

ACTS
OF THE
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OF
WEST VIRGINIA



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SPEAKER OF THE HOUSE

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CHAPTER 136

**(S. B. 673 - By Senators Rucker, Blair, Azinger,
Cline, Maynard, Roberts, Romano, Stollings, Trump
and Unger)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to repeal §18B-1D-2, §18B-1D-3, §18B-1D-4, and §18B-1D-5 of the Code of West Virginia, 1931, as amended; to repeal §18B-7-8 of said code; to amend and reenact §18B-1D-1 and §18B-1D-8 of said code; and to amend and reenact §18C-1-1 of said code, all relating to public higher education accountability and planning; ensuring efficiency in planning and accountability; modifying the data collection and reporting processes; eliminating the requirement for a statewide master plan for public higher education; eliminating the requirement for state and institutional compacts for public higher education; eliminating the requirement for a human resources report card for public higher education; modifying the reporting methods for certain institutional and statewide reports; modifying the reporting method for the student financial aid report card for public higher education; and continuing the accountability system for public higher education.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-1. Master plan repealed; accountability system continued.

1 (a) The Legislature finds that:

2 (1) Accountability and strategic planning are valuable
3 and necessary components of establishing and achieving
4 goals for higher education in this state and fulfilling
5 missions of the institutions;

6 (2) To be most effective and efficient, the accountability
7 and strategic planning process should be coordinated,
8 streamlined, and nonduplicative; and

9 (3) Redundant reporting requirements exist in the
10 accountability and strategic planning process which serve to
11 waste scarce resources and decrease efficiency.

12 (b) It is the intent of the Legislature that the
13 accountability and strategic planning process for public
14 higher education in this state continues in a unified and
15 comprehensive manner while utilizing the resources of the
16 higher education systems in an economical and efficient
17 manner. To that end:

18 (1) The requirement for a statewide master plan for
19 public higher education is repealed, and any provision of
20 this code regarding the plan is void and of no effect;

21 (2) The requirements for state and institutional
22 compacts for public higher education are repealed, and any
23 provision of this code regarding the compacts are void and
24 of no effect; and

25 (3) When collecting data from an institution, the
26 commission and council first shall consider data generated
27 from the unit-record student, registration, course and
28 personnel files, the audited financial statements, and any
29 source previously submitted formally to the commission or
30 council from which the requested data may be obtained, so
31 long as the data or information available through these
32 sources reflects the most current reporting period.

§18B-1D-2. Definitions.

1 [Repealed.]

§18B-1D-3. State vision for public higher education; findings; establishment of objectives.

1 [Repealed.]

§18B-1D-4. Responsibilities of Higher Education Policy Commission and Council for Community and Technical College Education; development of public policy agendas; reports; institutional responsibilities.

1 [Repealed.]

§18B-1D-5. Master plans; reports; approval process.

1 [Repealed.]

§18B-1D-8. Publication of institution and system data.

1 (a) The purpose of the institutional and statewide data
2 reporting system is to make information available through
3 the official websites of the commission and council to
4 parents, students, faculty, staff, state policymakers, and the
5 general public on the quality and performance of public
6 higher education.

7 (b) The information provided through the reporting
8 system shall be consistent and comparable between and
9 among state institutions of higher education. If applicable,
10 the information shall allow for easy comparison with higher
11 education-related data collected and disseminated by the
12 Southern Regional Education Board, the United States
13 Department of Education and other education data-
14 gathering and data-disseminating organizations upon which
15 state policymakers frequently rely in setting policy.

16 (c) The rules required by this article shall provide for the
17 collection, analysis, and dissemination of information on the
18 performance of the state institutions of higher education,
19 including health sciences education, in relation to the
20 findings, goals, and objectives set forth in this article and
21 §18B-1-1a of this code.

22 (1) The objective of this portion of the rule is to ensure
23 that the Legislative Oversight Commission on Education
24 Accountability and others identified in subsection (a) of this
25 section are provided with full and accurate information
26 while minimizing the institutional burden of recordkeeping
27 and reporting.

28 (2) This portion of the rule shall identify various
29 indicators of student and institutional performance that, at a
30 minimum, must be reported annually, set forth general
31 guidelines for the collection and reporting of data, and
32 provide for the preparation and publication of the statewide
33 data and reports.

34 The statewide annual report shall be analysis-driven,
35 rather than simply data-driven, and shall present
36 information in a format that can inform education
37 policymaking. It shall outline significant trends, identify
38 major areas of concern, and discuss progress toward
39 meeting state and system goals and objectives. It shall be
40 brief and concise, reporting required information in
41 nontechnical language.

42 (d) The statewide data reporting system shall include the
43 data for each separately listed, applicable indicator
44 identified in the rule promulgated pursuant to subsection (c)
45 of this section and the aggregate of the data for all public
46 institutions of higher education.

47 (e) A statewide annual report shall be prepared using
48 actual institutional, state, regional, and national data, as
49 applicable and available, indicating the present performance
50 of the individual institutions, the governing boards, and the
51 state systems of higher education. The report shall be based
52 upon information for the current school year or for the most
53 recent school year for which the information is available, in
54 which case the year shall be clearly noted.

55 (f) The president or chief executive officer of each state
56 institution of higher education shall prepare and submit

57 annually all requested data to the commission at the times
58 established by the commission.

59 (g) The higher education central office staff, under the
60 direction of the vice chancellor for administration, shall
61 provide technical assistance to each institution and
62 governing board in data collection and reporting and is
63 responsible for assembling the statewide annual report from
64 information submitted by each governing board.

65 (h) Current data shall be published to the statewide data
66 reporting system prior to January 1 annually. The statewide
67 annual report shall be completed and disseminated with
68 copies to the Legislative Oversight Commission on
69 Education Accountability prior to January 1 annually, and
70 the staff of the commission and the council shall prepare a
71 report highlighting specifically the trends, progress toward
72 meeting goals and objectives, and major areas of concern
73 for public higher education, including medical education,
74 for presentation to the Legislative Oversight Commission
75 on Education Accountability annually at the interim
76 meetings in January.

77 (i) The Vice Chancellor for Administration shall make
78 a digital copy of the statewide annual report available to the
79 public for download from the official websites of the
80 commission and council.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-8. Reporting.

1 [Repealed.]

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

§18C-1-1. Legislative findings; purpose; administration generally; reporting.

1 (a) The Legislature makes the following findings:

2 (1) Although enrollments in institutions of higher
3 education in this state and throughout the nation continue to
4 increase at a rapid pace, West Virginia has not developed
5 sufficiently the state's human talent and resources because
6 many able, but needy, students are not able to finance a
7 higher education program;

8 (2) The state can achieve its full economic and social
9 potential only when the following elements are in place:

10 (A) Every individual has the opportunity to contribute
11 to the full extent of his or her capability; and

12 (B) The state assists in removing financial barriers to the
13 individual's education goals that remain after he or she has
14 used all resources and work opportunities available;

15 (b) The ultimate state goal in providing student financial
16 aid is to create a culture that values education, to improve
17 the quality of the workforce, and to enhance the quality of
18 life for the citizens of West Virginia.

19 (c) The vice chancellor for administration has a
20 ministerial duty to administer, oversee, and monitor all state
21 and federal student financial aid programs administered at
22 the state level in accordance with established rules under the
23 direction of the commission and council and in consultation
24 with the Higher Education Student Financial Aid Advisory
25 Board.

26 (d) These programs include, but are not limited to, the
27 following programs:

28 (1) The Guaranteed Student Loan Program, which may
29 be administered by a private nonprofit agency;

30 (2) The Medical Student Loan Program;

31 (3) The Underwood-Smith Teacher Scholarship Program;

32 (4) The Engineering, Science and Technology
33 Scholarship Program;

34 (5) The West Virginia Higher Education Grant
35 Program;

36 (6) The Higher Education Adult Part-Time Student
37 Grant Program;

38 (7) The West Virginia Providing Real Opportunities for
39 Maximizing In-State Student Excellence (PROMISE)
40 Scholarship Program;

41 (8) The Higher Education Student Assistance Loan
42 Program established pursuant to §18-22D-1 *et seq.* of this
43 code;

44 (9) The West Virginia College Prepaid Tuition and
45 Savings Program established pursuant to §18-30-1 *et seq.* of
46 this code, which is administered by the State Treasurer;

47 (10) The state aid programs for students of optometry,
48 pursuant to §18C-3-1 *et seq.* of this code;

49 (11) The state aid programs for students of veterinary
50 medicine pursuant to §18-11-6a of this code;

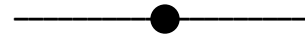
51 (12) Any reciprocal program and contract program for
52 student aid established pursuant to §18B-4-3 and §18B-4-4
53 of this code;

54 (13) Any other state-level student aid programs in this
55 code; and

56 (14) Any federal grant or contract student assistance or
57 support programs administered at the state level.

58 (e) Notwithstanding any provision of this chapter to the
59 contrary, the Vice Chancellor for Administration shall
60 publish comprehensive data to the official websites of the
61 commission and council regarding the implementation of
62 the financial aid programs identified in subsection (d) of this

63 section which are administered under his or her supervision. A
64 concise summary report shall be provided to the commission
65 and the council and shall be presented to the Legislative
66 Oversight Commission on Education Accountability no later
67 than January 1 annually. The report shall address all financial
68 aid issues for which reports are required in this code, as well
69 as any findings and recommendations.



CHAPTER 137

(H. B. 3020 - By Delegate Espinosa)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §18B-5-3 of the Code of West Virginia, 1931, as amended, relating to the authority of the Higher Education Policy Commission, the Council for Community and Technical College Education, and institutional governing boards to enter into contracts for financial services; and providing for specified flexibility entering into agreements with certain affiliated nonprofit corporations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-3. Authority to contract for programs, services and facilities.

1 (a) The governing boards, the commission, and the
2 council are authorized and empowered to enter into
3 contracts and expend funds for programs, services and
4 facilities provided by public and private education
5 institutions, associations, boards, agencies, consortia,
6 corporations, partnerships, individuals and local, state and

7 federal governmental bodies within and outside of West
8 Virginia in order that maximum higher education
9 opportunities of high quality may be provided to the citizens
10 of the state in the most economical manner. In no event may
11 a contract for such services and facilities be entered into
12 unless the commission, the council, or the governing boards
13 have determined that such services and facilities are
14 necessary and would be at a savings to the state.

15 (b) When a governing board, the commission, or the
16 council determines that a contract for financial services is
17 necessary and proper, it may enter into such a contract with
18 an affiliated nonprofit corporation under such financial
19 terms as the governing board, commission, or council
20 determines are reasonable and proper in the sound
21 administration of their financial responsibilities to the state.
22 In so doing, the affiliated nonprofit corporation shall be
23 deemed a sole source in respect to any applicable law or
24 regulation relating to expenditures of public funds.

25 (c) As used in this section, “affiliated nonprofit
26 corporation” means a West Virginia nonprofit, nonstock
27 corporation which:

28 (1) Is organized as for charitable, educational, and
29 scientific purposes, or for similar purposes;

30 (2) Is recognized by the Internal Revenue Service as a
31 Section 501(c)3, or successor provision of federal law, tax-
32 exempt organization;

33 (3) Is organized solely to support and contribute to the
34 respective institution of higher education, or to the
35 commission, or to the council, as applicable; and

36 (4) Has annually independently audited financial
37 statements, which have been included and presented, for at
38 least the preceding five fiscal years, in the audited financial
39 statements of the respective governing board, or of the
40 respective institution of higher education under the authority
41 of a governing board, or of the commission or council.

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CHAPTER 138

**(Com. Sub. for S. B. 318 - By Senators Trump,
Rucker, Cline, Roberts, Sypolt, Tarr, Hamilton and
Azinger)**

[Passed March 7, 2019; in effect October 1, 2019.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §9-7-1, §9-7-3, §9-7-6, and §9-7-6a of the Code of West Virginia, 1931, as amended, all relating to transferring the Medicaid Fraud Control Unit to the Office of the Attorney General; establishing an effective date the Medicaid Fraud Control Unit will transfer to the Office of the Attorney General; establishing the Legislative Auditor to deliver a report on the performance of the Medicaid Fraud Control Unit; establishing investigation powers with the Attorney General; establishing the Secretary of the Department of Health and Human Resources may share documents with the Attorney General; establishing persons able to maintain a civil action; and establishing liability limits for employees acting in good faith.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

§9-7-1. Legislative purpose and findings; powers and duties of fraud control unit; transfer to the Office of the Attorney General; legislative report.

- 1 (a) It is the purpose of the Legislature to continue the
- 2 Medicaid Fraud Control Unit previously established within
- 3 the West Virginia Department of Health and Human
- 4 Resources and to provide it with the responsibility and

5 authority for investigating and controlling fraud and abuse
6 of the medical programs of the state Department of Health
7 and Human Resources which have been established
8 pursuant to §9-4-2 of this code: *Provided*, That effective
9 October 1, 2019, the Medicaid Fraud Control Unit shall be
10 transferred to the Office of the Attorney General pursuant to
11 subsection (c) of this section. It is the finding of the
12 Legislature that substantial sums of money have been lost
13 to the state and federal government in the operation of the
14 medical programs of the state due to the overpayment of
15 moneys to medical providers. Such overpayments have
16 been the result of both the abuse of and fraud in the
17 reimbursement process.

18 (b) The Medicaid Fraud Control Unit shall have the
19 following powers and duties:

20 (1) The investigation and referral for prosecution of all
21 violations of applicable state and federal laws pertaining to
22 the provision of goods or services under the medical
23 programs of the state including the Medicaid program.

24 (2) The investigation of abuse, neglect, or financial
25 exploitation of residents in board and care facilities and
26 patients in health care facilities which receive payments
27 under the medical programs of the state.

28 (3) To cooperate with the federal government in all
29 programs designed to detect and deter fraud and abuse in the
30 medical programs of the state.

31 (4) To employ and train personnel to achieve the
32 purposes of this article and to employ legal counsel,
33 investigators, auditors, and clerical support personnel and
34 such other personnel as are deemed necessary from time to
35 time to accomplish the purposes herein.

36 (c) Effective October 1, 2019, the Medicaid Fraud
37 Control Unit shall be transferred to the Office of the
38 Attorney General. All rights, responsibilities, powers, and
39 duties of the unit shall be transferred to the Office of the

40 Attorney General, including the administration and
41 authority of the Medicaid Fraud Control Fund. All
42 employees of the Medicaid Fraud Control Unit shall be
43 transferred to and become employees of the Office of the
44 Attorney General at their existing hourly rate or salary and
45 with all accrued benefits. The Medicaid Fraud Control
46 Unit's authorities, powers, and duties shall remain
47 unchanged by this subsection.

48 (d) On or before December 31, 2022, the Legislative
49 Auditor shall study and report to the Joint Committee on
50 Government and Finance on the performance of the
51 Medicaid Fraud Control Unit within the Office of the
52 Attorney General during the previous three years compared
53 to the performance of the unit while it was established
54 within the Department of Health and Human Resources.

