AND AMENDMENT

735 A. The Compact shall come into effect on the date on
736 which the Compact statute is enacted into law in the tenth
737 member state. The provisions, which become effective at
738 that time, shall be limited to the powers granted to the
739 Commission relating to assembly and the promulgation of
740 rules. Thereafter, the Commission shall meet and exercise
741 rulemaking powers necessary to the implementation and
742 administration of the Compact.

743 B. Any state that joins the Compact subsequent to the
744 Commission's initial adoption of the rules shall be subject
745 to the rules as they exist on the date on which the Compact
746 becomes law in that state. Any rule that has been previously
747 adopted by the Commission shall have the full force and
748 effect of law on the day the Compact becomes law in that
749 state.

750 C. Any member state may withdraw from this Compact
751 by enacting a statute repealing the same:

752 1. A member state's withdrawal shall not take effect
753 until six months after enactment of the repealing statute.

754 2. Withdrawal shall not affect the continuing
755 requirement of the withdrawing state's physical therapy
756 licensing board to comply with the investigative and
757 adverse action reporting requirements of this act prior to the
758 effective date of withdrawal.

759 D. Nothing contained in this Compact shall be construed
760 to invalidate or prevent any physical therapy licensure
761 agreement or other cooperative arrangement between a
762 member state and a non-member state that does not conflict
763 with the provisions of this Compact.

764 E. This Compact may be amended by the member states.
765 No amendment to this Compact shall become effective and
766 binding upon any member state until it is enacted into the
767 laws of all member states.

768 SECTION 12. CONSTRUCTION AND SEVERABILITY

769 This Compact shall be liberally construed so as to
770 effectuate the purposes thereof. The provisions of this
771 Compact shall be severable and if any phrase, clause,
772 sentence, or provision of this Compact is declared to be
773 contrary to the constitution of any party state or of the
774 United States or the applicability thereof to any government,
775 agency, person, or circumstance is held invalid, the validity
776 of the remainder of this Compact and the applicability
777 thereof to any government, agency, person, or circumstance
778 shall not be affected thereby. If this Compact shall be held
779 contrary to the constitution of any party state, the Compact
780 shall remain in full force and effect as to the remaining party
781 states and in full force and effect as to the party state
782 affected as to all severable matters.”

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CHAPTER 6

**(Com. Sub. for H. B. 102 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed May 21, 2018; in effect e 8, 2018.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §5H-1-2 of the Code of West Virginia, 1931, as amended, as contained in Chapter 211, Acts of the Legislature, Regular Session, 2018, relating to the West Virginia Fire, EMS, and Law-Enforcement Officer Survivor Benefit Act; creating a retroactive effective date; deleting a one-payment requirement for the benefit; requiring benefit distribution be consistent with the intestate statutes when no beneficiary documents are found; requiring the fire, EMS, or law-enforcement program to provide documentation of surviving spouse, descendants or parents of the decedent; and correcting terms for consistency of requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5H. SURVIVOR BENEFITS.

ARTICLE 1. WEST VIRGINIA FIRE, EMS, AND LAW- ENFORCEMENT OFFICER SURVIVOR BENEFIT ACT.

§5H-1-2. Death benefit for survivors.

- 1 (a) In the event a firefighter, EMS, or law-enforcement
- 2 provider dies as a proximate result of the performance of,
- 3 his or her duties, the department chief, within 30 days from
- 4 the date of death shall submit certification of the death to
- 5 the Governor's Office.

6 (b) This act includes both paid and volunteer fire, EMS,
7 and law-enforcement personnel acting in the performance
8 of his or her duties of any fire, EMS, or law-enforcement
9 department certified by the State of West Virginia.

10 (c) A firefighter, EMS, or law-enforcement provider is
11 considered to be acting in the performance of his or her
12 duties for the purposes of this act when he or she is
13 participating in any role of a fire, EMS, or law-enforcement
14 department function. This includes training, administration
15 meetings, fire, EMS, or law-enforcement incidents, service
16 calls, apparatus, equipment or station maintenance,
17 fundraisers, and travel to or from such functions.

18 (d) Travel includes riding upon or in any apparatus or
19 vehicle which is owned or used by the fire, EMS, or law-
20 enforcement department, or any other vehicle going to or
21 directly returning from a firefighter's home, place of
22 business, or other place where he or she shall have been
23 prior to participating in a fire, EMS, or law-enforcement
24 department function, or upon the authorization of the chief
25 of the department, agency head, or other person in charge.

26 (e) Certification shall include the name of the certified
27 fire, EMS, or law-enforcement program, the name of the
28 deceased firefighter, EMS, or law-enforcement provider,
29 the name or names and address of the beneficiary or
30 beneficiaries, any documentation designating a beneficiary
31 or beneficiaries, and setting forth the circumstances that
32 qualify the deceased individual for death benefits under this
33 act. Upon receipt of the certification from the certified fire,
34 EMS, or law-enforcement program, the state shall, from
35 moneys from the State Treasury, General Fund, pay to the
36 certified fire, EMS, or law-enforcement program the sum of
37 \$100,000 in the name of the beneficiary or beneficiaries of
38 the death benefit. Within five days of receipt of this sum
39 from the state, the fire, EMS, or law-enforcement program
40 certified by the state shall pay the sum as a benefit to the
41 surviving designated beneficiary or beneficiaries. If there is
42 no surviving designated beneficiary, then the sum shall be

43 paid as if the decedent had designated as beneficiaries those
44 persons who are entitled to inherit the decedent's intestate
45 estate, in the proportions established by §42-1-3 and §42-1-
46 3a of this Code. It is the responsibility of the certified fire,
47 EMS, or law-enforcement program to document the
48 beneficiary or beneficiaries above mentioned for purposes
49 of reporting to the Governor's Office.

50 (f) Any death ruled by a physician to be a result of an
51 injury sustained during any of the above mentioned
52 performance of fire department, EMS, or law-enforcement
53 duties will be eligible for this benefit, even if this death
54 occurs at a later time.

55 (g) Those individuals who are covered by this article are
56 eligible for only one state death benefit, paid pursuant to the
57 provisions of this section, regardless of the amount.

58 (h) Every department or agency head employing
59 persons to which this article applies shall provide notice of
60 the benefit provided hereby to such employees and
61 encourage covered employees to provide a written
62 designation of beneficiary to be maintained in the
63 employee's personnel file.

64 (i) Any person making application for certification as a
65 firefighter to which this section applies shall provide a
66 written designation of beneficiary using forms and
67 procedures prescribed by the State Fire Marshal. Any
68 person making application for emergency medical services
69 personnel certification to which this section applies shall
70 provide a written designation of beneficiary using forms and
71 procedures prescribed by the Commissioner of the Bureau
72 for Public Health.

73 (j) The operation of the amendments to this section
74 enacted during the 2018 Regular Session and 2018 First
75 Extraordinary Session of the Legislature shall be effective
76 retroactively to January 1, 2018.

●

CHAPTER 7

**(Com. Sub. for S. B. 1004 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed May 21, 2018; in effect ninety days from passage.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §15-9A-4 of the Code of West Virginia, 1931, as amended, as contained in Chapter 216, Acts of the Legislature, Regular Session, 2018, relating to modifying the type of businesses and establishments required to post human trafficking assistance notices; modifying the criminal penalties for failure to comply with posting of notices once given notice of lawful duty to post; providing that a business or establishment that does not correct a violation within 30 days from the receipt of notice is guilty of a misdemeanor and, upon a first conviction thereof, shall be fined not more than \$250; and providing that a second or subsequent conviction is punishable by a fine of not less than \$250 nor more than \$500.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.

§15-9A-4. Human trafficking assistance notices.

1 (a) For the purpose of assisting victims of human
2 trafficking to obtain help and services, the following
3 businesses and establishments shall post a notice which
4 meets the requirements of this section:

5 (1) All locations licensed by the Alcohol Beverage
6 Control Commissioner that permit on-premises

7 consumption of alcoholic beverages, pursuant to §60-7-1 *et*
8 *seq.* of this code;

9 (2) Exotic entertainment facilities, which are facilities
10 featuring live nude dancing, nude service personnel, or live
11 nude entertainment;

12 (3) Primary airports;

13 (4) Passenger rail stations;

14 (5) Bus stations;

15 (6) Locations where gasoline and diesel fuel are sold;

16 (7) Emergency departments within hospitals;

17 (8) Urgent care centers;

18 (9) Locations at which farm labor contractors and day
19 haulers work, if a physical facility is available at those
20 locations upon or in which notice can be posted;

21 (10) Privately operated job recruitment centers;

22 (11) Rest areas located along interstate highways in this
23 state, operated by the Division of Highways;

24 (12) Hotels; and

25 (13) Any other business or establishment that the
26 director determines, by legislative rule, is an effective
27 location to provide notice to victims of human trafficking.

28 (b) *Requirements for posting of notice.* — The notice
29 required by this section must be posted in English, Spanish,
30 and any other language determined by legislative rule by the
31 director. The notice must be posted in each public restroom
32 for the business or establishment, and either in a
33 conspicuous place near the public entrance of the business
34 or establishment or in another location in clear view of the

35 public and employees, where similar notices are
36 customarily posted.

37 (c) The director shall provide hyperlinks on the
38 division's website to downloadable notices that are eight
39 and one-half inches by 11 inches in size that provide
40 information regarding the National Human Trafficking
41 Resource Center and display the telephone number for the
42 National Human Trafficking Resource Center hotline.
43 These downloadable notices must be available in English,
44 Spanish, and any other language determined by legislative
45 rule by the director. These downloadable notices, if printed
46 and posted, will satisfy the notice posting requirements of
47 this section.

48 (d) Any law-enforcement officer, representative of the
49 Bureau for Public Health or of a county health department,
50 representative of the State Alcoholic Beverage Control
51 Commissioner, representative of the Division of Labor, or
52 other state representative inspecting a business or
53 establishment or otherwise lawfully acting under his or her
54 state authority, may notify, in writing, any business or
55 establishment that it has failed to comply with the
56 requirements of this section. The written notice must be
57 delivered to the noncomplying business or establishment by
58 certified mail, with return receipt requested. A business or
59 establishment that does not correct a violation within 30
60 days from the receipt of the written notice is guilty of a
61 misdemeanor and, upon a first conviction thereof, shall be
62 fined not more than \$250; and upon a second or subsequent
63 conviction, shall be fined not less than \$250 nor more than
64 \$500.

65 (e) For the purposes of this section, and unless a
66 different meaning is plainly required:

67 (1) "Day hauler" means any person who is employed by
68 a farm labor contractor to transport, or who, for a fee,

69 transports, by motor vehicle, workers to render personal
70 services in connection with the production of any farm
71 products to, for, or under the direction of a third person:
72 *Provided*, That such term shall not include a person engaged
73 in the production of agricultural products;

74 (2) "Farm labor contractor" means any person who, for
75 a fee, employs workers to render personal services in
76 connection with the production of any farm products to, for,
77 or under the direction of a third person, or who recruits,
78 solicits, supplies, or hires workers on behalf of an employer
79 engaged in the growing or producing of farm products, and
80 who, for a fee, provides in connection therewith one or more
81 of the following services: Furnishes board, lodging, or
82 transportation for those workers; supervises, times, checks,
83 counts, weighs, or otherwise directs or measures their work;
84 or disburses wage payments to such persons: *Provided*, That
85 such term shall not include a person engaged in the
86 production of agricultural products;

87 (3) "Hospital" shall have the same meaning as set forth
88 in §16-2D-2(21) of this code;

89 (4) "Hotel" means any establishment which offers
90 overnight accommodations to the public in exchange for a
91 monetary payment;

92 (5) "Primary airport" shall have the same meaning as set
93 forth in 49 U.S.C. § 47102(16); and

94 (6) "Production of agricultural products" means raising,
95 growing, harvesting, or storing of crops; feeding, breeding,
96 or managing livestock, equine, or poultry; producing or
97 storing feed for use in the production of livestock.

CHAPTER 8

**(Com. Sub. for S. B. 1006 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed May 21, 2018; in effect from passage.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §11A-3-19, §11A-3-20, §11A-3-27, §11A-3-55, and §11A-3-59 of the Code of West Virginia, 1931, as amended, all relating generally to purchasers of property tax liens securing a deed; amending the time frame during which a lien purchaser must provide certain information and fees to the Auditor to allow service of notice to redeem; amending the date by which a purchaser must provide notice to the Auditor that a lien purchased at a sheriff's sale was subject to an erroneous assessment or was nonexistent; amending the time frame during which the Auditor must execute and deliver deeds; and amending the time frame during which the Auditor must provide or publish notice to redeem a tax lien sold at a commissioner's sale.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3. SALE OF TAX LIENS AND NONENTERED,
ESCHEATED AND WASTE AND UNAPPROPRIATED
LANDS.**

§11A-3-19. What purchaser must do before the deed can be secured.

- 1 (a) At any time after August 31 of the year following the
- 2 sheriff's sale, and on or before October 31 of the same year,
- 3 the purchaser, his or her heirs or assigns, in order to secure
- 4 a deed for the real estate subject to the tax lien or liens
- 5 purchased, shall:

6 (1) Prepare a list of those to be served with notice to
7 redeem and request the State Auditor to prepare and serve
8 the notice as provided in §11A-3-21 and §11A-3-22 of this
9 code;

10 (2) When the real property subject to the tax lien is
11 classified as Class II property, provide the State Auditor
12 with the physical mailing address of the property that is
13 subject to the tax lien or liens purchased;

14 (3) Provide the State Auditor with a list of any
15 additional expenses incurred after January 1 of the year
16 following the sheriff's sale for the preparation of the list of
17 those to be served with notice to redeem, including proof of
18 the additional expenses in the form of receipts or other
19 evidence of reasonable legal expenses incurred for the
20 services of any attorney who has performed an examination
21 of the title to the real estate and rendered written
22 documentation used in the preparation of the list of those to
23 be served with the notice to redeem;

24 (4) Deposit with the State Auditor a sum sufficient to
25 cover the costs of preparing and serving the notice; and

26 (5) Present the purchaser's certificate of sale, or order
27 of the county commission where the certificate has been lost
28 or wrongfully withheld from the owner, to the State Auditor.

29 If the purchaser fails to meet these requirements he or
30 she shall lose all the benefits of his or her purchase.

31 (b) If the person requesting preparation and service of
32 the notice is an assignee of the purchaser he or she shall, at
33 the time of the request, file with the State Auditor a written
34 assignment to him or her of the purchaser's rights, executed,
35 acknowledged, and certified in the manner required to make
36 a valid deed.

37 (c) Whenever any certificate given by the sheriff for a
38 tax lien on any land, or interest in the land sold for
39 delinquent taxes, or any assignment of the lien is lost or

40 wrongfully withheld from the rightful owner of the land and
41 the land or interest has not been redeemed, the county
42 commission may receive evidence of the loss or wrongful
43 detention and, upon satisfactory proof of that fact, may
44 cause a certificate of the proof and finding, properly attested
45 by the State Auditor, to be delivered to the rightful claimant
46 and a record of the certificate shall be duly made by the
47 county clerk in the recorded proceedings of the commission.

§11A-3-20. Refund to purchaser of payment made at sheriff's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

1 If, by October 31 of the year following payment of the
2 amount bid at a sheriff's sale, the purchaser discovers that
3 the lien purchased at that sale is the subject of an erroneous
4 assessment or is otherwise nonexistent, the purchaser shall
5 submit the abstract or certificate of an attorney at law that
6 the property is the subject of an erroneous assessment or is
7 otherwise nonexistent. Upon receipt of the abstract or
8 certificate, the sheriff shall cause any money paid to be
9 refunded. Upon refund, the sheriff shall inform the assessor
10 and the State Auditor of the erroneous assessment for the
11 purpose of having the assessor correct the error. For failure
12 to meet this requirement, the purchaser shall lose all benefits
13 of his or her purchase.

§11A-3-27. Deed to purchaser; record.

1 (a) If the real estate described in the notice is not
2 redeemed within the time specified in the notice, then from
3 April 1 of the second year following the sheriff's sale until
4 the expiration of the lien evidenced by a tax certificate of
5 sale as provided in §11A-3-18 of this code, the State Auditor
6 or his or her deputy shall upon request of the purchaser
7 make and deliver to the clerk of the county commission, a
8 quitclaim deed for the real estate. The purchaser's right to a
9 tax deed shall be forfeited if the deed is not requested within
10 the 18-month period set forth in §11A-3-18 of this code. The
11 deed shall provide in form or effect as follows:

12 This deed made this _____ day of _____,
13 20 _____, by and between _____, State
14 Auditor, West Virginia, (or by and between
15 _____, a commissioner appointed by the circuit
16 court of _____ County, West Virginia) grantor,
17 and _____, purchaser, (or _____,
18 heir, devisee or assignee of _____,
19 purchaser), grantee, witnesseth, that:

20 Whereas, In pursuance of the statutes in such case made
21 and provided, _____, Sheriff of
22 _____ County, (or _____, deputy for
23 _____, Sheriff of _____ County), (or
24 _____, collector of _____ County),
25 did, in the month of _____, in the year 20 _____,
26 sell the tax lien(s) on real estate, hereinafter mentioned and
27 described, for the taxes delinquent thereon for the year (or
28 years) 20 _____, and _____, (here insert name
29 of purchaser) for the sum of \$ _____, that being the
30 amount of purchase money paid to the sheriff, did become
31 the purchaser of the tax lien(s) on such real estate (or on
32 _____ acres, part of the tract or land, or on an undivided
33 _____ interest in such real estate) which was
34 returned delinquent in the name of _____;
35 and

36 Whereas, The State Auditor has caused the notice to
37 redeem to be served on all persons required by law to be
38 served therewith; and

39 Whereas, The tax lien(s) on the real estate so purchased
40 has not been redeemed in the manner provided by law and
41 the time for redemption set in such notice has expired;

42 Now, therefore, the grantor, for and in consideration of
43 the premises and in pursuance of the statutes, doth grant
44 unto _____, grantee, his or her heirs and assigns
45 forever, the real estate on which the tax lien(s) so purchased
46 existed, situate in the county of _____,

47 bounded and described as follows:
48 _____.

49 Witness the following signature:
50 _____

51 State Auditor.

52 (b) The State Auditor shall execute and deliver a deed
53 within 120 days after the person entitled to the deed requests
54 the execution of the deed, except when directed to do
55 otherwise under §11A-3-28 of this code.

56 (c) For the execution of the deed and for all the
57 recording required by this section, a fee of \$50 and the
58 recording and transfer tax expenses shall be charged, to be
59 paid by the grantee upon delivery of the deed. The deed,
60 when duly acknowledged or proven, shall be recorded by
61 the clerk of the county commission in the deed book in the
62 clerk's office, together with any assignment from the
63 purchaser, if one was made, the notice to redeem, the return
64 of service of the notice, the affidavit of publication, if the
65 notice was served by publication, and any return receipts for
66 notices sent by certified mail.

67 (d) The State Auditor shall appoint employees of his or
68 her office to act as his or her designee to effect the purposes
69 of this section.

§11A-3-55. Service of notice.

1 As soon as the deputy commissioner has prepared the
2 notice provided for in §11A-3-54 of this code, he shall cause
3 it to be served upon all persons named on the list generated
4 by the purchaser pursuant to the provisions of §11A-3-52 of
5 this code. Such notice shall be mailed and, if necessary,
6 published at least 45 days prior to the first day a deed may
7 be issued following the deputy commissioner's sale.

8 The notice shall be served upon all such persons
9 residing or found in the state in the manner provided for

10 serving process commencing a civil action or by certified
11 mail, return receipt requested. The notice shall be served on
12 or before the thirtieth day following the request for such
13 notice.

14 If any person entitled to notice is a nonresident of this
15 state, whose address is known to the purchaser, he shall be
16 served at such address by certified mail, return receipt
17 requested.

18 If the address of any person entitled to notice, whether
19 a resident or nonresident of this state, is unknown to the
20 purchaser and cannot be discovered by due diligence on the
21 part of the purchaser, the notice shall be served by
22 publication as a Class III-0 legal advertisement in
23 compliance with the provisions of §59-3-1 *et seq.* of this
24 code and the publication area for such publication shall be
25 the county in which such real estate is located. If service by
26 publication is necessary, publication shall be commenced
27 when personal service is required as set forth above, and a
28 copy of the notice shall at the same time be sent by certified
29 mail, return receipt requested, to the last known address of
30 the person to be served. The return of service of such notice,
31 and the affidavit of publication, if any, shall be in the
32 manner provided for process generally and shall be filed and
33 preserved by the auditor in his office, together with any
34 return receipts for notices sent by certified mail.

35 In addition to the other notice requirements set forth in
36 this section, if the real property subject to the tax lien was
37 classified as Class II property at the time of the assessment,
38 at the same time the deputy commissioner issues the
39 required notices by certified mail, the deputy commissioner
40 shall forward a copy of the notice sent to the delinquent
41 taxpayer by first class mail, addressed to "Occupant", to the
42 physical mailing address for the subject property. The
43 physical mailing address for the subject property shall be
44 supplied by the purchaser of the property, pursuant to the
45 provisions of §11A-3-52 of this code. Where the mail is not

46 deliverable to an address at the physical location of the
47 subject property, the copy of the notice shall be sent to any
48 other mailing address that exists to which the notice would
49 be delivered to an occupant of the subject property.

§11A-3-59. Deed to purchaser; record.

1 If the real estate described in the notice is not redeemed
2 within the time specified therein, but in no event prior to 30
3 days after notices to redeem have been personally served, or
4 an attempt of personal service has been made, or such
5 notices have been mailed or, if necessary, published in
6 accordance with the provisions of §11A-3-55 of this code,
7 following the deputy commissioner's sale, the deputy
8 commissioner shall, upon the request of the purchaser, make
9 and deliver to the person entitled thereto a quitclaim deed
10 for such real estate in form or effect as follows:

11 This deed, made this _____ day of
12 _____, 20____, by and between
13 _____, deputy commissioner of delinquent and
14 nonentered lands of _____ County, West
15 Virginia, grantor, and _____, purchaser (or
16 _____ heir, devisee, assignee of
17 _____, purchaser) grantee,
18 witnesseth, that

19 Whereas, in pursuance of the statutes in such case made
20 and provided, _____, deputy
21 commissioner of delinquent and nonentered lands of
22 _____ County, did, on the _____ day
23 of _____, 20____, sell the real estate
24 hereinafter mentioned and described for the taxes
25 delinquent thereon for the year(s) 20____, (or as
26 nonentered land for failure of the owner thereof to have the
27 land entered on the land books for the years _____,
28 or as property escheated to the State of West Virginia, or as
29 waste or unappropriated property) for the sum of

30 \$ _____, that being the amount of
 31 purchase money paid to the deputy commissioner, and
 32 _____ (here insert name of purchaser) did become
 33 the purchaser of such real estate, which was returned
 34 delinquent in the name of _____ (or nonentered
 35 in the name of, or escheated from the estate of, or which was
 36 discovered as waste or unappropriated property); and

37 Whereas, the deputy commissioner has caused the
 38 notice to redeem to be served on all persons required by law
 39 to be served therewith; and

40 Whereas, the real estate so purchased has not been
 41 redeemed in the manner provided by law and the time for
 42 redemption set forth in such notice has expired.

43 Now, therefore, the grantor for and in consideration of
 44 the premises recited herein, and pursuant to the provisions
 45 of Article 3, Chapter 11A of the West Virginia Code, doth
 46 grant unto _____, grantee, his or her
 47 heirs and assigns forever, the real estate so purchased,
 48 situate in the County of _____, bounded and
 49 described as follows: _____
 50 (here insert description of property)

51 Witness the following signature:

52 _____

53 Deputy Commissioner of Delinquent and Nonentered
 54 Lands of _____ County

55 Except when ordered as provided in §11A-3-60 of this
 56 code, the deputy commissioner shall execute and deliver a
 57 deed within 120 days after the purchaser's right to the deed
 58 accrued.

59 For the preparation and execution of the deed and for all
 60 the recording required by this section, a fee of \$50 and the

61 recording expenses shall be charged, to be paid by the
62 grantee upon delivery of the deed. The deed, when duly
63 acknowledged or proven, shall be recorded by the clerk of
64 the county commission in the deed book in his or her office,
65 together with the assignment from the purchaser, if one was
66 made, the notice to redeem, the return of service of such
67 notice, the affidavit of publication, if the notice was served
68 by publication, and any return receipts for notices sent by
69 certified mail.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2017

CHAPTER 1

**(S. B. 2005 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed October 17, 2017; in effect from passage.]
[Approved by the Governor on October 24, 2017.]