§9-7-3. Investigations; procedure.

1 (a) When the unit has credible information that indicates
2 a person has engaged in an act or activity which is subject
3 to prosecution under this article, the unit may make an
4 investigation to determine if the act has been committed
5 and, to the extent necessary for such purpose, the Attorney
6 General, or an employee of the unit designated by the
7 Attorney General, may administer oaths or affirmations and
8 issue subpoenas for witnesses and documents relevant to the
9 investigation, including information concerning the
10 existence, description, nature, custody, condition, and
11 location of any book, record, documents, or other tangible
12 thing and the identity and location of persons having
13 knowledge of relevant facts or any matter reasonably
14 calculated to lead to the discovery of admissible evidence.

15 When the unit has probable cause to believe that a
16 person has engaged in an act or activity which is subject to
17 prosecution under this article, or §61-2-29 of this code,
18 either before, during, or after an investigation pursuant to
19 this section, the Attorney General, or an employee of the
20 unit designated by the Attorney General, may request search

21 warrants and present and swear or affirm criminal
22 complaints.

23 (b) If documents necessary to an investigation of the
24 unit shall appear to be located outside the state, the
25 documents shall be made available by the person or entity
26 within the jurisdiction of the state having control over the
27 documents either at a convenient location within the state
28 or, upon payment of reasonable and necessary expenses to
29 the unit for transportation and inspection, at the place
30 outside the state where the documents are maintained.

31 (c) Upon failure of a person to comply with a subpoena
32 or subpoena duces tecum or failure of a person to give
33 testimony without lawful excuse and upon reasonable notice
34 to all persons affected thereby, the unit may apply to the
35 circuit court of the county in which compliance is sought for
36 appropriate orders to compel obedience with the provisions
37 of this section.

38 (d) The unit shall not make public the name or identity
39 of a person whose acts or conduct is investigated pursuant
40 to this section or the facts disclosed in such investigation
41 except as the same may be used in any legal action or
42 enforcement proceeding brought pursuant to this article or
43 any other provision of this code.

44 (e) Beginning on October 1, 2019, the secretary and the
45 Department of Health and Human Resources shall fully
46 cooperate with the Office of the Attorney General on any
47 investigation, prosecution, or civil action conducted
48 pursuant to this article. The secretary shall promptly provide
49 the Attorney General with any information or document
50 requested for the purposes of carrying out this article, to the
51 extent permitted under federal law.

52 (f) Prior to October 1, 2019, the secretary and the
53 Department of Health and Human Resources shall fully
54 cooperate with and assist the Office of the Attorney General

55 in any efforts to seek, acquire, continue, and maintain any
56 ongoing work within the Medicaid Fraud Control Unit.

§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 the 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, the Attorney
20 General's assistants, or by any attorney in contract with or
21 employed with the Office of the Attorney General to
22 provide such representation. If the Attorney General
23 declines to do so, the civil action shall be maintained either
24 by a prosecuting attorney and the prosecuting attorney's
25 assistants or by any attorney in contract with or employed
26 by the Department of Health and Human Resources to
27 provide such representation.

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

§9-7-6a. Liability of employees of the Department of Health and Human Resources; Office of the Attorney General.

1 There shall be no civil liability on the part of, and no
 2 cause of action shall arise against the Department of Health
 3 and Human Resources, the Office of the Attorney General,
 4 or employees or agents of the aforementioned for any action
 5 taken by them in good faith and in the lawful performance
 6 of their powers and duties under this article.

CHAPTER 139

**(Com. Sub. for S. B. 564 - By Senators Takubo,
 Baldwin, Beach, Facemire, Hardesty, Ihlenfeld,
 Jeffries, Lindsay, Maroney, Prezioso, Romano,
 Stollings, Unger and Hamilton)**

[Passed March 9, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-5-12 of said code, all relating to expanding certain insurance coverages for pregnant women; expanding who is eligible to receive certain Medicaid services; expanding who is eligible to receive certain services through the Children's Health Insurance Program; providing the minimum services are to be covered; and providing an effective date.

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 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.**§5-16B-6d. Modified benefit plan implementation.**

1 (a) Upon approval by the Centers for Medicare and
2 Medicaid Services, the board shall implement a benefit plan
3 for uninsured children of families with income between 200
4 and 300 hundred percent of the federal poverty level.

5 (b) The benefit plans offered pursuant to this section
6 shall include services determined to be appropriate for
7 children, but may vary from those currently offered by the
8 board.

9 (c) The board shall structure the benefit plans for this
10 expansion to include premiums, coinsurance or copays, and
11 deductibles. The board shall develop the cost-sharing
12 features in such a manner as to keep the program fiscally
13 stable without creating a barrier to enrollment. Such features
14 may include different cost-sharing features within this
15 group based upon the percentage of the federal poverty
16 level.

17 (d) Provider reimbursement schedules shall be no lower
18 than the reimbursement provided for the same services
19 under the plans offered in §5-16-1 *et seq.* of this code.

20 (e) The board shall create a benefit plan for
21 comprehensive coverage for pregnant women between 185
22 percent and 300 percent of the federal poverty level
23 including prenatal care, delivery, and 60 days postpartum
24 care under authorization of the Title XXI of the Social
25 Security Act of 1997, 42 U.S.C. § 1397II, and as funding is
26 available after all children up to 300 percent of the federal
27 poverty level are covered.

28 (f) All provisions of this article are applicable to this
29 expansion unless expressly addressed in this section.

30 (g) Nothing in this section may be construed to require
31 any appropriation of state General Revenue Funds for the
32 payment of any benefit provided pursuant to this section,
33 except for the state appropriation used to match the federal
34 financial participation funds. In the event that federal funds
35 are no longer authorized for participation by individuals
36 eligible at income levels above 200 percent, the board shall
37 take immediate steps to terminate the expansion provided
38 for in this section and notify all enrollees of such
39 termination. In the event federal appropriations decrease for
40 the programs created pursuant to Title XXI of the Social
41 Security Act of 1997, the board is directed to make those
42 decreases in this expansion program before making changes
43 to the programs created for those children whose family
44 income is less than 200 percent of the federal poverty level.

45 (h) The board is directed to report no less than quarterly
46 to the Legislative Oversight Commission on Health and
47 Human Resources Accountability on the development,
48 implementation, and progress of the expansion authorized
49 in this section.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-12. Medicaid program; maternity and infant care.

1 (a) The Legislature finds that high rates of infant
2 mortality and morbidity are costly to the state in terms of
3 human suffering and of expenditures for long-term
4 institutionalization, special education, and medical care. It
5 is well documented that appropriate care during pregnancy
6 and delivery can prevent many of the expensive, disabling
7 problems our children experience. There exists a crisis in
8 this state relating to the availability of obstetrical services,
9 particularly to patients in rural areas, and to the cost patients
10 must pay for obstetrical services. The availability of
11 obstetrical service for Medicaid patients enables these
12 patients to receive quality medical care and to give birth to

13 healthier babies and, consequently, improve the health
14 status of the next generation.

15 The Legislature further recognizes that public and
16 private insurance mechanisms remain inadequate, and poor
17 and middle income women and children are among the most
18 likely to be without insurance. Generally, low-income,
19 uninsured children receive half as much health care as their
20 insured counterparts. The state is now investing millions to
21 care for sick infants whose deaths and disabilities could
22 have been avoided.

23 It is the intent of the Legislature that the Department of
24 Health and Human Resources participate in the Medicaid
25 program for indigent children and pregnant women
26 established by Congress under the Consolidated Omnibus
27 Budget Reconciliation Act (COBRA), Public Law 99-272,
28 the Sixth Omnibus Budget Reconciliation Act (SOBRA),
29 Public Law 99-504, and the Omnibus Budget
30 Reconciliation Act (OBRA), Public Law 100-203.

31 (b) The department shall:

32 (1) Extend Medicaid coverage to pregnant women and
33 their newborn infants to 185 percent of the federal poverty
34 level and to provide coverage up to 60 days postpartum care,
35 effective July 1, 2019, or as soon as federal approval has
36 occurred.

37 (2) As provided under COBRA, SOBRA, and OBRA,
38 effective July 1, 1988, infants shall be included under
39 Medicaid coverage with all children eligible for Medicaid
40 coverage born on or after October 1, 1983, whose family
41 incomes are at or below 100 percent of the federal poverty
42 level and continuing until such children reach the age of
43 eight years.

44 (3) Elect the federal options provided under COBRA,
45 SOBRA, and OBRA impacting pregnant women and
46 children below the poverty level: *Provided*, That no
47 provision in this article shall restrict the department in

48 exercising new options provided by or to be in compliance
49 with new federal legislation that further expands eligibility
50 for children and pregnant women.

51 (4) The department shall be responsible for the
52 implementation and program design for a maternal and infant
53 health care system to reduce infant mortality in West Virginia.
54 The health system design shall include quality assurance
55 measures, case management, and patient outreach activities.
56 The department shall assume responsibility for claims
57 processing in accordance with established fee schedules and
58 financial aspects of the program necessary to receive available
59 federal dollars and to meet federal rules and regulations.

60 (5) Beginning July 1, 1988, the department shall
61 increase to no less than \$600 the reimbursement rates under
62 the Medicaid program for prenatal care, delivery, and post-
63 partum care.

64 (c) In order to be in compliance with the provisions of
65 OBRA through rules and regulations, the department shall
66 ensure that pregnant women and children whose incomes
67 are above the Aid to Families and Dependent Children
68 (AFDC) payment level are not required to apply for
69 entitlements under the AFDC program as a condition of
70 eligibility for Medicaid coverage. Further, the department
71 shall develop a short, simplified pregnancy/pediatric
72 application of no more than three pages, paralleling the
73 simplified OBRA standards.

74 (d) Any woman who establishes eligibility under this
75 section shall continue to be treated as an eligible individual
76 without regard to any change in income of the family of
77 which she is a member until the end of the 60-day period
78 beginning on the last day of her pregnancy.

79 (e) No later than July 1, 2016, the department shall seek
80 a waiver of the requirements that all women seek 30-day
81 approval from the federal Center for Medicare and
82 Medicaid Services prior to receiving a tubal ligation.

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CHAPTER 140

**(H. B. 2459 - By Delegates Shott, Capito, Kessinger,
Mandt, Fleischauer, Pushkin, Byrd, Robinson, S.
Brown and Lovejoy)**

[Passed February 20, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-3a, relating to exercising authority to exempt individuals domiciled within the state from certain restrictions contained in federal law and exempting persons convicted of certain offenses from the prohibition against receiving supplemental nutrition assistance program benefits.

Be it enacted by the Legislature of West Virginia:

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

§9-2-3a. Authorized exemption from federal law; exceptions.

1 Pursuant to the authority and option granted by 21
2 U.S.C. §862a(d)(1)(A) to the states, West Virginia exempts
3 all individuals domiciled within the state from the
4 application of 21 U.S.C. §862a(a)(2) unless the offense of
5 conviction has as an element thereof misuse of
6 supplemental nutrition assistance program benefits, loss of
7 life, or the causing of physical injury.

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CHAPTER 141

**(H. B. 2492 - By Delegates Ellington, Hill, Summers,
Pack, Atkinson, Wilson, Worrell, D. Jeffries, Hollen
and Butler)**

[Passed February 19, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2019.]

AN ACT to amend and reenact §9-6-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-2-809 of said code, all relating to mandatory reporting procedures of abuse and neglect of adults and children.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-11. Reporting procedures.

1 (a) A report of neglect or abuse of an incapacitated adult
2 or facility resident or of an emergency situation involving such
3 an adult shall be made immediately to the department's adult
4 protective services agency by a method established by the
5 department: *Provided*, That if the method for reporting is web-
6 based, the Department of Health and Human Resources shall
7 maintain a system for addressing emergency situations that
8 require immediate attention and shall be followed by a written
9 report by the complainant or the receiving agency within 48
10 hours. The department shall, upon receiving any such report,
11 take such action as may be appropriate and shall maintain a
12 record thereof. The department shall receive telephonic reports
13 on its 24-hour, seven-day-a-week, toll-free number established
14 to receive calls reporting cases of suspected or known adult
15 abuse or neglect.

16 (b) A copy of any report of abuse, neglect, or emergency
17 situation shall be immediately filed with the following
18 agencies:

19 (1) The Department of Health and Human Resources;

20 (2) The appropriate law-enforcement agency and the
21 prosecuting attorney, if necessary; or

22 (3) In case of a death, to the appropriate medical
23 examiner or coroner's office.

24 (c) If the person who is alleged to be abused or neglected
25 is a resident of a nursing home or other residential facility,
26 a copy of the report shall also be filed with the state or
27 regional ombudsman and the administrator of the nursing
28 home or facility.

29 (d) The department shall omit from such report in the
30 first instance, the name of the person making a report, when
31 requested by such person.

32 (e) Reports of known or suspected institutional abuse or
33 neglect of an incapacitated adult or facility resident or the
34 existence of an emergency situation in an institution,
35 nursing home, or other residential facility shall be made,
36 received, and investigated in the same manner as other
37 reports provided for in this article. In the case of a report
38 regarding an institution, nursing home, or residential
39 facility, the department shall immediately cause an
40 investigation to be conducted.

41 (f) Upon receipt of a written complaint, the department
42 shall coordinate an investigation pursuant to §9-6-3 of this
43 code and applicable state or federal laws, rules, or
44 regulations.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-809. Reporting procedures.

1 (a) Reports of child abuse and neglect pursuant to this
2 article shall be made immediately to the department of child
3 protective services by a method established by the
4 department: *Provided*, That if the method for reporting is
5 web-based, the Department of Health and Human
6 Resources shall maintain a system for addressing
7 emergency situations that require immediate attention and
8 shall be followed by a written report within 48 hours if so
9 requested by the receiving agency. The state department
10 shall establish and maintain a 24-hour, seven-day-a-week
11 telephone number to receive calls reporting suspected or
12 known child abuse or neglect.

13 (b) A copy of any report of serious physical abuse,
14 sexual abuse, or assault shall be forwarded by the
15 department to the appropriate law-enforcement agency, the
16 prosecuting attorney, or the coroner or medical examiner's
17 office. All reports under this article are confidential. Reports
18 of known or suspected institutional child abuse or neglect
19 shall be made and received as all other reports made
20 pursuant to this article.



CHAPTER 142

(Com. Sub. for S. B. 30 - By Senators Blair and Cline)

[Passed March 9, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §33-3-15 of the Code of West Virginia, 1931, as amended, relating to eliminating taxation on annuity considerations collected and received by a life insurer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURERS.

§33-3-15. Annuity tax

1 (a) For the taxable years beginning on or after January 1,
2 2021, the tax imposed by this section is discontinued.