AN ACT finding and declaring a claim against the state and its agency to be a moral obligation of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

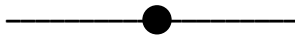
§1. Finding and declaring a certain claim against New River Community and Technical College to be a moral obligation of the state and directing payment thereof.

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 a certain claimant and
4 has considered this claim against the state and New River
5 Community and Technical College, an agency thereof,
6 which has arisen due to over-expenditures of the
7 departmental appropriations by officers of the state
8 spending unit, the claim having been previously considered
9 by the Legislative Claims Commission, which also found
10 that the state has received the benefit of the commodities
11 received and/or services rendered by the claimant, but was
12 denied by the Legislative Claims Commission on the purely

13 statutory grounds that to allow the claim would be
 14 condoning an act contrary to the laws of the state. The
 15 Legislature, pursuant to its findings of fact and also by the
 16 adoption of the findings of fact by the Legislative Claims
 17 Commission as its own, while not condoning such illegal
 18 act, hereby declares it to be the moral obligation of the state
 19 to pay this claim in the amount specified below and directs
 20 the Auditor to issue a warrant upon receipt of properly
 21 executed requisitions supported by itemized invoices,
 22 statements, or other satisfactory documents as required by
 23 section ten, article three, chapter twelve of the Code of West
 24 Virginia, 1931, as amended, for the payment thereof out of
 25 any fund appropriated and available for the purpose.

26 (TO BE PAID FROM SPECIAL REVENUE FUND)

27 G4S Secure Solutions (USA) Inc.\$74,296.58



CHAPTER 2

**(S. B. 2003 - By Senators Carmichael (Mr. President)
 and Prezioso)**

[By Request of the Executive]

[Passed October 17, 2017; in effect from passage.]
 [Approved by the Governor on October 24, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
 by adding thereto a new section, designated §11B-1-8; and to
 amend said code by adding thereto a new section, designated
 §17-2A-24, all relating generally to employment procedures
 of the Division of Highways and the Tax Division of the
 Department of Revenue; authorizing the Tax Commissioner
 and the Commissioner of Highways to implement special
 employment procedures for personnel positions in their
 respective divisions; making legislative findings; defining

terms; establishing requirements for the special employment procedures; exempting Tax Division of the Department of Revenue and Division of Highways from certain other employment procedures; permitting recommendations for new schedules of compensation; exempting Division of Personnel from involvement in certain grievance claims or settlements; directing Division of Personnel to facilitate special employment procedures; requiring Division of Personnel to perform any lawful action necessary to initiate or complete employment transactions of the Division of Highways or the Tax Division under newly established employment procedures; providing for continued application of due process; maintaining efficacy of code provisions prohibiting nepotism, favoritism and discrimination under the special employment procedures; authorizing the Commissioner of Highways and the Tax Commissioner to promulgate emergency rules; and requiring the Commissioner of Highways and the Tax Commissioner to propose legislative rules for the implementation of the special employment procedures authorized for their respective agencies.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11B-1-8; and that said code be amended by adding thereto a new section, designated §17-2A-24, all to read as follows:

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 1. DEPARTMENT OF REVENUE.

§11B-1-8. Special employment procedures for Tax Division personnel.

1 (a) *Legislative findings and intent.* —

2 (1) The Tax Division of the Department of Revenue has
3 approximately one hundred vacancies. The Legislature
4 finds that the division has long had difficulty filling
5 positions which are essential to efficiently and effectively

6 administering, collecting and enforcing the tax laws of this
7 state. The Legislature finds that, to address this problem, the
8 hiring and retention processes of the division must be
9 streamlined to effectively and efficiently meet personnel
10 needs while still affording applicants and employees the due
11 process protections of classified service.

12 (2) The ratification of the Roads to Prosperity
13 Amendment of 2017 to the Constitution of West Virginia
14 will result in substantially increased funding for roads and
15 highways in the state and the opportunity for in-state and
16 out-of-state contractors to bid on road projects. The need to
17 ensure that all businesses are in compliance with the tax
18 laws of this state will exacerbate the division's staffing
19 shortage.

20 (3) The purpose of this section is to allow the division
21 to employ qualified applicants in vacant and new personnel
22 positions within the division in a timely manner and to
23 ensure that the division maintains an adequate workforce to
24 effectively and fairly administer, collect and enforce the tax
25 laws of this state.

26 (b) *Definitions.* — As used in this section:

27 (1) “Commissioner” means the Commissioner of the
28 Tax Division of the Department of Revenue or his or her
29 designee; and

30 (2) “Division” means the Tax Division of the
31 Department of Revenue.

32 (c) *Special employment procedure; requirements.* —
33 The commissioner shall implement the special merit-based
34 application and appointment procedure authorized by the
35 provisions of this section for all the employees of the
36 division to ensure and provide for the selection and retention
37 of competent and qualified personnel. The special
38 application and employment procedure established pursuant

39 to this section shall be effective on and after December 1,
40 2017, and shall be subject to the following requirements:

41 (1) The Division of Personnel shall provide competitive
42 registers of eligible applicants when requested by the
43 division to do so within five business days of receipt of the
44 request;

45 (2) Any position to be filled internally shall be posted
46 for seven calendar days before the division may select an
47 applicant. For positions to be filled with applicants from
48 outside of the division, the public service announcement
49 shall be posted for not less than fourteen calendar days;

50 (3) Postings shall be active for up to one year;

51 (4) Notwithstanding any provision of law or rule
52 promulgated under the provisions of this code, the division
53 may employ any person listed on the register for
54 employment as a Tax and Revenue Auditor 1, Tax and
55 Revenue Auditor 2, Tax and Revenue Auditor 3, Revenue
56 Agent 1, Revenue Agent 2, Investigator 2 or Investigator 3
57 without regard to the person's position on the applicable
58 register;

59 (5) The division shall have full authority to evaluate
60 applicants for employment or promotion within the division
61 to positions within the classified service and classified-
62 exempt service. The division shall have sole authority to
63 determine whether applicants for positions with the division
64 meet minimum position requirements;

65 (6) The division shall have full authority to make
66 classification determinations for positions within the
67 division by using the classification system approved by the
68 State Personnel Board. The division may independently
69 submit to the State Personnel Board recommendations for
70 the approval of new division classifications or the
71 amendment of current division classifications;

72 (7) The division shall have full authority to exercise its
73 discretion regarding the application of the Division of
74 Personnel's system of compensation for positions within the
75 classified and classified-exempt service: *Provided*, That
76 application of this subdivision shall be uniform. The
77 division may independently submit to the State Personnel
78 Board recommendations for the approval of a special pay
79 scale for the division's personnel;

80 (8) Notwithstanding any provision of the code or of any
81 rule to the contrary, the Division of Personnel shall not be a
82 mandatory party to any public employee grievance filed
83 against the division. The Division of Personnel shall not be
84 a signatory to, and may not override or otherwise challenge,
85 the division's decisions regarding settlement terms and
86 conditions in employee grievances or other legal
87 proceedings;

88 (9) The Division of Personnel shall facilitate or perform
89 any lawful action necessary to initiate or complete the
90 division's employment transactions, including, but not
91 limited to, posting positions on applicable systems,
92 initiating public service announcements when requested by
93 the division, and processing necessary forms;

94 (10) The division shall comply with all applicable
95 record retention requirements provided by law;

96 (11) The division is authorized to declare any positions
97 effectively vacant due to employee separations, which were
98 not processed prior to the division being placed under the
99 wvOASIS system, vacant and subject to being filled
100 pursuant to the provisions of this section;

101 (12) The division shall have the flexibility to utilize all
102 vacant position numbers when posting to fill a vacancy and
103 to post vacant positions utilizing multiple classifications
104 with corresponding job descriptions when the commissioner
105 determines it to be necessary and in the best interest of the
106 division; and

107 (13) For purposes of this section, a vacancy created
108 when an employee of the division separates or goes on
109 terminal leave may be posted upon receipt of the notice that
110 the employee separated or commenced such leave.

111 (d) *Exemption from regular application and*
112 *appointment requirements.* — When seeking applications or
113 making appointments pursuant to the special procedure
114 authorized by subsection (c) of this section, the division is
115 not required to comply with Division of Personnel
116 procedures for seeking applications and making
117 appointments to classified service positions as provided by
118 the provisions of article six, chapter twenty-nine of this code
119 or in any other provision of this code, including those
120 procedures promulgated in procedural or legislative rules
121 promulgated by the commissioner pursuant to article three,
122 chapter twenty-nine-a of this code, except that this section
123 does not exempt the division from provisions of this code,
124 prohibiting nepotism, favoritism, discrimination or
125 unethical practices related to appointment, or the public
126 employee grievance system.

127 (e) The commissioner may promulgate emergency rules
128 and shall propose legislative rules pursuant to the provisions
129 of article three, chapter twenty-nine-a of this code as may
130 be necessary to implement and comply with the provisions
131 of this section.

132 (f) The provisions of this section shall apply
133 notwithstanding the provisions of article six, chapter
134 twenty-nine of this code to the contrary.

135 (g) Classified employees of the division shall continue
136 to be covered by the civil service system and may utilize any
137 applicable public employee grievance process.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. THE WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-24. Special employment procedures for Division of Highways personnel.

1 (a) *Legislative findings and intent.* —

2 (1) The Legislature previously commissioned a
3 performance audit to assess and improve the effectiveness
4 and efficiency of the core operations of the Division of
5 Highways. The Division of Highways has long had
6 difficulty filling positions which are essential to
7 constructing and maintaining the state's highways and
8 bridges. The Legislature finds that the hiring and retention
9 processes of the division must be streamlined to effectively
10 and efficiently meet personnel needs while still affording
11 applicants and employees the due process protections of
12 classified service.

13 (2) The Legislature has recently approved increased
14 funding for the division which will exacerbate its staffing
15 shortage of hundreds of positions.

16 (3) The purpose of this section is to allow the Division
17 of Highways to employ qualified applicants to vacant and
18 new personnel positions in the division in a timely manner
19 and to ensure that the Division of Highways has an adequate
20 workforce sufficient to maintain safe roadways for the
21 citizens of West Virginia.

22 (b) *Definitions.* — As used in this section:

23 (1) “Commissioner” means the Commissioner of the
24 Division of Highways or his or her designee; and

25 (2) “Division” means the Division of Highways.

26 (c) *Special employment procedure; requirements.* —
27 The commissioner shall implement the special merit-based
28 application and appointment procedure authorized by the
29 provisions of this section for all the employees of the
30 division to ensure and provide for the selection and retention
31 of competent and qualified personnel. The special

32 application and employment procedure established pursuant
33 to this section shall be effective on and after December 1,
34 2017, and shall be subject to the following requirements:

35 (1) The Division of Personnel shall provide competitive
36 registers of eligible applicants when requested by the
37 division to do so within five business days of receipt of the
38 request;

39 (2) Any position to be filled internally shall be posted
40 for seven calendar days before the division may select an
41 applicant. For positions to be filled with an applicant from
42 outside of the division, the public service announcement
43 shall be posted for not less than fourteen calendar days;

44 (3) Postings shall be active for up to one year;

45 (4) Notwithstanding any provision of law or of any rule
46 promulgated under the provisions of this code, the division
47 may employ any person listed on the Transportation Worker
48 I register for employment as a Transportation Worker I
49 without regard to the person's position on said register;

50 (5) The division shall have full authority to evaluate
51 applicants for employment or promotion within the division
52 to positions within the classified service and classified-
53 exempt service. The division shall have sole authority to
54 determine whether applicants for positions with the division
55 meet minimum position requirements;

56 (6) The division shall have full authority to make
57 classification determinations for positions within the
58 division by using the classification system approved by the
59 State Personnel Board. The division may independently
60 submit to the State Personnel Board recommendations for
61 the approval of new division classifications or the
62 amendment of current division classifications;

63 (7) The division shall have full authority to exercise its
64 discretion regarding the application of the Division of
65 Personnel's system of compensation for positions in the

66 division within the classified and classified-exempt service:
67 *Provided*, That application of the provisions of this
68 subdivision shall be uniform. The division may
69 independently submit to the State Personnel Board
70 recommendations for the approval of a special pay scale for
71 the division's personnel;

72 (8) Notwithstanding any provision of the code or of any
73 rule to the contrary, the Division of Personnel shall not be a
74 mandatory party to any public employee grievance filed
75 against the division. The Division of Personnel shall not be a
76 signatory to, and may not override or otherwise challenge, the
77 division's decisions regarding settlement terms and conditions
78 in employee grievances or other legal proceedings;

79 (9) The Division of Personnel shall facilitate or perform
80 any lawful action necessary to initiate or complete the
81 division's employment transactions, including, but not
82 limited to, posting positions on applicable systems,
83 initiating public service announcements when requested by
84 the division, and processing necessary forms;

85 (10) The division shall comply with all applicable
86 record retention requirements provided by law;

87 (11) The division is authorized to declare any positions
88 effectively vacant due to employee separations, which were
89 not processed prior to the division being placed under the
90 wvOASIS system, vacant and subject to being filled
91 pursuant to the provisions of this section;

92 (12) The division shall have the flexibility to utilize all
93 vacant position numbers when posting to fill a vacancy and
94 to post vacant positions utilizing multiple classifications
95 with corresponding job descriptions when the commissioner
96 determines it to be necessary and in the best interest of the
97 agency; and

98 (13) For purposes of this section, a vacancy created
99 when an employee of the division separates or goes on

100 terminal leave may be posted upon receipt of the notice that
101 the employee has separated or commenced such leave.