3 (b) Every life insurer transacting insurance in West Virginia
4 shall make a return to the commissioner annually on a form
5 prescribed by the commissioner, on or before March 1, under
6 the oath of its president or secretary, of the gross amount of
7 annuity considerations collected and received by it during the
8 previous calendar year on its annuity business transacted in this
9 state and stating the amount of tax due under this section,
10 together with payment in full for the tax due. The tax is the sum
11 equal to one per centum of the gross amount of the annuity
12 considerations, less annuity considerations returned and less
13 termination allowances on group annuity contracts. All the taxes
14 received by the commissioner shall be paid into the insurance
15 tax fund created in §33-3-14(b) of this code. In the case of funds
16 accepted by a life insurer under an agreement which provides
17 for an accumulation of money to purchase annuities at future
18 dates, annuity considerations may be either considered by the
19 life insurer to be collected and received upon receipt or upon
20 actual application to the purchase of annuities. Any earnings
21 credited to money accumulated while under the latter alternative
22 will also be considered annuity considerations. For purposes of
23 this election, the alternative which the life insurer elected to file
24 its tax return for the 2001 tax year or which it elects when it
25 enters the state, whichever is later, shall be considered the life
26 insurer's election between these alternatives. A life insurer filing
27 a year 2001 tax return shall provide written notice to the
28 commissioner of its election within 90 days of the effective date
29 of this enactment. Otherwise, a life insurer shall provide written
30 notice to the commissioner of its election within 90 days after it
31 enters the state. Thereafter, a life insurer may not change its
32 election without the consent of the Insurance Commissioner.
33 The Insurance Commissioner may develop forms to assure
34 compliance with this subsection.

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CHAPTER 143

**(Com. Sub. for S. B. 310 - By Senators Stollings,
Jeffries, Beach, Takubo and Prezioso)**

[Passed March 4, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-39, relating to dental insurance plans; defining terms; prohibiting insurers from requiring dentists to provide a discount on noncovered services; prohibiting dentists from charging covered persons more for noncovered services than his or her customary or usual rate for the services; providing that insurers may not provide for a nominal reimbursement for a service in order to claim that the service or material is covered; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-39. Prohibitions related to dental insurance plans, agreements, charges, and reimbursements; definitions.

1 (a) For purposes of this section:

2 “Covered services” means dental care services for
3 which reimbursement is available/ under an enrollee’s plan
4 contract, or for which reimbursement would be available but
5 for the application of contractual limitations such as
6 deductibles, copayments, coinsurance, waiting periods,
7 annual or lifetime maximum, frequency limitations,
8 alternative benefit payments, or any other limitation.

9 “Contractual discount” means a percentage reduction
10 from the provider’s usual and customary rate for covered
11 dental services and materials required under a participating
12 provider agreement.

13 “Dental plan” includes any policy of insurance which is
14 issued by a health care service contractor which provides for
15 coverage of dental services not in connection with a medical
16 plan.

17 “Materials” includes, but is not limited to, any material
18 or device utilized within the scope of practice by a licensed
19 dentist.

20 (b) No contract of any health care service contractor that
21 covers any dental services, and no contract or participating
22 provider agreement with a dentist may require, directly or
23 indirectly, that a dentist who is a participating provider,
24 provide services to an enrolled participant at a fee set by, or
25 a fee subject to the approval of, the health care services
26 contractor unless the dental services are covered services.

27 (c) A health care service contractor or other person
28 providing third-party administrator services shall not make
29 available any providers in its dental network to a plan that
30 sets dental fees for any services except covered services.

31 (d) A dentist may not charge more for services and
32 materials that are noncovered services under a dental
33 benefits policy than his or her usual and customary fee for
34 those services and materials.

35 (e) Reimbursement paid by a dental plan for covered
36 services and materials shall be reasonable and may not
37 provide nominal reimbursement in order to claim that
38 services and materials are covered services.

39 (f) This section applies to dental plans, contracts, and
40 participating provider agreements which take effect or are
41 renewed on or after July 1, 2019.

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CHAPTER 144

(Com. Sub. for S. B. 485 - By Senator Azinger)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §33-17A-3 and §33-17A-4 of the Code of West Virginia, 1931, as amended, all relating to clarifying notification requirements for property insurance purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION, AND DISCLOSURE.

§33-17A-3. Definitions.

1 (a) “Declination” is the refusal of an insurer to issue a
2 property insurance policy on a written application or written
3 request for coverage. For the purposes of this article, the
4 offering of insurance coverage with a company within an
5 insurance group which is different from the company
6 requested on the application or written request for coverage,
7 or the offering of insurance upon different terms than
8 requested in the application or written request for coverage,
9 is not considered a declination if such offering of such
10 insurance is based upon any valid underwriting reason
11 which involves a substantial increase in the risk. Each
12 company or groups of companies instituting such transfer
13 shall give notice in the manner provided in §33-17A-4(c) of
14 this code to the insured as to the reasons for such transfer.

15 (b) “Nonpayment of premium” means the failure of the
16 named insured to discharge any obligation in connection
17 with the payment of premiums on policies of property

18 insurance, subject to this article, whether the payments are
19 directly payable to the insurer or its agent or indirectly
20 payable to the insurer or its agent or indirectly payable under
21 a premium finance plan or extension of credit.
22 “Nonpayment of premium” includes the failure to pay dues
23 or fees where payment of dues or fees is a prerequisite to
24 obtaining or continuing property insurance coverage.

25 (c) “Renewal” or “to renew” means the issuance and
26 delivery by an insurer at the end of a policy period of a
27 policy superseding a policy previously issued and delivered
28 by the same insurer, or the issuance and delivery of a
29 certificate or notice extending the term of an existing policy
30 beyond its policy period or term. For the purpose of this
31 article, any policy period or term of less than six months is
32 considered a policy period or term of six months, and any
33 policy period or term of more than one year or any policy
34 with no fixed expiration date is considered a policy period
35 or term of one year.

36 (d) “Termination” means either a cancellation or
37 nonrenewal of property insurance coverage in whole or in
38 part. A cancellation occurs during the policy term. A
39 nonrenewal occurs at the end of the policy term as set forth
40 in §33-17A-3(c) of this code.

41 (1) For purposes of this article, the transfer of a
42 policyholder between companies within the same insurance
43 group is not considered a termination, if such transfer is
44 based upon any valid underwriting reason which involves a
45 substantial increase in the risk.

46 (2) Requiring a reasonable deductible, reasonable
47 changes in the amount of insurance, or reasonable
48 reductions in policy limits or coverage is not considered a
49 termination if the requirements are directly related to the
50 hazard involved and are made on the renewal date of the
51 policy.

§33-17A-4. Notification and reasons for a transfer, declination, termination, or renewal with reduction in coverage.

1 (a) Upon declining to insure any real or personal
2 property, subject to this article, the insurer making a
3 declination shall provide the insurance applicant with a
4 written explanation of the specific reason or reasons for the
5 declination at the time of the declination. The provision of
6 such insurance application form by an insurer shall create
7 no right to coverage on behalf of the insured to which the
8 insured is not otherwise entitled.

9 (b) A notice of cancellation of property insurance
10 coverage by an insurer shall be in writing, shall be delivered
11 to the named insured or sent by first class mail to the named
12 insured at the last known address of the named insured, shall
13 state the effective date of the cancellation, and shall be
14 accompanied by a written explanation of the specific reason
15 or reasons for the cancellation.

16 (c) At least 30 days before the end of a policy period, as
17 described in §33-17A-3(c) of this code, an insurer shall
18 deliver or send by first class mail to the named insured at
19 the last known address of the named insured, notice of its
20 intention regarding the renewal of the property insurance
21 policy.

22 (1) Notice of an intention not to renew a property
23 insurance policy shall be accompanied by an explanation of
24 the specific reasons for the nonrenewal: *Provided*, That no
25 insurer shall fail to renew an outstanding property insurance
26 policy which has been in existence for four years or longer
27 except for the reasons as set forth in §33-17A-5 of this code,
28 or for other valid underwriting reasons which involve a
29 substantial increase in the risk: *Provided, however*, That
30 notwithstanding any other provision of this article, no
31 property insurance coverage policy in force for at least four
32 years, may be denied renewal or canceled solely as a result
33 of:

34 (A) A single first party property damage claim within
35 the previous 36 months and that arose from wind, hail,
36 lightning, wildfire, snow, or ice, unless the insurer has
37 evidence that the insured unreasonably failed to maintain
38 the property and that failure to maintain the property
39 contributed to the loss; or

40 (B) Two first party property damage claims within the
41 previous 12 months, both of which arose from claims solely
42 due to an event for which a state of emergency is declared
43 for the county in which the insured property is located,
44 unless the insurer has evidence that the insured
45 unreasonably failed to maintain the property and that failure
46 to maintain the property contributed to the loss. "State of
47 emergency" means the situation existing after the
48 occurrence of a disaster in which a state of emergency has
49 been declared by the Governor or by the Legislature
50 pursuant to the provisions of §15-5-6 of this code or in
51 which a major disaster declaration or emergency declaration
52 has been issued by the President of the United States
53 pursuant to the provisions of 42 U. S. C. §5122.

54 (2) Notice of an intention to transfer a policyholder
55 between companies within the same insurance group as
56 provided in §33-17A-3(d)(1) of this code shall be given by
57 each company or group of companies instituting such
58 transfer and shall be accompanied by an explanation of the
59 reasons for such transfer.

60 (3) Notice of an intention to renew a property insurance
61 policy with a new policy that includes changes made by the
62 insurer, which result in a removal of coverage, diminution
63 in the scope or reduction in coverage, change in deductible,
64 or addition of an exclusion, shall be accompanied by an
65 explanation of the changes made by the insurer. This
66 subdivision does not apply to any change, reduction, or
67 elimination of coverage made at the request of the insured,
68 any correction of typographical or scrivener's errors, or the
69 application of mandated legislative changes.



CHAPTER 145

**(Com. Sub. for S. B. 489 - By Senators Maroney,
Takubo and Tarr)**

[Passed February 26, 2019; in effect from passage.]
[Approved by the Governor on March 1, 2019.]

AN ACT to amend and reenact §5-16-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-51-3, §33-51-4, §33-51-7, §33-51-8, and §33-51-9 of said code; and to amend said code by adding thereto a new section, designated §33-51-10, all relating to the regulation of pharmacy benefit managers; defining terms; requiring pharmacy benefit managers to obtain a license from the Insurance Commissioner before doing business in the state; setting forth terms of licensure of pharmacy benefit managers; establishing fees; authorizing the Insurance Commissioner to promulgate rules for legislative approval; providing network adequacy standards; prohibiting a network to be comprised only of mail-order benefits; requiring the Insurance Commissioner to enforce the licensure provisions relating to pharmacy benefit managers; providing for the applicability of provisions to pharmacy benefit managers; clarifying that requirements do not apply to certain prescription drug plans; prohibiting certain practices by an auditing entity; providing exemptions; prohibiting different treatment of a federal 340B drug discount program; requiring the reporting of certain data relating to the payment of pharmacy claims; permitting the Public Employees Insurance Agency to cancel a contract if certain conditions are not met; providing disciplinary procedures; and providing civil penalties.

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.**

**§5-16-9. 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 the
118 director shall negotiate and contract directly with health
119 care providers and other entities, organizations and vendors
120 in order to secure competitive premiums, prices, and other
121 financial advantages. The director shall deal directly with
122 insurers or health care providers and other entities,
123 organizations, and vendors in presenting specifications and

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

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

157 (g) Each employee who is covered under any contract
158 or contracts shall receive a statement of benefits to which
159 the employee, his or her spouse and his or her dependents
160 are entitled under the contract, setting forth the information

161 as to whom the benefits are payable, to whom claims shall
162 be submitted and a summary of the provisions of the
163 contract or contracts as they affect the employee, his or her
164 spouse and his or her dependents.

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

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

188 (j) The director shall include language in all contracts
189 for pharmacy benefits management, as defined by §33-51-3
190 of this code, requiring the pharmacy benefit manager to
191 report quarterly to the agency for all pharmacy claims the
192 amount paid to the pharmacy provider per claim, including,
193 but not limited to, the following:

194 (1) The cost of drug reimbursement;

195 (2) Dispensing fees;

196 (3) Copayments; and

197 (4) The amount charged to the agency for each claim by
198 the pharmacy benefit manager.

199 In the event there is a difference between these amounts
200 for any claim, the pharmacy benefit manager shall report an
201 itemization of all administrative fees, rebates, or processing
202 charges associated with the claim. All data and information
203 provided by the pharmacy benefit manager shall be kept
204 secure, and notwithstanding any other provision of this code
205 to the contrary, the agency shall maintain the confidentiality
206 of the proprietary information and not share or disclose the
207 proprietary information contained in the report or data
208 collected with persons outside the agency. All data and
209 information provided by the pharmacy benefit manager
210 shall be considered proprietary and confidential and exempt
211 from disclosure under the West Virginia Freedom of
212 Information Act pursuant to §29B-1-4(a)(1) of this code.
213 Only those agency employees involved in collecting,
214 securing, and analyzing the data for the purpose of
215 preparing the report provided for herein shall have access to
216 the proprietary data. The director shall, using aggregated,
217 non-proprietary data only, report at least quarterly to the
218 Joint Committee on Government and Finance on the
219 implementation of this subsection and its impact on
220 program expenditures, including any difference or spread
221 between the amount paid by pharmacy benefit managers to
222 the pharmacy providers and the amount charged to the
223 agency for each claim by the pharmacy benefit manager.

224 (k) If the information required herein is not provided,
225 the agency may terminate the contract with the pharmacy
226 benefit manager and the Office of the Insurance
227 Commissioner shall discipline the pharmacy benefit
228 manager as provided in §33-51-8(e) of this code.

CHAPTER 33. INSURANCE.

ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.

§33-51-3. Definitions.

1 For purposes of this article:

2 “340B entity” means an entity participating in the
3 federal 340B drug discount program, as described in 42
4 U.S.C. § 256b, including its pharmacy or pharmacies, or any
5 pharmacy or pharmacies, contracted with the participating
6 entity to dispense drugs purchased through such program.

7 “Affiliate” means a pharmacy, pharmacist, or pharmacy
8 technician that directly or indirectly, through one or more
9 intermediaries, owns or controls, is owned or controlled by,
10 or is under common ownership or control with a pharmacy
11 benefit manager.

12 “Auditing entity” means a person or company that
13 performs a pharmacy audit, including a covered entity,
14 pharmacy benefits manager, managed care organization, or
15 third-party administrator.

16 “Business day” means any day of the week excluding
17 Saturday, Sunday, and any legal holiday as set forth in §2-
18 2-1 of this code.

19 “Claim level information” means data submitted by a
20 pharmacy or required by a payer or claims processor to
21 adjudicate a claim.

22 “Covered entity” means a contract holder or policy
23 holder providing pharmacy benefits to a covered individual
24 under a health insurance policy pursuant to a contract
25 administered by a pharmacy benefits manager.