102 (d) *Exemption from regular application and*
103 *appointment requirements.* — When seeking applications or
104 making appointments pursuant to the special procedure
105 authorized by subsection (c) of this section, the division is
106 not required to comply with Division of Personnel
107 procedures for seeking applications and making
108 appointments to classified service positions as provided by
109 the provisions of article six, chapter twenty-nine of this code
110 or any other provision of this code, including those
111 procedures promulgated by legislative rules, subject
112 however to the following exceptions:

113 (1) This section does not exempt the division from
114 provisions of this code, prohibiting nepotism, favoritism,
115 discrimination or unethical practices related to employment
116 and promotion, or the public employee grievance system; and

117 (2) The provisions of this section may not be applied to
118 hiring procedures applicable to any division classified
119 service position or employee in any manner that disqualifies
120 the division for eligibility for any federal highway funds or
121 assistance.

122 (e) *Rules.* — The commissioner may promulgate
123 emergency rules and shall propose legislative rules pursuant
124 to the provisions of article three, chapter twenty-nine-a of
125 this code as may be necessary to implement and comply
126 with the provisions of this section.

127 (f) The provisions of this section shall apply
128 notwithstanding any provisions of article six, chapter
129 twenty-nine of this code to the contrary.

130 (g) Classified employees of the division shall continue
131 to be covered by the civil service system and may utilize any
132 applicable public employee grievance process.

●

CHAPTER 3

**(H. B. 205 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed October 17, 2017; in effect from passage.]
[Approved by the Governor on October 24, 2017.]

AN ACT to amend and reenact §21-1C-2, §21-1C-4 and §21-1C-6 of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia Jobs Act; defining terms; requiring Workforce West Virginia to provide a waiver to an employer if unable to refer certain amount of qualified job applicants to the employer within three business days; increasing and adding civil penalties for violations; providing for written notice of violation to employer for violations; creating a special revenue account; and other technical corrections.

Be it enacted by the Legislature of West Virginia:

That §21-1C-2, §21-1C-4 and §21-1C-6 of the West Virginia Code, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.

1 As used in this article:

2 (1) The term “commissioner” means the Commissioner
3 of the West Virginia Division of Labor, or his or her
4 authorized representatives.

5 (2) The term “construction project” means any
6 construction, reconstruction, improvement, enlargement,
7 painting, decorating or repair of any public improvement let

8 to contract in an amount equal to or greater than \$500,000.
9 The term “construction project” does not include temporary
10 or emergency repairs;

11 (3) The term “domicile” or “primary residence” means
12 an individual’s true, fixed, principal, and permanent home,
13 to which he or she returns or intends to return, even though
14 currently residing elsewhere. Presentation of a valid,
15 government-issued identification card shall be conclusive
16 proof of domicile.

17 (4) (A) The term “employee” means any person hired or
18 permitted to perform hourly work for wages by a person,
19 firm or corporation in the construction industry;

20 (B) The term “employee” does not include:

21 (i) Bona fide employees of a public authority or
22 individuals engaged in making temporary or emergency
23 repairs;

24 (ii) Bona fide independent contractors; or

25 (iii) Salaried supervisory personnel necessary to assure
26 efficient execution of the employee’s work;

27 (5) The term “employer” means any person, firm or
28 corporation employing one or more employees on any
29 public improvement and includes all contractors and
30 subcontractors;

31 (6) The term “local labor market” means every county
32 in West Virginia, and any county outside of West Virginia
33 if any portion of that county is within fifty miles of the
34 border of West Virginia;

35 (7) The term “public authority” means any officer,
36 board, commission or agency of the State of West Virginia
37 and its subdivisions, including counties and municipalities.
38 Further, the economic grant committee, economic
39 development authority, infrastructure and jobs development

40 council and School Building Authority shall be required to
41 comply with the provisions of this article for loans, grants
42 or bonds provided for public improvement construction
43 projects;

44 (8) The term “public improvement” includes, the
45 construction of all buildings, roads, highways, bridges,
46 streets, alleys, sewers, ditches, sewage disposal plants,
47 waterworks, airports and all other structures that may be let
48 to contract by a public authority, excluding improvements
49 funded, in whole or in part, by federal funds.

**§21-1C-4. Local labor market utilization on public
improvement construction projects; waiver certificates.**

1 (a) Employers shall hire at least seventy-five percent of
2 employees for public improvement construction projects
3 domiciled in the local labor market, to be rounded off, with
4 at least two employees from outside the local labor market
5 permissible for each employer per project.

6 (b) Any employer unable to employ the minimum
7 number of employees from the local labor market shall
8 inform the nearest office of Workforce West Virginia of the
9 number of qualified employees needed and provide a job
10 description of the positions to be filled.

11 (c) If, within three business days following the placing
12 of a job order, Workforce West Virginia is unable to refer
13 any qualified job applicants to the employer or refers less
14 qualified job applicants than the number requested, then
15 Workforce West Virginia shall issue a waiver to the
16 employer stating the unavailability of applicants and shall
17 permit the employer to fill any positions covered by the
18 waiver from outside the local labor market. The waiver shall
19 be in writing and shall be issued within the prescribed three
20 days. A waiver certificate shall be sent to both the employer
21 for its permanent project records and to the public authority.

**§21-1C-6. Penalties for violation of article, notice of violations;
administrative remedies.**

1 (a) If, after inspection or investigation, the
2 commissioner determines that an employer has violated any
3 provision of this article, the commissioner shall provide a
4 written notice of violation to the employer and the public
5 authority, setting forth the number of violations, a
6 description of every violation and the amount of the penalty
7 that will be imposed if the employer continues to violate any
8 provision of this article after receipt of the notice of
9 violation, and shall direct the public authority to withhold
10 final payment to the employer until the employer has paid
11 the penalty or the matter has been otherwise resolved.

12 (b) Any employer who violates any provision of this
13 article is subject to a civil penalty of \$250 per each
14 employee less than the required threshold of seventy-five
15 percent per day of violation after receipt of a notice of
16 violation issued by the commissioner. This civil penalty
17 terminates upon compliance or upon issuance of a waiver
18 by Workforce West Virginia.

19 (c) Any employer that continues to violate any provision
20 of this article more than fourteen calendar days after receipt
21 of a notice of violation is subject to a civil penalty of \$500
22 per each employee less than the required threshold of
23 seventy-five percent per day of violation. This civil penalty
24 terminates upon compliance or upon issuance of a waiver
25 by Workforce West Virginia.

26 (d) All civil penalties paid pursuant to this section shall
27 be paid to the commissioner and deposited in an
28 appropriated special revenue account hereby created in the
29 State Treasury to be known as the "West Virginia Jobs Act
30 Fund" and expended for the implementation and
31 enforcement of this article.

●

CHAPTER 4

**(H. B. 201 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed October 17, 2017; in effect from passage.]
[Approved by the Governor on October 24, 2017.]

AN ACT to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exempting military retirement income from personal income tax after specified date.

Be it enacted by the Legislature of West Virginia:

That §11-21-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* — The West Virginia adjusted gross
2 income of a resident individual means his or her federal
3 adjusted gross income as defined in the laws of the United
4 States for the taxable year with the modifications specified
5 in this section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.* — There shall be added to federal adjusted gross
8 income, unless already included therein, the following
9 items:

10 (1) Interest income on obligations of any state other than
11 this state or of a political subdivision of any other state

12 unless created by compact or agreement to which this state
13 is a party;

14 (2) Interest or dividend income on obligations or
15 securities of any authority, commission or instrumentality
16 of the United States, which the laws of the United States
17 exempt from federal income tax but not from state income
18 taxes;

19 (3) Any deduction allowed when determining federal
20 adjusted gross income for federal income tax purposes for
21 the taxable year that is not allowed as a deduction under this
22 article for the taxable year;

23 (4) Interest on indebtedness incurred or continued to
24 purchase or carry obligations or securities the income from
25 which is exempt from tax under this article, to the extent
26 deductible in determining federal adjusted gross income;

27 (5) Interest on a depository institution tax-exempt
28 savings certificate which is allowed as an exclusion from
29 federal gross income under Section 128 of the Internal
30 Revenue Code, for the federal taxable year;

31 (6) The amount of a lump sum distribution for which the
32 taxpayer has elected under Section 402(e) of the Internal
33 Revenue Code of 1986, as amended, to be separately taxed
34 for federal income tax purposes; and

35 (7) Amounts withdrawn from a medical savings account
36 established by or for an individual under section twenty,
37 article fifteen, chapter thirty-three of this code or section
38 fifteen, article sixteen of said chapter that are used for a
39 purpose other than payment of medical expenses, as defined
40 in those sections.

41 (c) *Modifications reducing federal adjusted gross*
42 *income.* — There shall be subtracted from federal adjusted
43 gross income to the extent included therein:

44 (1) Interest income on obligations of the United States
45 and its possessions to the extent includable in gross income
46 for federal income tax purposes;

47 (2) Interest or dividend income on obligations or
48 securities of any authority, commission or instrumentality
49 of the United States or of the State of West Virginia to the
50 extent includable in gross income for federal income tax
51 purposes but exempt from state income taxes under the laws
52 of the United States or of the State of West Virginia,
53 including federal interest or dividends paid to shareholders
54 of a regulated investment company, under Section 852 of
55 the Internal Revenue Code for taxable years ending after
56 June 30, 1987;

57 (3) Any amount included in federal adjusted gross
58 income for federal income tax purposes for the taxable year
59 that is not included in federal adjusted gross income under
60 this article for the taxable year;

61 (4) The amount of any refund or credit for overpayment
62 of income taxes imposed by this state, or any other taxing
63 jurisdiction, to the extent properly included in gross income
64 for federal income tax purposes;

65 (5) Annuities, retirement allowances, returns of
66 contributions and any other benefit received under the West
67 Virginia Public Employees Retirement System, and the
68 West Virginia State Teachers Retirement System, including
69 any survivorship annuities derived therefrom, to the extent
70 includable in gross income for federal income tax purposes:
71 *Provided*, That notwithstanding any provisions in this code
72 to the contrary this modification shall be limited to the first
73 \$2,000 of benefits received under the West Virginia Public
74 Employees Retirement System, the West Virginia State
75 Teachers Retirement System and, including any
76 survivorship annuities derived therefrom, to the extent
77 includable in gross income for federal income tax purposes
78 for taxable years beginning after December 31, 1986; and
79 the first \$2,000 of benefits received under any federal

80 retirement system to which Title 4 U.S.C. §111 applies:
81 *Provided, however,* That the total modification under this
82 paragraph shall not exceed \$2,000 per person receiving
83 retirement benefits and this limitation shall apply to all
84 returns or amended returns filed after December 31, 1988;

85 (6) Retirement income received in the form of pensions
86 and annuities after December 31, 1979, under any West
87 Virginia police, West Virginia Firemen's Retirement
88 System or the West Virginia State Police Death, Disability
89 and Retirement Fund, the West Virginia State Police
90 Retirement System or the West Virginia Deputy Sheriff
91 Retirement System, including any survivorship annuities
92 derived from any of these programs, to the extent includable
93 in gross income for federal income tax purposes;

94 (7) (A) For taxable years beginning after December 31,
95 2000, and ending prior to January 1, 2003, an amount equal
96 to two percent multiplied by the number of years of active
97 duty in the Armed Forces of the United States of America
98 with the product thereof multiplied by the first \$30,000 of
99 military retirement income, including retirement income
100 from the regular Armed Forces, reserves and National
101 Guard paid by the United States or by this state after
102 December 31, 2000, including any survivorship annuities,
103 to the extent included in gross income for federal income
104 tax purposes for the taxable year.

105 (B) For taxable years beginning after December 31,
106 2000, the first \$20,000 of military retirement income,
107 including retirement income from the regular Armed
108 Forces, Reserves and National Guard paid by the United
109 States or by this state after December 31, 2002, including
110 any survivorship annuities, to the extent included in gross
111 income for federal income tax purposes for the taxable year.

112 (C) For taxable years beginning after December 31,
113 2017, military retirement income, including retirement
114 income from the regular Armed Forces, Reserves and
115 National Guard paid by the United States or by this state

116 after December 31, 2017, including any survivorship
117 annuities, to the extent included in federal adjusted gross
118 income for the taxable year.

119 (D) In the event that any of the provisions of this
120 subdivision are found by a court of competent jurisdiction
121 to violate either the Constitution of this state or of the United
122 States, or is held to be extended to persons other than
123 specified in this subdivision, this subdivision shall become
124 null and void by operation of law.

125 (8) Federal adjusted gross income in the amount of
126 \$8,000 received from any source after December 31, 1986,
127 by any person who has attained the age of sixty-five on or
128 before the last day of the taxable year, or by any person
129 certified by proper authority as permanently and totally
130 disabled, regardless of age, on or before the last day of the
131 taxable year, to the extent includable in federal adjusted
132 gross income for federal tax purposes: *Provided*, That if a
133 person has a medical certification from a prior year and he
134 or she is still permanently and totally disabled, a copy of the
135 original certificate is acceptable as proof of disability. A
136 copy of the form filed for the federal disability income tax
137 exclusion is acceptable: *Provided, however*, That:

138 (i) Where the total modification under subdivisions (1),
139 (2), (5), (6) and (7) of this subsection is \$8,000 per person
140 or more, no deduction shall be allowed under this
141 subdivision; and

142 (ii) Where the total modification under subdivisions (1),
143 (2), (5), (6) and (7) of this subsection is less than \$8,000 per
144 person, the total modification allowed under this
145 subdivision for all gross income received by that person
146 shall be limited to the difference between \$8,000 and the
147 sum of modifications under subdivisions (1), (2), (5), (6)
148 and (7) of this subsection;

149 (9) Federal adjusted gross income in the amount of
150 \$8,000 received from any source after December 31, 1986,

151 by the surviving spouse of any person who had attained the
152 age of sixty-five or who had been certified as permanently
153 and totally disabled, to the extent includable in federal
154 adjusted gross income for federal tax purposes: *Provided*,
155 That:

156 (i) Where the total modification under subdivisions (1),
157 (2), (5), (6), (7) and (8) of this subsection is \$8,000 or more,
158 no deduction shall be allowed under this subdivision; and

159 (ii) Where the total modification under subdivisions (1),
160 (2), (5), (6), (7) and (8) of this subsection is less than \$8,000
161 per person, the total modification allowed under this
162 subdivision for all gross income received by that person
163 shall be limited to the difference between \$8,000 and the
164 sum of subdivisions (1), (2), (5), (6), (7) and (8) of this
165 subsection;

166 (10) Contributions from any source to a medical savings
167 account established by or for the individual pursuant to
168 section twenty, article fifteen, chapter thirty-three of this
169 code or section fifteen, article sixteen of said chapter, plus
170 interest earned on the account, to the extent includable in
171 federal adjusted gross income for federal tax purposes:
172 *Provided*, That the amount subtracted pursuant to this
173 subdivision for any one taxable year may not exceed \$2,000
174 plus interest earned on the account. For married individuals
175 filing a joint return, the maximum deduction is computed
176 separately for each individual;

177 (11) For the 2006 taxable year only, severance wages
178 received by a taxpayer from an employer as the result of the
179 taxpayer's permanent termination from employment
180 through a reduction in force and through no fault of the
181 employee, not to exceed \$30,000. For purposes of this
182 subdivision:

183 (i) The term "severance wages" means any monetary
184 compensation paid by the employer in the taxable year as a

185 result of permanent termination from employment in excess
186 of regular annual wages or regular annual salary;

187 (ii) The term “reduction in force” means a net reduction
188 in the number of employees employed by the employer in
189 West Virginia, determined based on total West Virginia
190 employment of the employer’s controlled group;

191 (iii) The term “controlled group” means one or more
192 chains of corporations connected through stock ownership
193 with a common parent corporation if stock possessing at
194 least fifty percent of the voting power of all classes of stock
195 of each of the corporations is owned directly or indirectly
196 by one or more of the corporations and the common parent
197 owns directly stock possessing at least fifty percent of the
198 voting power of all classes of stock of at least one of the
199 other corporations;

200 (iv) The term “corporation” means any corporation,
201 joint-stock company or association and any business
202 conducted by a trustee or trustees wherein interest or
203 ownership is evidenced by a certificate of interest or
204 ownership or similar written instrument; and

205 (12) Any other income which this state is prohibited
206 from taxing under the laws of the United States.

207 (d) *Modification for West Virginia fiduciary adjustment.*
208 — There shall be added to or subtracted from federal
209 adjusted gross income, as the case may be, the taxpayer’s
210 share, as beneficiary of an estate or trust, of the West
211 Virginia fiduciary adjustment determined under section
212 nineteen of this article.

213 (e) *Partners and S corporation shareholders.* — The
214 amounts of modifications required to be made under this
215 section by a partner or an S corporation shareholder, which
216 relate to items of income, gain, loss or deduction of a
217 partnership or an S corporation, shall be determined under
218 section seventeen of this article.

219 (f) *Husband and wife.* — If husband and wife determine
220 their federal income tax on a joint return but determine their
221 West Virginia income taxes separately, they shall determine
222 their West Virginia adjusted gross incomes separately as if
223 their federal adjusted gross incomes had been determined
224 separately.

225 (g) *Effective date.* —

226 (1) Changes in the language of this section enacted in
227 the year 2000 shall apply to taxable years beginning after
228 December 31, 2000.

229 (2) Changes in the language of this section enacted in
230 the year 2002 shall apply to taxable years beginning after
231 December 31, 2002.

CHAPTER 5

**(H. B. 203 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed October 17, 2017; in effect from passage.]
[Approved by the Governor on October 24, 2017.]

AN ACT to amend and reenact §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-23a and §11-24-23e of said code, all relating generally to tax credits for rehabilitation of historic buildings and structures; increasing the amount of tax credit against personal and corporate net income taxes from ten percent to twenty-five percent for expenditures made on or after December 31, 2017; providing for the use of tax credit on or after January 1, 2020; prohibiting eligibility for credit if the taxpayer is in arrears or delinquent on certain tax payments; directing rule-making by the Tax Commissioner; eliminating

allowance of tax credits after December 31, 2022; allowing prior authorized tax credits to be claimed; limiting the maximum amount available for tax credit per project and in the aggregate per West Virginia state fiscal year; requiring the state historic preservation officer to reserve a certain amount of available tax credits for projects where proposed tax credits will not exceed \$500,000 per project; authorizing the state historic preservation officer to reallocate unused credits reserved for certain projects; modifying carry-back and carry-forward provisions for tax credits; providing requirements and procedures for the allocation and issuance of tax credit reservations and certificates by the state historic preservation officer; establishing requirements to claim tax credits; requiring the state historic preservation officer to prescribe and publish a form and instructions for applications for credits; providing for an application fee payable to the state historic preservation officer; establishing and providing for the administration of and expenditures from a special revenue account; and providing time limits for certain actions of the state historic preservation officer.

Be it enacted by the Legislature of West Virginia:

That §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-24-23a and §11-24-23e of said code be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of
2 this article is allowed as follows:

3 (a) *Certified historic structures.* – For certified historic
4 structures, the credit is equal to ten percent of qualified
5 rehabilitation expenditures as defined in §47(c)(2), Title 26
6 of the United States Code, as amended: *Provided*, That for
7 qualified rehabilitation expenditures made after December
8 31, 2017, pursuant to an historic preservation certification

9 application, Part 2 – Description of Rehabilitation, received
10 by the state historic preservation office after December 31,
11 2017, the credit allowed by this section is equal to twenty-
12 five percent of the qualified rehabilitation expenditure,
13 subject to the limitations and other provisions of section
14 twenty-three-a, article twenty-four of this chapter:
15 *Provided, however,* That the credit authorized by this
16 section for qualified rehabilitation expenditures made after
17 December 31, 2017, may not be used to offset tax liabilities
18 of the taxpayer prior to the tax year beginning on or after
19 January 1, 2020: *Provided further,* That the taxpayer is not
20 entitled to this credit if, when the applicant begins to claim
21 the credit and throughout the time period within which the
22 credit is claimed, the taxpayer is in arrears in the payment
23 of any tax administered by the Tax Division or the taxpayer
24 is delinquent in the payment of any local or municipal tax,
25 or the taxpayer is delinquent in the payment of property
26 taxes on the property containing the certified historic tax
27 structure when the applicant begins to claim the credit and
28 throughout the time period within which the credit is
29 claimed. The Tax Commissioner shall promulgate
30 procedural rules in accordance with article three, chapter
31 twenty-nine-a of this code that provide what information
32 must accompany any claim for the tax credit for the
33 determination that the taxpayer is not in arrears in the
34 payment of any tax administered by the Tax Division, is not
35 delinquent in the payment of any local or municipal tax, nor
36 is the taxpayer delinquent in the payment of property taxes
37 on the property containing the certified historic tax
38 structure, and such other administrative requirements as the
39 Tax Commissioner may specify. This credit is available for
40 both residential and nonresidential buildings located in this
41 state, that are reviewed by the West Virginia Division of
42 Culture and History and designated by the National Park
43 Service, United States Department of the Interior as
44 “certified historic structures,” and further defined as a
45 “qualified rehabilitated building,” as defined under
46 §47(c)(1), Title 26 of the United States Code, as amended.

47 (b) The tax credit allowed by this section is eliminated
48 after December 31, 2022: *Provided*, That any tax credits
49 authorized by the state historic preservation officer and
50 eligible to be claimed prior to January 1, 2023, shall
51 continue to be eligible to be claimed subject to the
52 provisions of law governing those tax credits that were in
53 effect prior to January 1, 2023.

§11-21-8e. Carryback, carryforward.

1 (a) Any unused portion of the credit for qualified
2 rehabilitated buildings investment authorized by section
3 eight-a of this article which may not be taken in the taxable
4 year to which the credit applies qualifies for carryback and
5 carryforward treatment subject to the identical general
6 provisions under §39, Title 26 of the United States Code, as
7 amended: *Provided*, That the amount of the credit taken in
8 a taxable year shall in no event exceed the tax liability due
9 for the taxable year: *Provided, however*, That for tax years
10 beginning on and after January 1, 2020, any unused portion
11 of the credit authorized by section eight-a of this article,
12 may not be carried back to any prior taxable year: *Provided*
13 *further*, That for tax years beginning on and after January 1,
14 2020, any unused portion of the credit authorized by section
15 eight-a of this article may be carried over to each of the next
16 ten tax years following the first tax year for which the credit
17 entitlement is authorized under this article for a specific
18 qualified rehabilitation buildings investment until used to
19 exhaustion or forfeited due to lapse of time.