26 “Covered individual” means a member, participant,
27 enrollee, or beneficiary of a covered entity who is provided
28 health coverage by a covered entity, including a dependent
29 or other person provided health coverage through the policy
30 or contract of a covered individual.

31 “Extrapolation” means the practice of inferring a
32 frequency of dollar amount of overpayments,
33 underpayments, nonvalid claims, or other errors on any
34 portion of claims submitted, based on the frequency of
35 dollar amount of overpayments, underpayments, nonvalid
36 claims, or other errors actually measured in a sample of
37 claims.

38 “Health care provider” has the same meaning as defined
39 in §33-41-2 of this code.

40 “Health insurance policy” means a policy, subscriber
41 contract, certificate, or plan that provides prescription drug
42 coverage. The term includes both comprehensive and
43 limited benefit health insurance policies.

44 “Insurance commissioner” or “commissioner” has the
45 same meaning as defined in §33-1-5 of this code.

46 “Network” means a pharmacy or group of pharmacies
47 that agree to provide prescription services to covered
48 individuals on behalf of a covered entity or group of covered
49 entities in exchange for payment for its services by a
50 pharmacy benefits manager or pharmacy services
51 administration organization. The term includes a pharmacy
52 that generally dispenses outpatient prescriptions to covered
53 individuals or dispenses particular types of prescriptions,
54 provides pharmacy services to particular types of covered
55 individuals or dispenses prescriptions in particular health
56 care settings, including networks of specialty, institutional
57 or long-term care facilities.

58 “Nonproprietary drug” means a drug containing any
59 quantity of any controlled substance or any drug which is
60 required by any applicable federal or state law to be
61 dispensed only by prescription.

62 “Pharmacist” means an individual licensed by the West
63 Virginia Board of Pharmacy to engage in the practice of
64 pharmacy.

65 “Pharmacy” means any place within this state where
66 drugs are dispensed and pharmacist care is provided.

67 “Pharmacy audit” means an audit, conducted on-site by
68 or on behalf of an auditing entity of any records of a
69 pharmacy for prescription or nonproprietary drugs
70 dispensed by a pharmacy to a covered individual.

71 “Pharmacy benefits management” means the
72 performance of any of the following:

73 (1) The procurement of prescription drugs at a
74 negotiated contracted rate for dispensation within the State
75 of West Virginia to covered individuals;

76 (2) The administration or management of prescription
77 drug benefits provided by a covered entity for the benefit of
78 covered individuals;

79 (3) The administration of pharmacy benefits, including:

80 (A) Operating a mail-service pharmacy;

81 (B) Claims processing;

82 (C) Managing a retail pharmacy network;

83 (D) Paying claims to a pharmacy for prescription drugs
84 dispensed to covered individuals via retail or mail-order
85 pharmacy;

86 (E) Developing and managing a clinical formulary
87 including utilization management and quality assurance
88 programs;

89 (F) Rebate contracting administration; and

90 (G) Managing a patient compliance, therapeutic
91 intervention, and generic substitution program.

92 “Pharmacy benefits manager” means a person, business,
93 or other entity that performs pharmacy benefits
94 management for covered entities;

95 “Pharmacy record” means any record stored
96 electronically or as a hard copy by a pharmacy that relates
97 to the provision of prescription or nonproprietary drugs or
98 pharmacy services or other component of pharmacist care
99 that is included in the practice of pharmacy.

100 “Pharmacy services administration organization” means
101 any entity that contracts with a pharmacy to assist with
102 third-party payer interactions and that may provide a variety
103 of other administrative services, including contracting with
104 pharmacy benefits managers on behalf of pharmacies and
105 managing pharmacies’ claims payments from third-party
106 payers.

107 “Third party” means any insurer, health benefit plan for
108 employees which provides a pharmacy benefits plan, a
109 participating public agency which provides a system of
110 health insurance for public employees, their dependents and
111 retirees, or any other insurer or organization that provides
112 health coverage, benefits, or coverage of prescription drugs
113 as part of workers’ compensation insurance in accordance
114 with state or federal law. The term does not include an
115 insurer that provides coverage under a policy of casualty or
116 property insurance.

§33-51-4. Procedures for conducting pharmacy audits.

1 (a) An entity conducting a pharmacy audit under this
2 article shall conform to the following rules:

3 (1) Except as otherwise provided by federal or state law,
4 an auditing entity conducting a pharmacy audit may have
5 access to a pharmacy’s previous audit report only if the
6 report was prepared by that auditing entity.

7 (2) Information collected during a pharmacy audit is
8 confidential by law, except that the auditing entity

9 conducting the pharmacy audit may share the information
10 with the pharmacy benefits manager and with the covered
11 entity for which a pharmacy audit is being conducted and
12 with any regulatory agencies and law-enforcement agencies
13 as required by law.

14 (3) The auditing entity conducting a pharmacy audit
15 may not compensate an employee or contractor with which
16 an auditing entity contracts to conduct a pharmacy audit
17 solely based on the amount claimed or the actual amount
18 recouped by the pharmacy being audited.

19 (4) The auditing entity shall provide the pharmacy being
20 audited with at least 14 calendar days' prior written notice
21 before conducting a pharmacy audit unless both parties
22 agree otherwise. If a delay of the audit is requested by the
23 pharmacy, the pharmacy shall provide notice to the
24 pharmacy benefits manager within 72 hours of receiving
25 notice of the audit.

26 (5) The auditing entity may not initiate or schedule a
27 pharmacy audit without the express consent of the
28 pharmacy during the first five business days of any month
29 for any pharmacy that averages in excess of 600
30 prescriptions filled per week.

31 (6) The auditing entity shall accept paper or electronic
32 signature logs that document the delivery of prescription or
33 nonproprietary drugs and pharmacist services to a health
34 plan beneficiary or the beneficiary's caregiver or guardian.

35 (7) Prior to leaving the pharmacy after the on-site
36 portion of the pharmacy audit, the auditing entity shall
37 provide to the representative of the pharmacy a complete list
38 of pharmacy records reviewed.

39 (8) A pharmacy audit that involves clinical judgment
40 shall be conducted by, or in consultation with, a pharmacist.

41 (9) A pharmacy audit may not cover:

42 (A) A period of more than 24 months after the date a
43 claim was submitted by the pharmacy to the pharmacy
44 benefits manager or covered entity unless a longer period is
45 required by law; or

46 (B) More than 250 prescriptions: *Provided*, That a refill
47 does not constitute a separate prescription for the purposes
48 of this subparagraph.

49 (10) The auditing entity may not use extrapolation to
50 calculate penalties or amounts to be charged back or
51 recouped unless otherwise required by federal requirements
52 or federal plans.

53 (11) The auditing entity may not include dispensing fees
54 in the calculation of overpayments unless a prescription is
55 considered a misfill. As used in this subdivision, "misfill"
56 means a prescription that was not dispensed, a prescription
57 error, a prescription where the prescriber denied the
58 authorization request, or a prescription where an extra
59 dispensing fee was charged.

60 (12) The auditing entity conducting a pharmacy audit or
61 person acting on behalf of the auditing entity may not seek
62 any fee, charge-back, recoupment, or other adjustment for a
63 dispensed product, or any portion of a dispensed product,
64 unless one of the following has occurred:

65 (A) Fraud or other intentional and willful
66 misrepresentation as evidenced by a review of the claims
67 data, statements, physical review, or other investigative
68 methods;

69 (B) Dispensing in excess of the benefit design, as
70 established by the plan sponsor;

71 (C) Prescriptions not filled in accordance with the
72 prescriber's order; or

73 (D) Actual overpayment to the pharmacy.

74 (13) Any fee, charge-back, recoupment, or other
75 adjustment is limited to the actual financial harm associated
76 with the dispensed product, or portion of the dispensed
77 product, or the actual underpayment or overpayment as set
78 forth in the criteria in subdivision (12) of this subsection.

79 (14) A pharmacy may do any of the following when a
80 pharmacy audit is performed:

81 (A) A pharmacy may use authentic and verifiable
82 statements or records, including, but not limited to,
83 medication administration records of a nursing home,
84 assisted living facility, hospital, or health care provider with
85 prescriptive authority, to validate the pharmacy record and
86 delivery; and

87 (B) A pharmacy may use any valid prescription,
88 including, but not limited to, medication administration
89 records, facsimiles, electronic prescriptions, electronically
90 stored images of prescriptions, electronically created
91 annotations, or documented telephone calls from the
92 prescribing health care provider or practitioner's agent, to
93 validate claims in connection with prescriptions or changes
94 in prescriptions or refills of prescription or nonproprietary
95 drugs. Documentation of an oral prescription order that has
96 been verified by the prescribing health care provider shall
97 meet the provisions of this subparagraph for the initial audit
98 review.

99 (b) An auditing entity shall provide the pharmacy with
100 a written report of the pharmacy audit and comply with the
101 following requirements:

102 (1) A preliminary pharmacy audit report shall be
103 delivered to the pharmacy or its corporate parent within 60
104 calendar days after the completion of the pharmacy audit.
105 The preliminary report shall include contact information for
106 the auditing entity that conducted the pharmacy audit and an
107 appropriate and accessible point of contact, including
108 telephone number, facsimile number, e-mail address, and

109 auditing firm name and address so that audit results,
110 procedures and any discrepancies can be reviewed. The
111 preliminary pharmacy audit report shall include, but not be
112 limited to, claim level information for any discrepancy
113 found and total dollar amounts of claims subject to
114 recovery.

115 (2) A pharmacy is allowed at least 30 calendar days
116 following receipt of the preliminary audit report to respond
117 to the findings of the preliminary report.

118 (3) A final pharmacy audit report shall be delivered to
119 the pharmacy or its corporate parent no later than 90
120 calendar days after completion of the pharmacy audit. The
121 final pharmacy audit report shall include any response
122 provided to the auditing entity by the pharmacy or corporate
123 parent and shall consider and address such responses.

124 (4) The final audit report may be delivered
125 electronically.

126 (5) A pharmacy may not be subject to a charge-back or
127 recoupment for a clerical or recordkeeping error in a
128 required document or record, including a typographical or
129 computer error, unless the error resulted in overpayment to
130 the pharmacy.

131 (6) An auditing entity conducting a pharmacy audit or
132 person acting on behalf of the entity may not charge-back,
133 recoup, or collect penalties from a pharmacy until the time
134 to file an appeal of a final pharmacy audit report has passed
135 or the appeals process has been exhausted, whichever is
136 later.

137 (7) If an identified discrepancy in a pharmacy audit
138 exceeds \$25,000, future payments to the pharmacy in excess
139 of that amount may be withheld pending adjudication of an
140 appeal.

141 (8) No interest accrues for any party during the audit
142 period, beginning with the notice of the pharmacy audit and
143 ending with the conclusion of the appeals process.

144 (9) Except for Medicare claims, approval of drug,
145 prescriber, or patient eligibility upon adjudication of a claim
146 may not be reversed unless the pharmacy or pharmacist
147 obtained adjudication by fraud or misrepresentation of
148 claims elements.

§33-51-7. Pharmacy benefits manager and auditing entity registration.

1 (a) Prior to conducting business in the State of West
2 Virginia, except as provided in subsection (d) of this
3 section, an auditing entity shall register with the Insurance
4 Commissioner. The commissioner shall make an
5 application form available on its publicly accessible Internet
6 website that includes a request for the following
7 information:

8 (1) The identity, address, and telephone number of the
9 applicant;

10 (2) The name, business address, and telephone number
11 of the contact person for the applicant; and

12 (3) When applicable, the federal employer identification
13 number for the applicant.

14 (b) *Term and fee.* —

15 (1) The term of registration shall be two years from the
16 date of issuance.

17 (2) The Insurance Commissioner shall determine the
18 amount of the initial application fee and the renewal
19 application fee for the registration. Such fee shall be
20 submitted by the applicant with an application for
21 registration. An initial application fee is nonrefundable. A

22 renewal application fee shall be returned if the renewal of
23 the registration is not granted.

24 (3) The amount of the initial application fees and
25 renewal application fees must be sufficient to fund the
26 Insurance Commissioner's duties in relation to its
27 responsibilities under this article, but a single fee may not
28 exceed \$1,000.

29 (c) *Registration.* —

30 (1) The Insurance Commissioner shall issue a
31 registration, as appropriate, to an applicant when the
32 Insurance Commissioner determines that the applicant has
33 submitted a completed application and paid the required
34 registration fee.

35 (2) The registration may be in paper or electronic form,
36 is nontransferable, and shall prominently list the expiration
37 date of the registration.

38 (d) *Duplicate registration.* —

39 (1) A licensed insurer or other entity licensed by the
40 commissioner pursuant to this chapter shall comply with the
41 standards and procedures of this article but is not required
42 to separately register as an auditing entity.

43 (2) A pharmacy benefits manager that is registered as a
44 third-party administrator pursuant to §33-46-1 *et seq.* of this
45 code shall comply with the standards and procedures of this
46 article but is not required to register separately as an
47 auditing entity.

§33-51-8. Licensure of pharmacy benefit managers.

1 (a) A person or organization may not establish or
2 operate as a pharmacy benefits manager in the State of West
3 Virginia without first obtaining a license from the Insurance
4 Commissioner pursuant to this section: *Provided*, That a
5 pharmacy benefit manager registered pursuant to §33-5-7 of

6 this code may continue to do business in the state until the
7 Insurance Commissioner has completed the legislative rule
8 as set forth in §33-55-10 of this code: *Provided, however,*
9 That additionally the pharmacy benefit manager shall
10 submit an application within six months of completion of
11 the final rule. The Insurance Commissioner shall make an
12 application form available on its publicly accessible Internet
13 website that includes a request for the following
14 information:

15 (1) The identity, address, and telephone number of the
16 applicant;

17 (2) The name, business address, and telephone number
18 of the contact person for the applicant;

19 (3) When applicable, the federal employer identification
20 number for the applicant; and

21 (4) Any other information the Insurance Commissioner
22 considers necessary and appropriate to establish the
23 qualifications to receive a license as a pharmacy benefit
24 manager to complete the licensure process, as set forth by
25 legislative rule promulgated by the Insurance
26 Commissioner pursuant to §33-51-9(f) of this code.

27 (b) *Term and fee.* —

28 (1) The term of licensure shall be two years from the
29 date of issuance.

30 (2) The Insurance Commissioner shall determine the
31 amount of the initial application fee and the renewal
32 application fee for the registration. The fee shall be
33 submitted by the applicant with an application for
34 registration. An initial application fee is nonrefundable. A
35 renewal application fee shall be returned if the renewal of
36 the registration is not granted.

37 (3) The amount of the initial application fees and
38 renewal application fees must be sufficient to fund the

39 Insurance Commissioner's duties in relation to his/her
40 responsibilities under this section, but a single fee may not
41 exceed \$10,000.

42 (4) Each application for a license, and subsequent
43 renewal for a license, shall be accompanied by evidence of
44 financial responsibility in an amount of \$1 million.

45 (c) *Licensure.* —

46 (1) The Insurance Commissioner shall propose
47 legislative rules, in accordance with §33-51-9(f) of this
48 code, establishing the licensing, fees, application, financial
49 standards, and reporting requirements of pharmacy benefit
50 managers.

51 (2) Upon receipt of a completed application, evidence
52 of financial responsibility, and fee, the Insurance
53 Commissioner shall make a review of each applicant and
54 shall issue a license if the applicant is qualified in
55 accordance with the provisions of this section and the rules
56 promulgated by the Insurance Commissioner pursuant to
57 this section. The commissioner may require additional
58 information or submissions from an applicant and may
59 obtain any documents or information reasonably necessary
60 to verify the information contained in the application.

61 (3) The license may be in paper or electronic form, is
62 nontransferable, and shall prominently list the expiration
63 date of the license.

64 (d) *Network adequacy.* —

65 (1) A pharmacy benefit manager's network shall not be
66 comprised only of mail-order benefits but must have a mix
67 of mail-order benefits and physical stores in this state.

68 (2) A pharmacy benefit manager shall provide a
69 pharmacy benefit manager's network report describing the
70 pharmacy benefit manager's network and the mix of mail-
71 order to physical stores in this state in a time and manner

72 required by rule issued by the Insurance Commissioner
73 pursuant to this section.

74 (3) Failure to provide a timely report may result in the
75 suspension or revocation of a pharmacy benefit manager's
76 license by the Insurance Commissioner.

77 (e) *Enforcement.* —

78 (1) The Insurance Commissioner shall enforce this
79 section and may examine or audit the books and records of
80 a pharmacy benefit manager providing pharmacy benefits
81 management to determine if the pharmacy benefit manager
82 is in compliance with this section: *Provided*, That any
83 information or data acquired during the examination or
84 audit is considered proprietary and confidential and exempt
85 from disclosure under the West Virginia Freedom of
86 Information Act pursuant to §29B-1-4(a)(1) of this code.

87 (2) The Insurance Commissioner may propose rules for
88 legislative approval in accordance with §29A-3-1 *et seq.* of
89 this code regulating pharmacy benefit managers in a manner
90 consistent with this chapter. Rules adopted pursuant to this
91 section shall set forth penalties or fines, including, without
92 limitation, monetary fines, suspension of licensure, and
93 revocation of licensure for violations of this chapter and the
94 rules adopted pursuant to this section.

95 (f) *Applicability.* —

96 (1) This section is applicable to any contract or health
97 benefit plan issued, renewed, recredentialed, amended, or
98 extended on or after July 1, 2019.

99 (2) The requirements of this section, and any rules
100 promulgated by the Insurance Commissioner pursuant to
101 §33-51-9(f) of this code, do not apply to the coverage of
102 prescription drugs under a plan that is subject to the
103 Employee Retirement Income Security Act of 1974 or any
104 information relating to such coverage.

§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 the covered individual to
5 assist health care consumers in making informed decisions.
6 Neither a pharmacy, a pharmacist, nor a pharmacy
7 technician may be penalized by a pharmacy benefit manager
8 for discussing information in this section or for selling a
9 lower cost alternative to a covered individual, if one is
10 available, without using a health insurance policy.

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

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

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

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

26 (d) A pharmacy benefit manager, or any other third party,
27 that reimburses a 340B entity for drugs that are subject to an
28 agreement under 42 U.S.C. §256b shall not reimburse the
29 340B entity for pharmacy-dispensed drugs at a rate lower than
30 that paid for the same drug to pharmacies similar in
31 prescription volume that are not 340B entities, and shall not
32 assess any fee, charge-back, or other adjustment upon the
33 340B entity on the basis that the 340B entity participates in the
34 program set forth in 42 U.S.C. §256b.

35 (e) With respect to a patient eligible to receive drugs
36 subject to an agreement under 42 U.S.C. § 256b, a pharmacy
37 benefit manager, or any other third party that makes
38 payment for such drugs, shall not discriminate against a
39 340B entity in a manner that prevents or interferes with the
40 patient’s choice to receive such drugs from the 340B entity:
41 *Provided*, That for purposes of this section, “third party”
42 does not include the state Medicaid program when Medicaid
43 is providing reimbursement for covered outpatient drugs, as
44 that term is defined in 42 U.S.C. § 1396r-8(k), on a fee-for-
45 service basis: *Provided, however*, That “third party” does
46 include a Medicaid-managed care organization as described
47 in 42 U.S.C. § 1396b(m).

48 (f) This section does not apply with respect to claims
49 under an employee benefit plan under the Employee
50 Retirement Income Security Act of 1974 or, except for
51 paragraph (d), to Medicare Part D.

§33-51-10. Commissioner authorized to propose rules.

1 The Insurance Commissioner may propose rules for
2 legislative approval in accordance with §29A-3-1 *et seq.* of
3 this code that are necessary to effectuate the provisions of
4 this article.

CHAPTER 146

(S. B. 587 - By Senator Trump)

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §5-16-8a of the Code of West Virginia, 1931, as amended, relating to the West Virginia Public Employees Insurance Agency’s reimbursement of air-

ambulance providers who provide emergency transportation to individuals covered by the plan.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.**

§5-16-8a. Air-ambulance fees.

1 (a) The plan shall reimburse any air-ambulance provider
2 that provides emergency air transportation or related
3 emergency medical or treatment services to an employee or
4 dependent of an employee covered by the plan the amount
5 then in effect for the federal Medicare program, including
6 any applicable Geographic Practice Cost Index.

7 (b) Nothing in this section limits the authority of the
8 director under §5-16-3(c) and §5-16-9 of this code,
9 including, but not limited to, his or her authority to manage
10 provider contracting and payments and to designate covered
11 and noncovered services.

12 (c) This section does not limit the authority of the
13 director, the plan, or the plans under §5-16-11 of this code.

14 (d) Notwithstanding any provision of this code to the
15 contrary, wherever 49 U.S.C. §41713(b) applies to the
16 reimbursement of air ambulance providers under §5-16-8a
17 of this code, the provisions of this code, including any
18 administrative, civil, or criminal penalties, are inapplicable.



CHAPTER 147

**(H. B. 2351 - By Delegates Ellington, Hill, Rohrbach,
Rowan, Summers, C. Thompson, Walker, Staggers,
Atkinson and Angelucci)**

[Passed February 20, 2019; in effect from passage.]
[Approved by the Governor on March 1, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-7f; to amend said code by adding thereto a new section, designated §33-15-4s; to amend said code by adding thereto a new section, designated §33-16-3dd; to amend said code by adding thereto a new section, designated §33-24-7s; to amend said code by adding thereto a new section, designated §33-25-8p; and to amend said code by adding thereto a new section, designated §33-25A-8s, all relating to prior authorizations; requiring health insurers to develop prior authorization forms; requiring health insurers to develop prior authorization portals; defining terms; providing for electronically transmitted prior authorization forms; establishing procedures for submission and acceptance of forms; establishing form requirements; establishing deadlines for approval of prior authorizations; providing for a process of an incomplete prior authorization submission; providing for an audit; setting forth peer review procedures; requiring health insurers to accept a prior authorization from other health insurers for a period of time; requiring health insurers to use certain standards when reviewing a prior authorization; providing an exemption for medication provide upon discharge; requiring an exemption for health care practitioners meeting specified criteria; requiring certain information to be included on the health insurer's web page; establishing deadlines for pharmacy benefit prior authorization; establishing submission format for

pharmacy benefits; setting forth an effective date; providing for implementation applicability; and setting deadlines.

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.**

§5-16-7f. Prior authorization.

1 (a) As used in this section, the following words and
2 phrases have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 “Episode of Care” means a specific medical problem,
5 condition, or specific illness being managed including tests,
6 procedures and rehabilitation initially requested by health
7 care practitioner, to be performed at, the site of service,
8 excluding out of network care: *Provided*, That any
9 additional testing or procedures related or unrelated to the
10 specific medical problem, condition, or specific illness
11 being managed may require a separate prior authorization.

12 “National Council for Prescription Drug Programs
13 (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT
14 Standard Version 201310 or the most recent standard
15 adopted by the United States Department of Health and
16 Human Services. Subsequently released versions may be
17 used provided that the new version is backward compatible
18 with the current version approved by the United States
19 Department of Health and Human Services;

20 “Prior Authorization” means obtaining advance
21 approval from the Public Employees Insurance Agency
22 about the coverage of a service or medication.

23 (b) The Public Employees Insurance Agency is required
24 to develop prior authorization forms and portals and shall
25 accept one prior authorization for an episode of care. These
26 forms are required to be placed in an easily identifiable and
27 accessible place on the Public Employees Insurance
28 Agency's webpage. The forms shall:

29 (1) Include instructions for the submission of clinical
30 documentation;

31 (2) Provide an electronic notification confirming receipt
32 of the prior authorization request if forms are submitted
33 electronically;

34 (3) Contain a comprehensive list of all procedures,
35 services, drugs, devices, treatment, durable medical
36 equipment, and anything else for which the Public
37 Employees Insurance Agency requires a prior authorization.
38 This list shall delineate those items which are bundled
39 together as part of the episode of care. The standard for
40 including any matter on this list shall be science-based using
41 a nationally recognized standard. This list is required to be
42 updated at least quarterly to ensure that the list remains
43 current;

44 (4) Inform the patient if the Public Employees Insurance
45 Agency requires a plan member to use step therapy
46 protocols. This must be conspicuous on the prior
47 authorization form. If the patient has completed step therapy
48 as required by the Public Employees Insurance Agency and
49 the step therapy has been unsuccessful, this shall be clearly
50 indicated on the form, including information regarding
51 medication or therapies which were attempted and were
52 unsuccessful; and

53 (5) Be prepared by October 1, 2019.

54 (c) The Public Employees Insurance Agency shall
55 accept electronic prior authorization requests and respond to
56 the request through electronic means by July 1, 2020. The

57 Public Employees Insurance Agency is required to accept
58 an electronically submitted prior authorization and may not
59 require more than one prior authorization form for an
60 episode of care. If the Public Employees Insurance Agency
61 is currently accepting electronic prior authorization
62 requests, the Public Employees Insurance Agency shall
63 have until January 1, 2020, to implement the provisions of
64 this section.

65 (d) If the health care practitioner submits the request for
66 prior authorization electronically, and all of the information
67 as required is provided, the Public Employees Insurance
68 Agency shall respond to the prior authorization request
69 within seven days from the day on the electronic receipt of
70 the prior authorization request, except that the Public
71 Employees Insurance Agency shall respond to the prior
72 authorization request within two days if the request is for
73 medical care or other service for a condition where
74 application of the time frame for making routine or non-life-
75 threatening care determinations is either of the following:

76 (1) Could seriously jeopardize the life, health, or safety
77 of the patient or others due to the patient's psychological
78 state; or

79 (2) In the opinion of a health care practitioner with
80 knowledge of the patient's medical condition, would subject
81 the patient to adverse health consequences without the care
82 or treatment that is the subject of the request.

83 (e) If the information submitted is considered
84 incomplete, the Public Employees Insurance Agency shall
85 identify all deficiencies and within two business days from
86 the day on the electronic receipt of the prior authorization
87 request return the prior authorization to the health care
88 practitioner. The health care practitioner shall provide the
89 additional information requested within three business days
90 from the day the return request is received by the health care
91 practitioner or the prior authorization is deemed denied and
92 a new request must be submitted.

93 (f) If the Public Employees Insurance Agency wishes to
94 audit the prior authorization or if the information regarding
95 step therapy is incomplete, the prior authorization may be
96 transferred to the peer review process.

97 (g) A prior authorization approved by the Public
98 Employees Insurance Agency is carried over to all other
99 managed care organizations and health insurers for three
100 months, if the services are provided within the state.

101 (h) The Public Employees Insurance Agency shall use
102 national best practice guidelines to evaluate a prior
103 authorization.

104 (i) If a prior authorization is rejected by the Public
105 Employees Insurance Agency and the health care
106 practitioner who submitted the prior authorization requests
107 an appeal by peer review of the decision to reject, the peer
108 review shall be with a health care practitioner similar in
109 specialty, education, and background. The Public
110 Employees Insurance Agency's medical director has the
111 ultimate decision regarding the appeal determination and
112 the health care practitioner has the option to consult with the
113 medical director after the peer-to-peer consultation. Time
114 frames regarding this appeal process shall take no longer
115 than 30 days.

116 (j) (1) Any prescription written for an inpatient at the
117 time of discharge requiring a prior authorization shall not be
118 subject to prior authorization requirements and shall be
119 immediately approved for not less than three days:
120 *Provided*, That the cost of the medication does not exceed
121 \$5,000 per day and the health care practitioner shall note on
122 the prescription or notify the pharmacy that the prescription
123 is being provided at discharge. After the three-day time
124 frame, a prior authorization must be obtained.

125 (2) If the approval of a prior authorization requires a
126 medication substitution, the substituted medication shall be
127 as required under §30-5-1 *et seq.*

128 (k) In the event a health care practitioner has performed
129 an average of 30 procedures per year and in a six-month
130 time period has received a 100 percent prior approval rating,
131 the Public Employees Insurance Agency shall not require
132 the health care practitioner to submit a prior authorization
133 for that procedure for the next six months. At the end of the
134 six-month time frame, the exemption shall be reviewed
135 prior to renewal. This exemption is subject to internal
136 auditing, at any time, by the Public Employees Insurance
137 Agency and may be rescinded if the Public Employees
138 Insurance Agency determines the health care practitioner is
139 not performing the procedure in conformity with the Public
140 Employees Insurance Agency's benefit plan based upon the
141 results of the Public Employees Insurance Agency's internal
142 audit.

143 (l) The Public Employees Insurance Agency must
144 accept and respond to electronically submitted prior
145 authorization requests for pharmacy benefits by July 1,
146 2020, or if the Public Employees Insurance Agency is
147 currently accepting electronic prior authorization requests,
148 it shall have until January 1, 2020, to implement this
149 provision. The Public Employees Insurance Agency shall
150 accept and respond to prior authorizations through a secure
151 electronic transmission using the NCPDP SCRIPT Standard
152 ePA transactions.

153 (m) This section is effective for policy, contract, plans,
154 or agreements beginning on or after January 1, 2020. This
155 section applies to all policies, contracts, plans, or
156 agreements, subject to this article, that are delivered,
157 executed, issued, amended, adjusted, or renewed in this
158 state on or after the effective date of this section.

159 (n) The timeframes in this section are not applicable to
160 prior authorization requests submitted through telephone,
161 mail, or fax.