20 (b) Effective for taxable years beginning on and after
21 January 1, 2001, credits granted to an electing small
22 business corporation (S corporation), limited partnership,
23 general partnership, limited liability company or multiple
24 owners of property shall be passed through to the
25 shareholders, partners, members or owners, either pro rata
26 or pursuant to an agreement among the shareholders,
27 partners, members or owners documenting an alternative
28 distribution method. The Tax Commissioner shall
29 promulgate procedural rules in accordance with article

30 three, chapter twenty-nine-a of this code that provide the
31 method of reporting the alternative method of distribution
32 authorized by this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

1 (a) A credit against the tax imposed by the provisions of
2 this article shall be allowed as follows:

3 *Certified historic structures.* – For certified historic
4 structures, the credit is equal to ten percent of qualified
5 rehabilitation expenditures as defined in §47(c)(2), Title 26
6 of the United States Code, as amended: *Provided*, That for
7 qualified rehabilitation expenditures made after December
8 31, 2017, pursuant to an historic preservation certification
9 application, Part 2 – Description of Rehabilitation, received
10 by the state historic preservation office after December 31,
11 2017, the credit allowed by this section is equal to twenty-
12 five percent of the qualified rehabilitation expenditure:
13 *Provided, however*, That the credit authorized by this
14 section for qualified rehabilitation expenditures made after
15 December 31, 2017, may not be used to offset tax liabilities
16 of the taxpayer prior to the tax year beginning on or after
17 January 1, 2020: *Provided further*, That the taxpayer is not
18 entitled to this credit if, when the applicant begins to claim
19 the credit and throughout the time period within which the
20 credit is claimed, the taxpayer is in arrears in the payment
21 of any tax administered by the Tax Division or the taxpayer
22 is delinquent in the payment of any local or municipal tax,
23 or the taxpayer is delinquent in the payment of property
24 taxes on the property containing the certified historic tax
25 structure when the applicant begins to claim the credit and
26 throughout the time period within which the credit is
27 claimed. The Tax Commissioner shall promulgate
28 procedural rules in accordance with article three, chapter
29 twenty-nine-a of this code that provide what information
30 must accompany any claim for the tax credit for the
31 determination that the taxpayer is not in arrears in the

32 payment of any tax administered by the Tax Division, is not
33 delinquent in the payment of any local or municipal tax, nor
34 is the taxpayer delinquent in the payment of property taxes
35 on the property containing the certified historic tax
36 structure, and such other administrative requirements as the
37 Tax Commissioner may specify. This credit is available for
38 both residential and nonresidential buildings located in this
39 state that are reviewed by the West Virginia Division of
40 Culture and History and designated by the National Park
41 Service, United States Department of the Interior as
42 “certified historic building”, and further defined as a
43 “qualified rehabilitated building”, as defined under
44 §47(c)(1), Title 26, of the United States Code, as amended.

45 (b) *Allocations and maximum amounts of tax credits per*
46 *project and per fiscal year -*

47 (1) No more than \$10 million of the tax credits
48 authorized by this section and section eight-a, article
49 twenty-one of this chapter may be allocated, reserved or
50 issued by the state historic preservation officer to any single
51 certified rehabilitation.

52 (2) No more than \$30 million of the tax credits
53 authorized by this section and section eight-a, article
54 twenty-one of this chapter cumulatively may be issued by
55 the state historic preservation officer for use in any given
56 West Virginia state fiscal year, and any amount remaining
57 up to \$30 million may not be carried over to a subsequent
58 West Virginia state fiscal year.

59 (3) At the beginning of each fiscal year, no less than \$5
60 million of the tax credits authorized by this section and
61 section eight-a, article twenty-one of this chapter shall be
62 set aside for reservation and the issuance of tax credits for
63 certified rehabilitation projects with proposed tax credits of
64 \$500,000. The balance of any amount set aside for these
65 projects that has not been reserved pursuant to the
66 procedures in subsection (c) of this section by the end of the
67 fiscal year shall be allocated by the state historic

68 preservation officer for the projects in any amount of other
69 pending applicants otherwise eligible for the issuance of tax
70 credits under this section and section eight-a, article twenty-
71 one of this chapter in the order that the applications for those
72 projects were received.

73 (c) *Procedure for issuance of tax credits reservations*
74 *and certificates by the state historic preservation officer –*

75 (1) Any claim for the tax credits authorized pursuant to
76 this section and section eight-a, article twenty-one of this
77 chapter shall be accompanied by a tax credit certificate
78 issued by the state historic preservation officer.

79 (2) The tax credits will be awarded on a first come, first
80 served basis. At the time the historic preservation
81 certification application, Part 2 – Description of
82 Rehabilitation, is received by the state historic preservation
83 office, the project will be placed on a reservation list, which
84 will reserve the tax credit amount listed on the application.
85 The historic preservation certification application, Part 2 –
86 Description of Rehabilitation, will be reviewed by the state
87 historic preservation office for completion and submitted to
88 the National Park Service for full review. At the time the
89 historic preservation certification application, Part 2 –
90 Description of Rehabilitation, is submitted to the National
91 Park Service, the state historic preservation officer shall
92 send a request for the fee prescribed in subsection (e) of this
93 section to the property owner. Upon approval of the historic
94 preservation certification application, Part 2 – Description
95 of Rehabilitation, from the National Park Service, including
96 approval with conditions, that the project will meet the
97 Secretary of the Interior's standards for rehabilitation, the
98 owner of the building will receive guarantee of the tax
99 credits from the state historic preservation office.

100 (3) The state historic preservation officer shall issue tax
101 credit certificates for certified rehabilitation projects that the
102 National Park Service has determined have met the
103 Secretary of the Interior standards for rehabilitation based

104 on the issuance of an approved historic preservation
105 certification application, Part 3 – Request for Certification
106 of Completed Work.

107 (4) Once the state historic preservation officer has
108 allocated and reserved the maximum tax credits authorized
109 for any given West Virginia state fiscal year, the state
110 historic preservation officer then shall allocate and reserve
111 tax credits against the maximum tax credits authorized for
112 use in the succeeding West Virginia state fiscal year.

113 (5) If an applicant for tax credits that receives a
114 reservation for tax credits for any given West Virginia state
115 fiscal year fails to submit an approved historic preservation
116 certification application, Part 3 – Request for Certification
117 of Completed Work in the instance of a certified
118 rehabilitation within thirty-six (36) months of the date of the
119 approved historic preservation certification application, Part
120 2 – Description of Rehabilitation, therefor or in the instance
121 of a phased project as determined by the National Park
122 Service within sixty (60) months of the date of the advisory
123 determination by the National Park Service therefor that
124 such phase has been completed in accordance with the
125 Secretary of the Interior standards for rehabilitation then the
126 state historic preservation officer may reallocate part or all
127 of the tax credits reserved therefor to other applicants in the
128 order their applications were received.

129 (d) The state historic preservation officer shall prescribe
130 and publish a form and instructions for an application for
131 reservation and issuance of the tax credits authorized by this
132 section and section eight-a, article twenty-one of this
133 chapter.

134 (e) *Application fee* - Each application for tax credits
135 authorized pursuant to this section and section eight-a,
136 article twenty-one of this chapter shall require a fee payable
137 to the state historic preservation officer equal to the lesser
138 of (1) 0.5% of the amount of the tax credits requested for in
139 such application and (2) \$10,000. The state historic

140 preservation officer shall review and act on all such
141 applications within thirty days of receipt.

142 Fees collected under this subsection shall be deposited
143 into a special revenue account which is hereby created. The
144 fund shall be administered by the state historic preservation
145 officer and expended for the purposes of administering the
146 provisions of this section and section eight-a, article twenty-
147 one of this chapter.

148 (f) The tax credit allowed by this section is eliminated
149 after December 31, 2022: *Provided*, That any tax credits
150 authorized by the state historic preservation officer and
151 eligible to be claimed prior to January 1, 2023, shall
152 continue to be eligible to be claimed subject to the
153 provisions of law governing those tax credits that were in
154 effect prior to January 1, 2023.

§11-24-23e. Carryback, carryforward.

1 Any unused portion of the credit for qualified
2 rehabilitated buildings investment authorized by section
3 twenty-three-a of this article which may not be taken in the
4 taxable year to which the credit applies shall qualify for
5 carryback and carryforward treatment subject to the
6 identical general provisions under §39, Title 26 of the
7 United States Code, as amended: *Provided*, That the amount
8 of such credit taken in a taxable year shall in no event
9 exceed the tax liability due for the taxable year: *Provided*,
10 *however*, That for tax years beginning on and after January
11 1, 2020, any unused portion of the credit authorized by
12 section twenty-three a of this article, may not be carried
13 back to any prior taxable year: *Provided further*, That for
14 tax years beginning on and after January 1, 2020, any
15 unused portion of the credit authorized by section twenty-
16 three-a of this article may be carried over to each of the next
17 ten tax years following the first tax year for which the credit
18 entitlement is authorized under this article for a specific
19 qualified rehabilitation buildings investment until used to
20 exhaustion or forfeited due to lapse of time.

●

CHAPTER 6

**(S. B. 2002 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed October 17, 2017; in effect from passage.]
[Approved by the Governor on October 24, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5cc; and to amend and reenact §11-10-11 of said code, all relating generally to allowing certain tax information to be shared with designated employees of Commissioner of Highways pursuant to written agreement; specifying information that may be disclosed; defining “good standing”; permitting agreement to be amended from time to time; clarifying scope of confidentiality and protection of information in hands of Commissioner of Highways; and clarifying that failure to remit personal income taxes required to be withheld by a contractor is grounds for withholding payment in final settlement of a contract.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-5cc; and that §11-10-11 of said code be amended and reenacted, all to read as follows:

**ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION
ACT.**

**§11-10-5cc. Disclosure of certain tax information to
Commissioner of Highways.**

1 (a) Notwithstanding any provision of this article to the
2 contrary, the Tax Commissioner shall enter into a written
3 agreement with the Commissioner of Highways of this state
4 to disclose to designated employees of the Division of
5 Highways:

6 (1) Whether a bidder for a contract with the Division of
7 Highways has a current business registration certificate
8 under article twelve of this chapter;

9 (2) Whether a contractor with the Division of Highways,
10 or any subcontractor of that contractor, has had its current
11 business registration certificate revoked or suspended under
12 article twelve of this chapter;

13 (3) Whether a cease and desist order has been issued
14 under article twelve of this chapter to a contractor working
15 on a project for the Division of Highways or a subcontractor
16 of that contractor working on a road construction or repair
17 project;

18 (4) Whether a contractor bidding on a contract for a road
19 construction project or repair project appears to be in
20 compliance with the employer withholding tax
21 requirements of this state as set forth in article twenty-one
22 of this chapter based on information in Tax Division
23 databases;

24 (5) Whether a contractor who has a contract with the
25 Division of Highways for a road construction project or
26 repair project appears to be in compliance with the employer
27 withholding tax requirements of this state as set forth in
28 article twenty-one of this chapter based on information in
29 Tax Division databases;

30 (6) Whether a subcontractor of any contractor who has
31 a contract with the Division of Highways for a road
32 construction project or repair project appears to be in
33 compliance with the employer withholding tax
34 requirements of this state as set forth in article twenty-one

35 of this chapter based on information in Tax Division
36 databases;

37 (7) Whether a bidder for a highway construction
38 contract is in good standing with the Tax Commissioner;

39 (8) Whether a contractor or subcontractor working on a
40 project for the Division of Highways is in good standing
41 with the Tax Commissioner and, if not in good standing, an
42 explanation of why the contractor or subcontractor is not in
43 good standing; and

44 (9) Whether a bidder, contractor or subcontractor
45 currently has pending before the Office of Tax Appeals a
46 contest concerning any assessment for additional tax or
47 denial of a claim for refund or credit.

48 (b) For purposes of this section, the term “good
49 standing” means that the bidder, contractor or subcontractor
50 has: (1) Filed all required tax returns due for taxes
51 administered under this article; (2) paid all taxes shown to
52 be due in the filed returns, including any interest and
53 additions to tax; and (3) paid all withholding taxes for
54 employees of the bidder, contractor or subcontractor
55 required to be paid under this code.

56 (c) An agreement executed under subsection (a) of this
57 section may be amended, from time to time, by the Tax
58 Commissioner and the Commissioner of Highways.

59 (d) Information in the hands of the Commissioner of
60 Highways or his or her designees pursuant to an agreement
61 under this section shall enjoy the same level of
62 confidentiality and protection as the information would
63 enjoy in the hands of the Tax Commissioner.

§11-10-11. Collection of tax.

1 (a) *General.* — The Tax Commissioner shall collect the
2 taxes, additions to tax, penalties and interest imposed by this
3 article or any of the other articles of this chapter to which

4 this article is applicable. In addition to all other remedies
5 available for the collection of debts due this state, the Tax
6 Commissioner may proceed by foreclosure of the lien
7 provided in section twelve, or by levy and distraint under
8 section thirteen.

9 (b) *Prerequisite to final settlement of contracts with*
10 *nonresident contractor; user personally liable.* —

11 (1) Any person contracting with a nonresident
12 contractor subject to the taxes imposed by articles thirteen,
13 twenty-one and twenty-four of this chapter shall withhold
14 payment, in the final settlement of the contract, of a
15 sufficient amount, not exceeding six percent of the contract
16 price, as will in the person's opinion be sufficient to cover
17 the taxes, until the receipt of a certificate from the Tax
18 Commissioner to the effect that the above-referenced taxes
19 imposed against the nonresident contractor have been paid
20 or provided for.

21 (2) If any person shall fail to withhold as provided in
22 subdivision (1) of this subsection, that person is personally
23 liable for the payment of all taxes attributable to the
24 contract, not to exceed six percent of the contract price. The
25 taxes attributable shall be recoverable by the Tax
26 Commissioner by appropriate legal proceedings, which may
27 include issuance of an assessment under this article.

28 (c) *Prerequisite for issuance of certificate of dissolution*
29 *or withdrawal of corporation.* — The Secretary of State
30 shall withhold the issuance of any certificate of dissolution
31 or withdrawal in the case of any corporation organized
32 under the laws of this state, or organized under the laws of
33 another state and admitted to do business in this state, until
34 the receipt of a certificate from the Tax Commissioner to the
35 effect that every tax administered under this article imposed
36 against any corporation has been paid or provided for, or
37 that the applicant is not liable for any tax administered under
38 this article.

39 (d) *Prerequisite to final settlement of contract with this*
40 *state or political subdivision; penalty.* — All state, county,
41 district and municipal officers and agents making contracts
42 on behalf of this state or any political subdivision thereof
43 shall withhold payment, in the final settlement of any
44 contract, until the receipt of a certificate from the Tax
45 Commissioner to the effect that the taxes imposed by
46 articles thirteen, twenty-one and twenty-four of this chapter
47 against the contractor, or required to be withheld by the
48 contractor, have been paid or provided for. If the transaction
49 embodied in the contract or the subject matter of the contract
50 is subject to county or municipal business and occupation
51 tax, then the payment shall also be withheld until receipt of
52 a release from the county or municipality to the effect that
53 all county or municipal business and occupation taxes
54 levied or accrued against the contractor have been paid. Any
55 official violating this section is subject to a civil penalty of
56 \$1,000, recoverable as a debt in a civil action brought by the
57 Tax Commissioner.

58 (e) *Limited effect of Tax Commissioner's certificates.* —
59 The certificates of the Tax Commissioner provided in
60 subsections (b), (c) and (d) of this section shall not bar
61 subsequent investigations, assessments, refunds and credits
62 with respect to the taxpayer.

63 (f) *Payment when person sells out or quits business;*
64 *liability of successor; lien.* —

65 (1) If any person subject to any tax administered under
66 this article sells out his, her or its business or stock of goods,
67 or ceases doing business, any tax, additions to tax, penalties
68 and interest imposed by this article or any of the other
69 articles of this chapter to which this article is applicable
70 shall become due and payable immediately and that person
71 shall, within thirty days after selling out his, her or its
72 business or stock of goods or ceasing to do business, make
73 a final return or returns and pay any tax or taxes which are
74 due. The unpaid amount of any tax is a lien upon the
75 property of that person.

76 (2) The successor in business of any person who sells
77 out his, her or its business or stock of goods, or ceases doing
78 business, is personally liable for the payments of tax,
79 additions to tax, penalties and interest unpaid after
80 expiration of the thirty-day period allowed for payment:
81 *Provided*, That if the business is purchased in an arms-
82 length transaction, and if the purchaser withholds so much
83 of the consideration for the purchase as will satisfy any tax,
84 additions to tax, penalties and interest which may be due
85 until the seller produces a receipt from the Tax
86 Commissioner evidencing the payment thereof, the
87 purchaser is not personally liable for any taxes attributable
88 to the former owner of the business unless the contract of
89 sale provides for the purchaser to be liable for some or all
90 of the taxes. The amount of tax, additions to tax, penalties
91 and interest for which the successor is liable is a lien on the
92 property of the successor, which shall be enforced by the
93 Tax Commissioner as provided in this article.

94 (g) *Priority in distribution of estate or property in*
95 *receivership; personal liability of fiduciary.* — All taxes due
96 and unpaid under this article shall be paid from the first
97 money available for distribution, voluntary or compulsory,
98 in receivership, bankruptcy or otherwise, of the estate of any
99 person, firm or corporation, in priority to all claims, except
100 taxes and debts due the United States which under federal
101 law are given priority over the debts and liens created by
102 this article. Any trustee, receiver, administrator, executor or
103 person charged with the administration of an estate who
104 violates the provisions of this section is personally liable for
105 any taxes accrued and unpaid under this article, which are
106 chargeable against the person, firm or corporation whose
107 estate is in administration.

108 (h) *Injunction.* — If the taxpayer fails for a period of
109 more than sixty days to fully comply with any of the
110 provisions of this article or of any other article of this
111 chapter to which this article is applicable, the Tax
112 Commissioner may institute a proceeding to secure an

113 injunction to restrain the taxpayer from doing business in
114 this state until the taxpayer fully complies with the
115 provisions of this article or any other articles. No bond is
116 required of the Tax Commissioner in any action instituted
117 under this subsection.

118 (i) *Costs.* — In any proceeding under this section, upon
119 judgment or decree for the Tax Commissioner, he or she
120 shall be awarded his or her costs.

121 (j) *Refunds; credits; right to offset.* —

122 (1) Whenever a taxpayer has a refund or credit due it for
123 an overpayment of any tax administered under this article,
124 the Tax Commissioner may reduce the amount of the refund
125 or credit by the amount of any tax administered under this
126 article, whether it be the same tax or any other tax, which is
127 owed by the same taxpayer and collectible as provided in
128 subsection (a) of this section.

129 (2) The Tax Commissioner may enter into agreements
130 with the Internal Revenue Service that provide for offsetting
131 state tax refunds against federal tax liabilities; offsetting
132 federal tax refunds against state tax liabilities; and
133 establishing the amount of the offset fee per transaction
134 which both agencies may charge each other: *Provided*, That
135 offsets under subdivision (1) of this subsection shall occur
136 prior to offset under this subdivision. At the times moneys
137 are received as a result of an offset of a taxpayer's federal
138 tax refund under the provisions of section 6402(e) of the
139 Internal Revenue Code, the taxpayer is given credit against
140 state tax liability for the amount of the offset less a
141 deduction for the offset fee imposed by the Internal Revenue
142 Service: *Provided however*, That the amount of the offset
143 fee imposed by the Internal Revenue Service shall be added
144 to the taxes, interest and penalties owed by the taxpayer to
145 this state: *Provided further*, That the amount of the offset
146 fee imposed by the Tax Commissioner shall be deducted
147 from the moneys retained from the taxpayer's state tax
148 refund and then deposited in the special revolving fund

149 which is hereby created and established in the state Treasury
150 and designated as the Tax Offset Fee Administration Fund:
151 *And provided further*, That the fees deposited in the Tax
152 Offset Fee Administration Fund may be expended by the
153 Tax Commissioner for the general administration of the
154 taxes administered under the authority of this article.

155 (k) *Spouse relieved of liability in certain cases.* —

156 (1) *In general.* — Under regulations prescribed by the
157 Tax Commissioner, if:

158 (A) A joint personal income tax return has been made
159 for a taxable year;

160 (B) On the return there is a substantial understatement
161 of tax attributable to grossly erroneous items of one spouse;

162 (C) The other spouse establishes that in signing the
163 return he or she did not know, and had no reason to know,
164 that there was a substantial understatement; and

165 (D) Taking into account all the facts and circumstances,
166 it is inequitable to hold the other spouse liable for the
167 deficiency in tax for the taxable year attributable to the
168 substantial understatement, then the other spouse is relieved
169 of any liability for tax, including interest, additions to tax,
170 and other amounts for the taxable year to the extent the
171 liability is attributable to the substantial understatement.

172 (2) *Grossly erroneous items.* — For purposes of this
173 subsection, the term “grossly erroneous items” means, with
174 respect to any spouse:

175 (A) Any item of gross income attributable to a spouse
176 which is omitted from gross income; and

177 (B) Any claim of a deduction, credit or basis by a spouse
178 in an amount for which there is no basis in fact or law.

179 (3) *Substantial understatement.* — For purposes of this
180 subsection, the term “substantial understatement” means
181 any understatement, as defined in regulations prescribed by
182 the Tax Commissioner which exceed \$500.

183 (4) Understatement must exceed specified percentage of
184 spouse's income.

185 (A) *Adjusted gross income of \$20,000 or less.* — If the
186 spouse's adjusted gross income for the readjustment year is
187 \$20,000 or less, this subsection applies only if the liability
188 described in subdivision (1) of this subsection is greater than
189 ten percent of the adjusted gross income.

190 (B) *Adjusted gross income of more than \$20,000.* — If
191 the spouse's adjusted gross income for the readjustment year
192 is more than \$20,000, paragraph (A) of this subdivision is
193 applied by substituting “twenty-five percent” for “ten
194 percent”.

195 (C) *Readjustment year.* — For purposes of this
196 paragraph, the term “readjustment year” means the most
197 recent taxable year of the spouse ending before the date the
198 deficiency notice is mailed.

199 (D) *Computation of spouse's adjusted gross income.* —
200 If the spouse is married to another spouse at the close of the
201 readjustment year, the spouse's adjusted gross income shall
202 include the income of the new spouse whether or not they
203 file a joint return.

204 (E) *Exception for omissions from gross income.* — This
205 paragraph shall not apply to any liability attributable to the
206 omission of an item from gross income.

207 (5) *Adjusted gross income.* — For purposes of this
208 subsection, the term “adjusted gross income” means the
209 West Virginia adjusted gross income of the taxpayer,
210 determined under article twenty-one of this chapter.

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 2017

CHAPTER 1

**(S. B. 3001 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

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

AN ACT to amend and reenact §17-3-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §17-26A-1, §17-26A-2, §17-26A-3, §17-26A-4, §17-26A-5, §17-26A-6, §17-26A-7, §17-26A-8, §17-26A-9, §17-26A-10, §17-26A-11, §17-26A-12, §17-26A-13 and §17-26A-14, all relating generally to state road bonds; requiring proceeds from the sale of state road bonds issued pursuant to Roads to Prosperity Amendment of 2017 to be kept in separate and distinct account in the State Road Fund; authorizing cost of issuance to be paid from State Road Fund; providing definitions; authorizing sale of bonds; providing schedule for sale of bonds; providing amount of bonds to be sold; providing conditions on the sale and issuance of bonds; creating the Roads to Prosperity Bond Debt Service Fund; authorizing investment of the fund; providing bond covenants; requiring certification of annual debt service amount; prohibiting conflicts of interest; creating a criminal misdemeanor offense and providing penalties for the proceeds from the sale of bonds to inure to the benefit of or be distributed to officers or employees of the state except to pay reasonable compensation for services rendered; declaring

state road bonds lawful investments; allowing for the refund of bonds; allowing for continuity of debt service in termination or dissolution; authorizing the Treasurer to select financial advisor; authorizing the Governor to select bond counsel and underwriter; allowing for payment of necessary expenses for issuance from funds; dedicating tax and fee collections for debt service; and setting a schedule for certain deposits into the Roads to Prosperity Bond Debt Service Fund.

Be it enacted by the Legislature of West Virginia:

That §17-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §17-26A-1, §17-26A-2, §17-26A-3, §17-26A-4, §17-26A-5, §17-26A-6, §17-26A-7, §17-26A-8, §17-26A-9, §17-26A-10, §17-26A-11, §17-26A-12, §17-26A-13 and §17-26A-14, all to read as follows:

ARTICLE 3. STATE ROAD FUND.

§17-3-1. What constitutes fund; payments into fund; use of money in fund.