CHAPTER 33. INSURANCE.**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.****§33-15-4s. Prior authorization.**

1 (a) As used in this section, the following words and
2 phrases have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 “Episode of Care” means a specific medical problem,
5 condition, or specific illness being managed including tests,
6 procedures and rehabilitation initially requested by health
7 care practitioner, to be performed at the site of service,
8 excluding out of network care: *Provided*, That any
9 additional testing or procedures related or unrelated to the
10 specific medical problem, condition, or specific illness
11 being managed may require a separate prior authorization.

12 “National Council for Prescription Drug Programs
13 (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT
14 Standard Version 201310 or the most recent standard
15 adopted by the United States Department of Health and
16 Human Services. Subsequently released versions may be
17 used provided that the new version is backward compatible
18 with the current version approved by the United States
19 Department of Health and Human Services;

20 “Prior Authorization” means obtaining advance
21 approval from a health insurer about the coverage of a
22 service or medication.

23 (b) The health insurer is required to develop prior
24 authorization forms and portals and shall accept one prior
25 authorization for an episode of care. These forms are
26 required to be placed in an easily identifiable and accessible
27 place on the health insurer’s webpage. The forms shall:

28 (1) Include instructions for the submission of clinical
29 documentation;

30 (2) Provide an electronic notification confirming receipt
31 of the prior authorization request if forms are submitted
32 electronically;

33 (3) Contain a comprehensive list of all procedures,
34 services, drugs, devices, treatment, durable medical
35 equipment, and anything else for which the health insurer
36 requires a prior authorization. This list shall delineate those
37 items which are bundled together as part of the episode of
38 care. The standard for including any matter on this list shall
39 be science-based using a nationally recognized standard.
40 This list is required to be updated at least quarterly to ensure
41 that the list remains current;

42 (4) Inform the patient if the health insurer requires a
43 plan member to use step therapy protocols, as set forth in
44 this chapter. This must be conspicuous on the prior
45 authorization form. If the patient has completed step
46 therapy as required by the health insurer and the step therapy
47 has been unsuccessful, this shall be clearly indicated on the
48 form, including information regarding medication or
49 therapies which were attempted and were unsuccessful; and

50 (5) Be prepared by October 1, 2019.

51 (c) The health insurer shall accept electronic prior
52 authorization requests and respond to the request through
53 electronic means by July 1, 2020. The health insurer is
54 required to accept an electronically submitted prior
55 authorization and may not require more than one prior
56 authorization form for an episode of care. If the health
57 insurer is currently accepting electronic prior authorization
58 requests, the health insurer shall have until January 1, 2020,
59 to implement the provisions of this section.

60 (d) If the health care practitioner submits the request for
61 prior authorization electronically, and all of the information
62 as required is provided, the health insurer shall respond to
63 the prior authorization request within seven days from the
64 day on the electronic receipt of the prior authorization

65 request, except that the health insurer shall respond to the
66 prior authorization request within two days if the request is
67 for medical care or other service for a condition where
68 application of the time frame for making routine or non-life-
69 threatening care determinations is either of the following:

70 (1) Could seriously jeopardize the life, health, or safety
71 of the patient or others due to the patient's psychological
72 state; or

73 (2) In the opinion of a health care practitioner with
74 knowledge of the patient's medical condition would subject
75 the patient to adverse health consequences without the care
76 or treatment that is the subject of the request.

77 (e) If the information submitted is considered
78 incomplete, the health insurer shall identify all deficiencies
79 and within two business days from the day on the electronic
80 receipt of the prior authorization request return the prior
81 authorization to the health care practitioner. The health care
82 practitioner shall provide the additional information
83 requested within three business days from the time the
84 return request is received by the health care practitioner or
85 the prior authorization is deemed denied and a new request
86 must be submitted.

87 (f) If the health insurer wishes to audit the prior
88 authorization or if the information regarding step therapy is
89 incomplete, the prior authorization may be transferred to the
90 peer review process.

91 (g) A prior authorization approved by a health insurer is
92 carried over to all other managed care organizations, health
93 insurers and the Public Employees Insurance Agency for
94 three months, if the services are provided within the state.

95 (h) The health insurer shall use national best practice
96 guidelines to evaluate a prior authorization.

97 (i) If a prior authorization is rejected by the health
98 insurer and the health care practitioner who submitted the

99 prior authorization requests an appeal by peer review of the
100 decision to reject, the peer review shall be with a health care
101 practitioner similar in specialty, education, and background.
102 The health insurer's medical director has the ultimate
103 decision regarding the appeal determination and the health
104 care practitioner has the option to consult with the medical
105 director after the peer-to-peer consultation. Time frames
106 regarding this appeal process shall take no longer than 30
107 days.

108 (j) (1) Any prescription written for an inpatient at the
109 time of discharge requiring a prior authorization shall not be
110 subject to prior authorization requirements and shall be
111 immediately approved for not less than three days:
112 *Provided*, That the cost of the medication does not exceed
113 \$5,000 per day and the physician shall note on the
114 prescription or notify the pharmacy that the prescription is
115 being provided at discharge. After the three-day time frame,
116 a prior authorization must be obtained.

117 (2) If the approval of a prior authorization requires a
118 medication substitution, the substituted medication shall be
119 as required under §30-5-1 *et seq.*

120 (k) In the event a health care practitioner has performed
121 an average of 30 procedures per year and in a six-month
122 time period has received a 100 percent prior approval rating,
123 the health insurer shall not require the health care
124 practitioner to submit a prior authorization for that
125 procedure for the next six months. At the end of the six-
126 month time frame, the exemption shall be reviewed prior to
127 renewal. This exemption is subject to internal auditing, at
128 any time, by the health insurer and may be rescinded if the
129 health insurer determines the health care practitioner is not
130 performing the procedure in conformity with the health
131 insurer's benefit plan based upon the results of the health
132 insurer's internal audit.

133 (l) The health insurer must accept and respond to
134 electronically submitted prior authorization requests for

135 pharmacy benefits by July 1, 2020, or if the health insurer is
136 currently accepting electronic prior authorization requests,
137 it shall have until January 1, 2020, to implement this
138 provision. The health insurer shall accept and respond to
139 prior authorizations through a secure electronic
140 transmission using the NCPDP SCRIPT Standard ePA
141 transactions.

142 (m) This section is effective for policy, contract, plans,
143 or agreements beginning on or after January 1, 2020. This
144 section applies to all policies, contracts, plans, or
145 agreements, subject to this article, that are delivered,
146 executed, issued, amended, adjusted, or renewed in this
147 state on or after the effective date of this section.

148 (n) The timeframes in this section are not applicable to
149 prior authorization requests submitted through telephone,
150 mail, or fax.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3dd. Prior authorization.

1 (a) As used in this section, the following words and
2 phrases have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 “Episode of Care” means a specific medical problem,
5 condition, or specific illness being managed including tests,
6 procedures, and rehabilitation initially requested by the
7 health care practitioner, to be performed at the site of
8 service, excluding out of network care: *Provided*, That any
9 additional testing or procedures related or unrelated to the
10 specific medical problem, condition, or specific illness
11 being managed may require a separate prior authorization.

12 “National Council for Prescription Drug Programs
13 (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT
14 Standard Version 201310 or the most recent standard
15 adopted by the United States Department of Health and

16 Human Services. Subsequently released versions may be
17 used provided that the new version is backward compatible
18 with the current version approved by the United States
19 Department of Health and Human Services;

20 “Prior Authorization” means obtaining advance
21 approval from a health insurer about the coverage of a
22 service or medication.

23 (b)The health insurer is required to develop prior
24 authorization forms and portals and shall accept one prior
25 authorization for an episode of care. These forms are
26 required to be placed in an easily identifiable and accessible
27 place on the health insurer’s webpage. The forms shall:

28 (1) Include instructions for the submission of clinical
29 documentation;

30 (2) Provide an electronic notification confirming receipt
31 of the prior authorization request if forms are submitted
32 electronically;

33 (3) Contain a comprehensive list of all procedures,
34 services, drugs, devices, treatment, durable medical
35 equipment, and anything else for which the health insurer
36 requires a prior authorization. This list shall delineate those
37 items which are bundled together as part of the episode of
38 care. The standard for including any matter on this list shall
39 be science-based using a nationally recognized standard.
40 This list is required to be updated at least quarterly to ensure
41 that the list remains current;

42 (4) Inform the patient if the health insurer requires a
43 plan member to use step therapy protocols. This must be
44 conspicuous on the prior authorization form. If the patient
45 has completed step therapy as required by the health insurer
46 and the step therapy has been unsuccessful, this shall be
47 clearly indicated on the form, including information
48 regarding medication or therapies which were attempted
49 and were unsuccessful; and

50 (5) Be prepared by October 1, 2019.

51 (c) The health insurer shall accept electronic prior
52 authorization requests and respond to the request through
53 electronic means by July 1, 2020. The health insurer is
54 required to accept an electronically submitted prior
55 authorization and may not require more than one prior
56 authorization form for an episode of care. If the health
57 insurer is currently accepting electronic prior authorization
58 requests, the health insurer shall have until January 1, 2020,
59 to implement the provisions of this section.

60 (d) If the health care practitioner submits the request for
61 prior authorization electronically, and all of the information
62 as required is provided, the health insurer shall respond to
63 the prior authorization request within seven days from the
64 day on the electronic receipt of the prior authorization
65 request, except that the health insurer shall respond to the
66 prior authorization request within two days if the request is
67 for medical care or other service for a condition where
68 application of the time frame for making routine or non-life-
69 threatening care determinations is either of the following:

70 (1) Could seriously jeopardize the life, health, or safety
71 of the patient or others due to the patient's psychological
72 state; or

73 (2) In the opinion of a health care practitioner with
74 knowledge of the patient's medical condition, would subject
75 the patient to adverse health consequences without the care
76 or treatment that is the subject of the request.

77 (e) If the information submitted is considered
78 incomplete, the health insurer shall identify all deficiencies
79 and within two business days from the day on the electronic
80 receipt of the prior authorization request return the prior
81 authorization to the health care practitioner. The health care
82 practitioner shall provide the additional information
83 requested within three business days from the time the
84 return request is received by the health care practitioner or

85 the prior authorization is deemed denied and a new request
86 must be submitted.

87 (f) If the health insurer wishes to audit the prior
88 authorization or if the information regarding step therapy is
89 incomplete, the prior authorization may be transferred to the
90 peer review process.

91 (g) A prior authorization approved by a managed care
92 organization is carried over to health insurers, the public
93 employees insurance agency and all other managed care
94 organizations for three months if the services are provided
95 within the state.

96 (h) The health insurer shall use national best practice
97 guidelines to evaluate a prior authorization.

98 (i) If a prior authorization is rejected by the health
99 insurer and the health care practitioner who submitted the
100 prior authorization requests an appeal by peer review of the
101 decision to reject, the peer review shall be with a health care
102 practitioner similar in specialty, education, and background.
103 The health insurer's medical director has the ultimate
104 decision regarding the appeal determination and the health
105 care practitioner has the option to consult with the medical
106 director after the peer-to-peer consultation. Time frames
107 regarding this appeal process shall take no longer than 30
108 days.

109 (j) (1) Any prescription written for an inpatient at the
110 time of discharge requiring a prior authorization shall not be
111 subject to prior authorization requirements and shall be
112 immediately approved for not less than three days:
113 *Provided*, That the cost of the medication does not exceed
114 \$5,000 per day and the physician shall note on the
115 prescription or notify the pharmacy that the prescription is
116 being provided at discharge. After the three-day time frame,
117 a prior authorization must be obtained.

118 (2) If the approval of a prior authorization requires a
119 medication substitution, the substituted medication shall be
120 as required under §30-5-1 *et seq.*

121 (k) In the event a health care practitioner has performed
122 an average of 30 procedures per year and in a six-month
123 time period has received a 100 percent prior approval rating,
124 the health insurer shall not require the health care
125 practitioner to submit a prior authorization for that
126 procedure for the next six months. At the end of the six-
127 month time frame, the exemption shall be reviewed prior to
128 renewal. This exemption is subject to internal auditing by
129 the health insurer at any time and may be rescinded if the
130 health insurer determines the health care practitioner is not
131 performing the procedure in conformity with the health
132 insurer's benefit plan based upon the results of the health
133 insurer's internal audit.

134 (l) The health insurer must accept and respond to
135 electronically submitted prior authorization requests for
136 pharmacy benefits by July 1, 2020, or if the health insurer is
137 currently accepting electronic prior authorization requests,
138 it shall have until January 1, 2020, to implement this
139 provision. The health insurer shall accept and respond to
140 prior authorizations through a secure electronic
141 transmission using the NCPDP SCRIPT Standard ePA
142 transactions.

143 (m) This section is effective for policy, contract, plans,
144 or agreements beginning on or after January 1, 2020. This
145 section applies to all policies, contracts, plans, or
146 agreements, subject to this article, that are delivered,
147 executed, issued, amended, adjusted, or renewed in this
148 state on or after the effective date of this section.

149 (n) The timeframes in this section are not applicable to
150 prior authorization requests submitted through telephone,
151 mail, or fax.

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

§33-24-7s. Prior authorization.

1 (a) As used in this section, the following words and
2 phrases have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 “Episode of Care” means a specific medical problem,
5 condition, or specific illness being managed including tests,
6 procedures and rehabilitation initially requested by health
7 care practitioner, to be performed at the site of service,
8 excluding out of network care: *Provided*, That any
9 additional testing or procedures related or unrelated to the
10 specific medical problem, condition, or specific illness
11 being managed may require a separate prior authorization.

12 “National Council for Prescription Drug Programs
13 (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT
14 Standard Version 201310 or the most recent standard
15 adopted by the United States Department of Health and
16 Human Services. Subsequently released versions may be
17 used provided that the new version is backward compatible
18 with the current version approved by the United States
19 Department of Health and Human Services;

20 “Prior Authorization” means obtaining advance
21 approval from a health insurer about the coverage of a
22 service or medication.

23 (b) The health insurer is required to develop prior
24 authorization forms and portals and shall accept one prior
25 authorization for an episode of care. These forms are
26 required to be placed in an easily identifiable and accessible
27 place on the health insurer’s webpage. The forms shall:

28 (1) Include instructions for the submission of clinical
29 documentation;

30 (2) Provide an electronic notification confirming receipt
31 of the prior authorization request if forms are submitted
32 electronically;

33 (3) Contain a comprehensive list of all procedures,
34 services, drugs, devices, treatment, durable medical
35 equipment and anything else for which the health insurer
36 requires a prior authorization. This list shall delineate those
37 items which are bundled together as part of the episode of
38 care. The standard for including any matter on this list shall
39 be science-based using a nationally recognized standard.
40 This list is required to be updated at least quarterly to ensure
41 that the list remains current;

42 (4) Inform the patient if the health insurer requires a
43 plan member to use step therapy protocols. This must be
44 conspicuous on the prior authorization form. If the patient
45 has completed step therapy as required by the health insurer
46 and the step therapy has been unsuccessful, this shall be
47 clearly indicated on the form, including information
48 regarding medication or therapies which were attempted
49 and were unsuccessful; and

50 (5) Be prepared by October 1, 2019.