1 There shall be a State Road Fund, which shall consist of
2 the proceeds of all state license taxes imposed upon
3 automobiles or other motor or steam driven vehicles; the
4 registration fees imposed upon all owners, chauffeurs,
5 operators and dealers in automobiles or other motor driven
6 vehicles; all sums of money which may be donated to such
7 fund; all proceeds derived from the sale of state bonds
8 issued pursuant to any resolution or act of the Legislature
9 carrying into effect the Better Roads Amendment to the
10 Constitution of this state, adopted in November, 1964,
11 except that the proceeds from the sale of these bonds shall
12 be kept in a separate and distinct account in the State Road
13 Fund; all proceeds from the sale of state bonds issued
14 pursuant to any resolution or act of the Legislature carrying
15 into effect the Safe Roads Amendment of 1996 to the
16 Constitution of this state, adopted in November, 1996,
17 except that the proceeds from the sale of these bonds shall

18 be kept in a separate and distinct account in the State Road
19 Fund; all proceeds from the sale of state bonds issued
20 pursuant to any resolution or act of the Legislature carrying
21 into effect the Roads to Prosperity Amendment of 2017 to
22 the Constitution of this state, adopted in October, 2017,
23 except that the proceeds from the sale of these bonds shall
24 be kept in a separate and distinct account in the State Road
25 Fund; all moneys and funds appropriated to it by the
26 Legislature; and all moneys allotted or appropriated by the
27 federal government to this state for road construction and
28 maintenance pursuant to any act of the Congress of the
29 United States; the proceeds of all taxes imposed upon and
30 collected from any person, firm or corporation and of all
31 taxes or charges imposed upon and collected from any
32 county, district or municipality for the benefit of the fund;
33 the proceeds of all judgments, decrees or awards recovered
34 and collected from any person, firm or corporation for
35 damages done to, or sustained by, any of the state roads or
36 parts thereof; all moneys recovered or received by reason of
37 the violation of any contract respecting the building,
38 construction or maintenance of any state road; all penalties
39 and forfeitures imposed, recovered or received by reason
40 thereof; and any and all other moneys and funds
41 appropriated to, imposed and collected for the benefit of
42 such fund, or collected by virtue of any statute and payable
43 to such fund: *Provided*, That notwithstanding any
44 provisions of this code to the contrary, 50 cents of every
45 license fee paid pursuant to the provisions of subdivision
46 (2), subsection (a), section eight, article two, chapter
47 seventeen-b of this code shall be paid to the special fund
48 established pursuant to the provisions of subsection (a),
49 section twelve, article two, chapter three of this code.

50 When any money is collected from any of the sources
51 aforesaid, it shall be paid into the State Treasury by the
52 officer whose duty it is to collect and account for the same,
53 and credited to the State Road Fund, and shall be used only
54 for the purposes named in this chapter, which are: (a) To
55 pay the principal and interest due on all state bonds issued

56 for the benefit of said fund, and any costs related to the
57 issuance thereof, and set aside and appropriated for that
58 purpose; (b) to pay the expenses of the administration of the
59 Division of Highways; and (c) to pay the cost of
60 maintenance, construction, reconstruction and improvement
61 of all state roads.

ARTICLE 26A. ROADS TO PROSPERITY STATE ROAD BONDS.

§17-26A-1. Definitions.

1 For purposes of this article:

2 (1) “Commissioner” means the West Virginia
3 Commissioner of Highways continued pursuant to section
4 one, article two-a of this chapter;

5 (2) “Amendment” means the amendment to the
6 Constitution of this state entitled Roads to Prosperity
7 Amendment of 2017 as approved by referendum in October,
8 2017;

9 (3) “State road bond” means any bond or bonds issued
10 by the state pursuant to section two of this article;

11 (4) “Division” means the West Virginia Division of
12 Highways established under section one, article two-a of
13 this chapter, or any successor to all or any substantial part
14 of its powers and duties; and

15 (5) “Secretary” means the Secretary of the West
16 Virginia Department of Transportation.

§17-26A-2. State road general obligation bonds; amount; when may issue.

1 (a) Bonds of the State of West Virginia, under authority
2 of the Roads to Prosperity Amendment of 2017 of the
3 principal amount not to exceed in the aggregate \$1.6 billion
4 are authorized to be issued and sold for matching available

5 federal funds for highway and bridge construction in this
6 state and for general highway and secondary roads and
7 bridge construction or improvements in each of the fifty-
8 five counties in this state, as provided for by the
9 Constitution and the provisions of this article. During the
10 fiscal year beginning July 1, 2017, the principal amount of
11 \$800 million in bonds may be sold. During the fiscal year
12 beginning July 1, 2018, the principal amount of \$400
13 million in bonds may be sold. During the fiscal year
14 beginning July 1, 2019, the principal amount of \$200
15 million in bonds may be sold. During the fiscal year
16 beginning July 1, 2020, the principal amount of \$200
17 million in bonds may be sold. Any amount not sold in a
18 fiscal year may be carried forward and issued in any
19 subsequent year before July 1, 2021.

20 (b) These bonds may be issued by the Governor upon
21 resolution passed by the Legislature authorizing the same.
22 The bonds shall bear the date and mature at the time, bear
23 interest at the rates, be in amounts, be in denominations,
24 be in the registered form, carry registration privileges, be
25 due and payable at the times and place and in amounts,
26 and be subject to terms of redemption as the resolution
27 may allow.

28 (c) Both the principal and interest of the bonds shall be
29 payable in the lawful money of the United States of
30 America, and the bonds and the interest thereon shall be
31 exempt from taxation by the State of West Virginia, or by
32 any county, district or municipality thereof, which fact shall
33 appear on the face of the bonds as part of the contract with
34 the holder of the bond.

35 (d) The bonds shall be executed on behalf of the State
36 of West Virginia, by the manual or facsimile signature of
37 the Governor, under the Great Seal of the State or a
38 facsimile of the Great Seal, and countersigned by the
39 manual or facsimile signature of the Secretary of State.

§17-26A-3. Creation of debt service fund to pay debt service on state road general obligation bonds.

1 There is hereby created a special account in the State
2 Treasury, which shall be designated and known as the
3 Roads to Prosperity Bond Debt Service Fund, into which
4 shall be deposited any and all amounts appropriated by the
5 Legislature from the State Road Fund or funds from any
6 source whatsoever which is made liable by law for the
7 purpose of paying the interest on the bonds or paying off
8 and retiring bonds issued pursuant to this article.

§17-26A-4. Roads to Prosperity Bond Debt Service Fund; sources used to pay bonds, interest and cost of issuance; investment of remainder.

1 (a) All funds deposited to the credit of the Roads to
2 Prosperity Bond Debt Service Fund shall be kept by the
3 State Treasurer in a separate account, and all money
4 belonging to the fund shall be deposited in the Treasury to
5 the credit of the fund.

6 (b) The fund shall be applied by the State Treasurer for
7 payments on the principal and interest on bonds sold
8 pursuant to this article as it becomes due and payable and
9 any costs related to the issuance thereof. The remainder of
10 the fund, if any, shall be invested by the West Virginia
11 Board of Treasury Investments in the manner authorized
12 under article six-c, chapter twelve of this code.

§17-26A-5. Covenants of state.

1 The State of West Virginia covenants and agrees with
2 the holders of the bonds issued pursuant hereto as follows:
3 (1) That the bonds are a direct and general obligation of the
4 State of West Virginia; (2) that the full faith and credit of
5 the state is pledged to secure the payment of the principal
6 and interest of the bonds; (3) that an annual state tax shall
7 be collected in an amount sufficient to pay, as it may accrue,
8 the interest on the bonds and the principal thereof; and (4)

9 that the tax shall be levied in any year only to the extent that
10 the moneys transferred to the Roads to Prosperity Bond
11 Debt Service Fund as provided in sections three and four of
12 this article which are irrevocably set aside and appropriated
13 for and applied to the payment of the interest on and
14 principal of any bond becoming due and payable in such
15 year are insufficient therefor.

§17-26A-6. Sale by Governor; certification of annual debt service amount.

1 The Governor shall sell the bonds herein authorized at a
2 time or times as provided by resolutions enacted by the
3 Legislature. The Governor, in his or her discretion, may, by
4 executive message, request that a resolution be proposed for
5 the issuance of bonds pursuant to this article. The Governor
6 shall determine the manner by which bonds will be sold at
7 an aggregate price equal to, above or below par value. On
8 or before June 1 in the fiscal year in which the first bonds
9 are issued pursuant to this article and June 1 of each fiscal
10 year, the commissioner shall certify to the Treasurer and
11 Secretary of the Department of Revenue the principal and
12 interest requirement for the following fiscal year on any
13 bonds issued pursuant to this article.

§17-26A-7. Conflicts of interest.

1 No part of the proceeds from the sale of bonds under
2 this article may inure to the benefit of or be distributable to
3 the officers or employees of the state except to pay
4 reasonable compensation for services rendered to the state.
5 Any person violating the provisions of this section is guilty
6 of a misdemeanor and, upon conviction thereof, shall be
7 fined not more than \$1,000, or confined in jail not more than
8 one year, or both fined and confined.

§17-26A-8. State road bonds lawful investments.

1 All state road bonds issued pursuant to this article
2 shall be lawful investments for banking institutions,
3 societies for savings, building and loan associations,
4 savings and loan associations, deposit guarantee
5 associations, trust companies, and insurance companies,
6 including domestic for life and domestic not for life
7 insurance companies.

§17-26A-9. Refunding bonds.

1 Any state road general obligation bonds which are
2 outstanding may at any time be refunded by the issuance of
3 refunding bonds in an amount deemed necessary to refund
4 the principal of the bonds to be refunded, together with any
5 unpaid interest thereon; to accomplish the purpose of the
6 amendment and to pay any premiums necessary to be paid
7 in connection therewith. Any refunding may be effected
8 whether the state road general obligation bonds to be
9 refunded shall have then matured or shall thereafter mature.
10 Any refunding bonds issued pursuant to this article shall be
11 payable from the Roads to Prosperity Bond Debt Service
12 Fund.

§17-26A-10. Termination or dissolution.

1 Upon the termination or dissolution of the West
2 Virginia Division of Highways, all rights and properties of
3 the West Virginia Division of Highways with respect to the
4 Roads to Prosperity Bond Debt Service Fund shall pass to
5 and be vested in the state, subject to the rights of
6 bondholders, lienholders and other creditors.

§17-26A-11. Treasurer to determine financial advisor.

1 The Treasurer, in his or her discretion, may select a
2 competent person or firm to serve as financial advisor for
3 the issuance and sale of general obligation bonds issued
4 pursuant to this article.

§17-26A-12. Governor to determine bond counsel.

1 The Governor shall select a competent person or firm to
2 serve as bond counsel who shall be responsible for the
3 issuance of a final approving opinion regarding the legality
4 of the sale of general obligation bonds issued pursuant to
5 this article. Notwithstanding the provisions of article three,
6 chapter five of this code, bond counsel may represent the
7 state in court, render advice and provide other legal services
8 as may be requested by the Governor, the secretary or the
9 commissioner regarding any bond issuance pursuant to this
10 article and all other matters relating to the bond issue. The
11 Governor may also, in his or her discretion, select a person
12 or firm to serve as underwriter for any issuance pursuant to
13 this article.

§17-26A-13. Approval of and payment of all necessary expenses.

1 All necessary expenses, including legal expenses,
2 incurred in the issuance of any general obligation bonds
3 pursuant to this article shall be paid out of the Roads to
4 Prosperity Bond Debt Service Fund or the State Road Fund
5 if so appropriated by the Legislature. The amount of any
6 expenses incurred shall be certified to the Treasurer by the
7 Commissioner of Highways.

§17-26A-14. Dedication of taxes and fees.

1 (a) There shall be dedicated an annual amount from the
2 collections of the taxes and fees imposed pursuant to
3 chapters eleven, seventeen-a, seventeen-b, seventeen-c and
4 seventeen-d of this code, that are required to be deposited to
5 the credit of the State Road Fund sufficient to pay the
6 principal and interest of any state road bonds issued
7 pursuant to this article.

8 (b) Beginning in July in the fiscal year in which the
9 first interest payment on the bonds issued pursuant to this
10 article is due, and monthly thereafter for the first ten

11 months of each fiscal year, there shall be deposited into
12 the Roads to Prosperity Bond Debt Service Fund an
13 amount equal to one tenth of the projected annual
14 principal and interest requirements, as certified by the
15 commissioner, on all bonds issued pursuant to this article,
16 of the tax collected pursuant to chapter eleven of this
17 code: *Provided*, That each tenth payment shall be reduced
18 by any interest earnings accrued to the Roads to
19 Prosperity Bond Debt Service Fund: *Provided, however*,
20 That if bonds issued after the annual certification have a
21 first interest or principal payment coming due in the then
22 current or next fiscal year, the monthly deposits shall be
23 made in such a manner to provide for the payment of the
24 interest and/or principal coming due.

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