51 (c) The health insurer shall accept electronic prior
52 authorization requests and respond to the request through
53 electronic means by July 1, 2020. The health insurer is
54 required to accept an electronically submitted prior
55 authorization and may not require more than one prior
56 authorization form for an episode of care. If the health
57 insurer is currently accepting electronic prior authorization
58 requests, the health insurer shall have until January 1, 2020,
59 to implement the provisions of this section.

60 (d) If the health care practitioner submits the request for
61 prior authorization electronically, and all of the information
62 as required is provided, the health insurer shall respond to
63 the prior authorization request within seven days from the
64 day on the electronic receipt of the prior authorization

65 request, except that the health insurer shall respond to the
66 prior authorization request within two days if the request is
67 for medical care or other service for a condition where
68 application of the time frame for making routine or non-life-
69 threatening care determinations is either of the following:

70 (1) Could seriously jeopardize the life, health, or safety
71 of the patient or others due to the patient's psychological
72 state; or

73 (2) In the opinion of a health care practitioner with
74 knowledge of the patient's medical condition, would subject
75 the patient to adverse health consequences without the care
76 or treatment that is the subject of the request.

77 (e) If the information submitted is considered
78 incomplete, the health insurer shall identify all deficiencies
79 and within two business days from the day on the electronic
80 receipt of the prior authorization request return the prior
81 authorization to the health care practitioner. The health care
82 practitioner shall provide the additional information
83 requested within three business days from the day the return
84 request is received by the health care practitioner or the prior
85 authorization is deemed denied and a new request must be
86 submitted.

87 (f) If the health insurer wishes to audit the prior
88 authorization or if the information regarding step therapy is
89 incomplete, the prior authorization may be transferred to the
90 peer review process.

91 (g) A prior authorization approved by a health insurer is
92 carried over to all other managed care organizations, health
93 insurers and the Public Employees Insurance Agency for
94 three months if the services are provided within the state.

95 (h) The health insurer shall use national best practice
96 guidelines to evaluate a prior authorization.

97 (i) If a prior authorization is rejected by the health
98 insurer and the health care practitioner who submitted the

99 prior authorization requests an appeal by peer review of the
100 decision to reject, the peer review shall be with a health care
101 practitioner similar in specialty, education, and background.
102 The health insurer's medical director has the ultimate
103 decision regarding the appeal determination and the health
104 care practitioner has the option to consult with the medical
105 director after the peer-to-peer consultation. Time frames
106 regarding this appeal process shall take no longer than 30
107 days.

108 (j) (1) Any prescription written for an inpatient at the
109 time of discharge requiring a prior authorization shall not be
110 subject to prior authorization requirements and shall be
111 immediately approved for not less than three days:
112 *Provided*, That the cost of the medication does not exceed
113 \$5,000 per day and the physician shall note on the
114 prescription or notify the pharmacy that the prescription is
115 being provided at discharge. After the three-day time frame,
116 a prior authorization must be obtained.

117 (2) If the approval of a prior authorization requires a
118 medication substitution, the substituted medication shall be
119 as required under §30-5-1 *et seq.*

120 (k) In the event a health care practitioner has performed
121 an average of 30 procedures per year and in a six-month
122 time period has received a 100 percent prior approval rating,
123 the health insurer shall not require the health care
124 practitioner to submit a prior authorization for that
125 procedure for the next six months. At the end of the six-
126 month time frame, the exemption shall be reviewed prior to
127 renewal. This exemption is subject to internal auditing, at
128 any time, by the health insurer and may be rescinded if the
129 health insurer determines the health care practitioner is not
130 performing the procedure in conformity with the health
131 insurer's benefit plan based upon the results of the health
132 insurer's internal audit.

133 (l) The health insurer must accept and respond to
134 electronically submitted prior authorization requests for

135 pharmacy benefits by July 1, 2020, or if the health insurer is
136 currently accepting electronic prior authorization requests,
137 it shall have until January 1, 2020, to implement this
138 provision. The health insurer shall accept and respond to
139 prior authorizations through a secure electronic
140 transmission using the NCPDP SCRIPT Standard ePA
141 transactions.

142 (m) This section is effective for policy, contract, plans,
143 or agreements beginning on or after January 1, 2020. This
144 section applies to all policies, contracts, plans, or
145 agreements, subject to this article, that are delivered,
146 executed, issued, amended, adjusted, or renewed in this
147 state on or after the effective date of this section.

148 (n) The timeframes in this section are not applicable to
149 prior authorization requests submitted through telephone,
150 mail, or fax.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8p. Prior authorization.

1 (a) As used in this section, the following words and
2 phrases have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 “Episode of Care” means a specific medical problem,
5 condition, or specific illness being managed including tests,
6 procedures and rehabilitation initially requested by health
7 care practitioner, to be performed at the site of service,
8 excluding out of network care: *Provided*, That any
9 additional testing or procedures related or unrelated to the
10 specific medical problem, condition, or specific illness
11 being managed may require a separate prior authorization.

12 “National Council for Prescription Drug Programs
13 (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT
14 Standard Version 201310 or the most recent standard
15 adopted by the United States Department of Health and
16 Human Services. Subsequently released versions may be

17 used provided that the new version is backward compatible
18 with the current version approved by the United States
19 Department of Health and Human Services;

20 “Prior Authorization” means obtaining advance
21 approval from a health insurer about the coverage of a
22 service or medication.

23 (b) The health insurer is required to develop prior
24 authorization forms and portals and shall accept one prior
25 authorization for an episode of care. These forms are
26 required to be placed in an easily identifiable and accessible
27 place on the health insurer’s webpage. The forms shall:

28 (1) Include instructions for the submission of clinical
29 documentation;

30 (2) Provide an electronic notification confirming receipt
31 of the prior authorization request if forms are submitted
32 electronically;

33 (3) Contain a comprehensive list of all procedures,
34 services, drugs, devices, treatment, durable medical
35 equipment and anything else for which the health insurer
36 requires a prior authorization. This list shall delineate those
37 items which are bundled together as part of the episode of
38 care. The standard for including any matter on this list shall
39 be science-based using a nationally recognized standard.
40 This list is required to be updated at least quarterly to ensure
41 that the list remains current;

42 (4) Inform the patient if the health insurer requires a
43 plan member to use step therapy protocols. This must be
44 conspicuous on the prior authorization form. If the patient
45 has completed step therapy as required by the health insurer
46 and the step therapy has been unsuccessful, this shall be
47 clearly indicated on the form, including information
48 regarding medication or therapies which were attempted
49 and were unsuccessful; and

50 (5) Be prepared by October 1, 2019.

51 (c) The health insurer shall accept electronic prior
52 authorization requests and respond to the request through
53 electronic means by July 1, 2020. The health insurer is
54 required to accept an electronically submitted prior
55 authorization and may not require more than one prior
56 authorization form for an episode of care. If the health
57 insurer is currently accepting electronic prior authorization
58 requests, the health insurer shall have until January 1, 2020,
59 to implement the provisions of this section.

60 (d) If the health care practitioner submits the request for
61 prior authorization electronically, and all of the information
62 as required is provided, the health insurer shall respond to
63 the prior authorization request within seven days from the
64 day on the electronic receipt of the prior authorization
65 request, except that the health insurer shall respond to the
66 prior authorization request within two days if the request is
67 for medical care or other service for a condition where
68 application of the time frame for making routine or non-life-
69 threatening care determinations is either of the following:

70 (1) Could seriously jeopardize the life, health, or safety
71 of the patient or others due to the patient's psychological
72 state; or

73 (2) In the opinion of a health care practitioner with
74 knowledge of the patient's medical condition, would subject
75 the patient to adverse health consequences without the care
76 or treatment that is the subject of the request.

77 (e) If the information submitted is considered
78 incomplete, the health insurer shall identify all deficiencies
79 and within two business days from the day on the electronic
80 receipt of the prior authorization request return the prior
81 authorization to the health care practitioner. The health care
82 practitioner shall provide the additional information
83 requested within three business days from the day the return
84 request is received by the health care practitioner or the prior
85 authorization is deemed denied and a new request must be
86 submitted.

87 (f) If the health insurer wishes to audit the prior
88 authorization or if the information regarding step therapy is
89 incomplete, the prior authorization may be transferred to the
90 peer review process.

91 (g) A prior authorization approved by a health insurer is
92 carried over to all other managed care organizations, health
93 insurers and the Public Employees Insurance Agency for
94 three months if the services are provided within the state.

95 (h) The health insurer shall use national best practice
96 guidelines to evaluate a prior authorization.

97 (i) If a prior authorization is rejected by the health
98 insurer and the health care practitioner who submitted the
99 prior authorization requests an appeal by peer review of the
100 decision to reject, the peer review shall be with a health care
101 practitioner similar in specialty, education, and background.
102 The health insurer's medical director has the ultimate
103 decision regarding the appeal determination and the health
104 care practitioner has the option to consult with the medical
105 director after the peer-to-peer consultation. Time frames
106 regarding this appeal process shall take no longer than 30
107 days.

108 (j) (1) Any prescription written for an inpatient at the
109 time of discharge requiring a prior authorization shall not be
110 subject to prior authorization requirements and shall be
111 immediately approved for not less than three days:
112 *Provided*, That the cost of the medication does not exceed
113 \$5,000 per day and the physician shall note on the
114 prescription or notify the pharmacy that the prescription is
115 being provided at discharge. After the three-day time frame,
116 a prior authorization must be obtained.

117 (2) If the approval of a prior authorization requires a
118 medication substitution, the substituted medication shall be
119 as required under §30-5-1 *et seq.*

120 (k) In the event a health care practitioner has performed
121 an average of 30 procedures per year and in a six-month
122 time period has received a 100 percent prior approval rating,
123 the health insurer shall not require the health care
124 practitioner to submit a prior authorization for that
125 procedure for the next six months. At the end of the six-
126 month time frame, the exemption shall be reviewed prior to
127 renewal. This exemption is subject to internal auditing, at
128 any time, by the health insurer and may be rescinded if the
129 health insurer determines the health care practitioner is not
130 performing the procedure in conformity with the health
131 insurer's benefit plan based upon the results of the health
132 insurer's internal audit.

133 (l) The health insurer must accept and respond to
134 electronically submitted prior authorization requests for
135 pharmacy benefits by July 1, 2020, or if the health insurer is
136 currently accepting electronic prior authorization requests,
137 it shall have until January 1, 2020, to implement this
138 provision. The health insurer shall accept and respond to
139 prior authorizations through a secure electronic
140 transmission using the NCPDP SCRIPT Standard ePA
141 transactions.

142 (m) This section is effective for policy, contract, plans,
143 or agreements beginning on or after January 1, 2020. This
144 section applies to all policies, contracts, plans, or
145 agreements, subject to this article, that are delivered,
146 executed, issued, amended, adjusted, or renewed in this
147 state on or after the effective date of this section.

148 (n) The timeframes in this section are not applicable to
149 prior authorization requests submitted through telephone,
150 mail, or fax.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8s. Prior authorization.

1 (a) As used in this section, the following words and
2 phrases have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 “Episode of Care” means a specific medical problem,
5 condition, or specific illness being managed including tests,
6 procedures and rehabilitation initially requested by health
7 care practitioner, to be performed at the site of service,
8 excluding out of network care: *Provided*, That any
9 additional testing or procedures related or unrelated to the
10 specific medical problem, condition, or specific illness
11 being managed may require a separate prior authorization.

12 “National Council for Prescription Drug Programs
13 (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT
14 Standard Version 201310 or the most recent standard
15 adopted by the United States Department of Health and
16 Human Services. Subsequently released versions may be
17 used provided that the new version is backward compatible
18 with the current version approved by the United States
19 Department of Health and Human Services;

20 “Prior Authorization” means obtaining advance
21 approval from a health maintenance organization about the
22 coverage of a service or medication.

23 (b) The health maintenance organization is required to
24 develop prior authorization forms and portals and shall
25 accept one prior authorization for an episode of care. These
26 forms are required to be placed in an easily identifiable and
27 accessible place on the health maintenance organization’s
28 webpage. The forms shall:

29 (1) Include instructions for the submission of clinical
30 documentation;

31 (2) Provide an electronic notification confirming receipt
32 of the prior authorization request if forms are submitted
33 electronically;

34 (3) Contain a comprehensive list of all procedures,
35 services, drugs, devices, treatment, durable medical
36 equipment and anything else for which the health
37 maintenance organization requires a prior authorization.
38 This list shall also delineate those items which are bundled
39 together as part of the episode of care. The standard for
40 including any matter on this list shall be science-based using
41 a nationally recognized standard. This list is required to be
42 updated at least quarterly to ensure that the list remains
43 current;

44 (4) Inform the patient if the health maintenance
45 organization requires a plan member to use step therapy
46 protocols. This must be conspicuous on the prior
47 authorization form. If the patient has completed step
48 therapy as required by the health maintenance organization
49 and the step therapy has been unsuccessful, this shall be
50 clearly indicated on the form, including information
51 regarding medication or therapies which were attempted
52 and were unsuccessful; and

53 (5) Be prepared by October 1, 2019.

54 (c) The health maintenance organization shall accept
55 electronic prior authorization requests and respond to the
56 request through electronic means by July 1, 2020. The
57 health maintenance organization is required to accept an
58 electronically submitted prior authorization and may not
59 require more than one prior authorization form for an
60 episode of care. If the health maintenance organization is
61 currently accepting electronic prior authorization requests,
62 the health maintenance organization shall have until January
63 1, 2020, to implement the provisions of this section.

64 (d) If the health care practitioner submits the request for
65 prior authorization electronically, and all of the information
66 as required is provided, the health maintenance organization
67 shall respond to the prior authorization request within seven
68 days from the day on the electronic receipt of the prior
69 authorization request, except that the health maintenance

70 organization shall respond to the prior authorization
71 request within two days if the request is for medical care
72 or other service for a condition where application of the
73 time frame for making routine or non-life-threatening care
74 determinations is either of the following:

75 (1) Could seriously jeopardize the life, health, or safety
76 of the patient or others due to the patient's psychological
77 state; or

78 (2) In the opinion of a health care practitioner with
79 knowledge of the patient's medical condition, would subject
80 the patient to adverse health consequences without the care
81 or treatment that is the subject of the request.

82 (e) If the information submitted is considered
83 incomplete, the health maintenance organization shall
84 identify all deficiencies and within two business days from
85 the day on the electronic receipt of the prior authorization
86 request return the prior authorization to the health care
87 practitioner. The health care practitioner shall provide the
88 additional information requested within three business days
89 from the day the return request is received by the health care
90 practitioner or the prior authorization is deemed denied and
91 a new request must be submitted.

92 (f) If the health maintenance organization wishes to
93 audit the prior authorization or if the information regarding
94 step therapy is incomplete, the prior authorization may be
95 transferred to the peer review process.

96 (g) A prior authorization approved by a health
97 maintenance organization is carried over to all other
98 managed care organizations, health insurers and the Public
99 Employees Insurance Agency for three months if the
100 services are provided within the state.

101 (h) The health maintenance organization shall use
102 national best practice guidelines to evaluate a prior
103 authorization.

104 (i) If a prior authorization is rejected by the health
105 maintenance organization and the health care practitioner who
106 submitted the prior authorization requests an appeal by peer
107 review of the decision to reject, the peer review shall be with a
108 health care practitioner similar in specialty, education, and
109 background. The health maintenance organization's medical
110 director has the ultimate decision regarding the appeal
111 determination and the health care practitioner has the option to
112 consult with the medical director after the peer-to-peer
113 consultation. Time frames regarding this appeal process shall
114 take no longer than 30 days.

115 (j) (1) Any prescription written for an inpatient at the
116 time of discharge requiring a prior authorization shall not be
117 subject to prior authorization requirements and shall be
118 immediately approved for not less than three days:
119 *Provided*, That the cost of the medication does not exceed
120 \$5,000 per day and the physician shall note on the
121 prescription or notify the pharmacy that the prescription is
122 being provided at discharge. After the three-day time frame,
123 a prior authorization must be obtained.

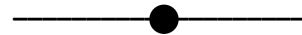
124 (2) If the approval of a prior authorization requires a
125 medication substitution, the substituted medication shall be
126 as required under §30-5-1 *et seq.*

127 (k) In the event a health care practitioner has performed
128 an average of 30 procedures per year and in a six-month
129 time period has received a 100 percent prior approval rating,
130 the health maintenance organization shall not require the
131 health care practitioner to submit a prior authorization for
132 that procedure for the next six months. At the end of the six-
133 month time frame, the exemption shall be reviewed prior to
134 renewal. This exemption is subject to internal auditing, at
135 any time, by the health maintenance organization and may
136 be rescinded if the health maintenance organization
137 determines the health care practitioner is not performing the
138 procedure in conformity with the health maintenance
139 organization's benefit plan based upon the results of the
140 health maintenance organization's internal audit.

141 (l) The health maintenance organization must accept
142 and respond to electronically submitted prior authorization
143 requests for pharmacy benefits by July 1, 2020, or if the
144 health maintenance organization are currently accepting
145 electronic prior authorization requests, it shall have until
146 January 1, 2020, to implement this provision. The health
147 maintenance organizations shall accept and respond to prior
148 authorizations through a secure electronic transmission
149 using the NCPDP SCRIPT Standard ePA transactions.

150 (m) This section is effective for policy, contract, plans,
151 or agreements beginning on or after January 1, 2020. This
152 section applies to all policies, contracts, plans, or
153 agreements, subject to this article, that are delivered,
154 executed, issued, amended, adjusted, or renewed in this
155 state on or after the effective date of this section.

156 (n) The timeframes in this section are not applicable to
157 prior authorization requests submitted through telephone,
158 mail, or fax.



CHAPTER 148

**(H. B. 2474 - By Delegates Westfall, Azinger, Criss, D.
Jeffries, Hamrick, Mandt, Nelson, Espinosa and
Porterfield)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §33-7-9 of the Code of West Virginia, 1931, as amended, relating to a reserving methodology for health insurance and annuity contracts; describing how the calendar year statutory valuation interest rate should be calculated regarding certain annuities and

guaranteed interest contracts; and prescribing the minimum standard of valuation for health insurance contracts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard Valuation Law.

1 (a) This section shall be known as the standard valuation
2 law. For the purposes of this section, the following
3 definitions apply on or after the operative date of the
4 valuation manual:

5 (1) The term “accident and health insurance” means
6 contracts that incorporate morbidity risk and provide
7 protection against economic loss resulting from accident,
8 sickness, or medical conditions and as may be specified in
9 the valuation manual.

10 (2) The term “appointed actuary” means a qualified
11 actuary who is appointed in accordance with the valuation
12 manual to prepare the actuarial opinion required in
13 subdivision (2), subsection (c) of this section.

14 (3) The term “company” means an entity that has
15 written, issued, or reinsured life insurance contracts,
16 accident and health insurance contracts, or deposit-type
17 contracts in this state and has at least one such policy in
18 force or on claim, or has written, issued, or reinsured life
19 insurance contracts, accident and health insurance contracts,
20 or deposit-type contracts in any state and is required to hold
21 a certificate of authority to write life insurance, accident and
22 health insurance, or deposit-type contracts in this state.

23 (4) The term “deposit-type contract” means contracts
24 that do not incorporate mortality or morbidity risks, and as
25 may be specified in the valuation manual.

26 (5) The term “life insurance” means contracts that
27 incorporate mortality risk, including annuity and pure

28 endowment contracts, and as may be specified in the
29 valuation manual.

30 (6) The term “NAIC” means the National Association
31 of Insurance Commissioners.

32 (7) The term “policyholder behavior” means any action
33 a policyholder, contract holder, or any other person with the
34 right to elect options, such as a certificate holder, may take
35 under a policy or contract subject to this section including,
36 but not limited to, lapse, withdrawal, transfer, deposit,
37 premium payment, loan, annuitization, or benefit elections
38 prescribed by the policy or contract but excluding events of
39 mortality or morbidity that result in benefits prescribed in
40 their essential aspects by the terms of the policy or contract.

41 (8) The term “principle-based valuation” means a
42 reserve valuation that uses one or more methods or one or
43 more assumptions determined by the insurer and is required
44 to comply with subsection (o) of this section as specified in
45 the valuation manual.

46 (9) The term “qualified actuary” means an individual
47 who is qualified to sign the applicable statement of actuarial
48 opinion in accordance with the American Academy of
49 Actuaries qualification standards for actuaries signing such
50 statements and who meets the requirements specified in the
51 valuation manual.

52 (10) The term “tail risk” means a risk that occurs either
53 where the frequency of low probability events is higher than
54 expected under a normal probability distribution or where
55 there are observed events of very significant size or
56 magnitude.

57 (11) The term “valuation manual” means the manual of
58 valuation instructions adopted by the commissioner in
59 accordance with subsection (n) of this section.

60 (b) *Reserve valuation.* —

61 (1) *Policies and Contracts Issued Prior to the Operative*
62 *Date of the Valuation Manual.* —

63 (A) The commissioner shall annually value, or cause to
64 be valued, the reserve liabilities (hereinafter called reserves)
65 for all outstanding life insurance policies and annuity and
66 pure endowment contracts of every life insurance company
67 doing business in this state issued on or after January 1,
68 1958 and prior to the operative date of the valuation manual.
69 In calculating reserves, the commissioner may use group
70 methods and approximate averages for fractions of a year or
71 otherwise. In lieu of the valuation of the reserves herein
72 required of any foreign or alien company, the commissioner
73 may accept any valuation made, or caused to be made, by
74 the insurance supervisory official of any state or other
75 jurisdiction when the valuation complies with the minimum
76 standard provided in this section.

77 (B) Subsections (d), (e), (f), (g), (h), (i), (j), (k), (l), and
78 (m) of this section apply to all policies and contracts, as
79 appropriate, subject to this section issued on or after January
80 1, 1958 and prior to the operative date of the valuation
81 manual, and subsections (n) and (o) of this section do not
82 apply to any such policies and contracts.

83 (C) The minimum standard for the valuation of policies
84 and contracts issued prior to January 1, 1958 shall be that
85 provided by the laws in effect immediately prior to that date.

86 (2) *Policies and contracts issued on or after the*
87 *operative date of the valuation manual.* —

88 (A) The commissioner shall annually value, or cause to
89 be valued, the reserve liabilities (hereinafter called reserves)
90 for all outstanding life insurance contracts, annuity and pure
91 endowment contracts, accident and health contracts, and
92 deposit-type contracts of every company issued on or after
93 the operative date of the valuation manual. In lieu of the
94 valuation of the reserves required of a foreign or alien
95 company, the commissioner may accept a valuation made,

96 or caused to be made, by the insurance supervisory official
97 of any state or other jurisdiction when the valuation
98 complies with the minimum standard provided in this
99 section.

100 (B) Subsection (n) and (o) of this section apply to all
101 policies and contracts issued on or after the operative date
102 of the valuation manual.

103 (c) *Actuarial opinion of reserves.* —

104 (1) *Actuarial Opinion Prior to the Operative Date of the*
105 *Valuation Manual.* —

106 (A) *General.* — Every life insurance company doing
107 business in this state shall annually submit the opinion of a
108 qualified actuary as to whether the reserves and related
109 actuarial items held in support of the policies and contracts
110 specified by the commissioner by rule are computed
111 appropriately, are based on assumptions which satisfy
112 contractual provisions, are consistent with prior reported
113 amounts and comply with applicable laws of this state. The
114 commissioner shall define the specifics of this opinion and
115 add any other items deemed to be necessary to its scope.

116 (B) *Actuarial analysis of reserves and assets supporting*
117 *the reserves.* —

118 (i) Every life insurance company, except as exempted
119 by or pursuant to rule, shall also annually include in the
120 opinion required by paragraph (A) of this subdivision an
121 opinion of the same qualified actuary as to whether the
122 reserves and related actuarial items held in support of the
123 policies and contracts specified by the commissioner by
124 rule, when considered in light of the assets held by the
125 company with respect to the reserves and related actuarial
126 items, including, but not limited to, the investment earnings
127 on the assets and the considerations anticipated to be
128 received and retained under the policies and contracts, make
129 adequate provision for the company's obligations under the

130 policies and contracts, including, but not limited to, the
131 benefits under and expenses associated with the policies and
132 contracts.

133 (ii) The commissioner may provide, by rule, for a
134 transition period for establishing any higher reserves that
135 the qualified actuary may deem necessary in order to render
136 the opinion required by this subdivision.

137 (C) *Requirement for opinion under paragraph (B) of*
138 *this subdivision.* — Each opinion required by paragraph (B)
139 of this subdivision shall be governed by the following
140 provisions:

141 (i) A memorandum in form and substance acceptable to
142 the commissioner as specified by rule shall be prepared to
143 support each actuarial opinion.

144 (ii) If the insurance company fails to provide a
145 supporting memorandum at the request of the commissioner
146 within a period specified by rule or the commissioner
147 determines that the supporting memorandum provided by
148 the insurance company fails to meet the standards
149 prescribed by the rules or is otherwise unacceptable to the
150 commissioner, the commissioner may engage a qualified
151 actuary at the expense of the company to review the opinion
152 and the basis for the opinion and prepare the supporting
153 memorandum required by the commissioner.

154 (D) *Requirement for all opinions subject to this*
155 *subdivision.* — Every opinion required by this subdivision
156 is governed by the following:

157 (i) The opinion shall be submitted with the annual
158 statement reflecting the valuation of such reserve liabilities
159 for each year ending on or after December 31, 1995.

160 (ii) The opinion shall apply to all business in force,
161 including individual and group health insurance plans, in
162 form and substance acceptable to the commissioner as
163 specified by rule.

164 (iii) The opinion shall be based on standards adopted,
165 from time to time, by the actuarial standards board and on
166 such additional standards as the commissioner may by rule
167 prescribe.

168 (iv) In the case of an opinion required to be submitted
169 by a foreign or alien company, the commissioner may
170 accept the opinion filed by that company with the insurance
171 supervisory official of another state if the commissioner
172 determines that the opinion reasonably meets the
173 requirements applicable to a company domiciled in this
174 state.

175 (v) For the purposes of this subsection, “qualified
176 actuary” means a member in good standing of the American
177 Academy of Actuaries who meets the requirements set forth
178 in such regulations.

179 (vi) Except in cases of fraud or willful misconduct, the
180 qualified actuary is not liable for damages to any person
181 (other than the insurance company and the commissioner)
182 for any act, error, omission, decision, or conduct with
183 respect to the actuary’s opinion.

184 (vii) Disciplinary action by the commissioner against
185 the company or the qualified actuary shall be defined in
186 rules by the commissioner.

187 (viii) Except as provided in subparagraphs (xii), (xiii),
188 and (xiv) of this paragraph, documents, materials or other
189 information in the possession or control of the
190 commissioner that are a memorandum in support of the
191 opinion and any other material provided by the company to
192 the commissioner in connection therewith are confidential
193 by law and privileged, exempt from disclosure under §29A-
194 1-1 *et seq.* of this code and are not to be subject to subpoena
195 and, additionally, are not subject to discovery or admissible
196 in evidence in any private civil action. However, the
197 commissioner is authorized to use the documents, materials,
198 or other information in the furtherance of any regulatory or

199 legal action brought as a part of the commissioner's official
200 duties.

201 (ix) Neither the commissioner nor any person who
202 received documents, materials, or other information while
203 acting under the authority of the commissioner is permitted
204 or required to testify in any private civil action concerning
205 any confidential documents, materials, or information
206 subject to subparagraph (viii) of this paragraph.

207 (x) In order to assist in the performance of the
208 commissioner's duties, the commissioner:

209 (I) May share documents, materials, or other
210 information, including the confidential and privileged
211 documents, materials, or information subject to
212 subparagraph (viii) of this paragraph with other state,
213 federal, and international regulatory agencies, with the
214 NAIC and its affiliates and subsidiaries, and with state,
215 federal, and international law-enforcement authorities,
216 provided that the recipient agrees to maintain the
217 confidentiality and privileged status of the document,
218 material or other information;

219 (II) May receive documents, materials, or information,
220 including otherwise confidential and privileged documents,
221 materials or information, from the NAIC and its affiliates
222 and subsidiaries, and from regulatory and law-enforcement
223 officials of other foreign or domestic jurisdictions, and shall
224 maintain as confidential or privileged any document,
225 material, or information received with notice or the
226 understanding that it is confidential or privileged under the
227 laws of the jurisdiction that is the source of the document,
228 material, or information; and

229 (III) May enter into agreements governing sharing and
230 use of information consistent with this subparagraph and
231 subparagraphs (viii) and (ix) of this paragraph.

232 (xi) No waiver of any applicable privilege or claim of
233 confidentiality in the documents, materials, or information
234 occurs as a result of disclosure to the commissioner under
235 this subsection or as a result of sharing as authorized in
236 subparagraph (x) of this paragraph.

237 (xii) A memorandum in support of the opinion, and any
238 other material provided by the company to the
239 commissioner in connection with the memorandum, may be
240 subject to subpoena for the purpose of defending an action
241 seeking damages from the actuary submitting the
242 memorandum by reason of an action required by this
243 subsection or by rules.

244 (xiii) The memorandum or other material may otherwise
245 be released by the commissioner with the written consent of
246 the company or to the American Academy of Actuaries
247 upon request stating that the memorandum or other material
248 is required for the purpose of professional disciplinary
249 proceedings and setting forth procedures satisfactory to the
250 commissioner for preserving the confidentiality of the
251 memorandum or other material.

252 (xiv) Once any portion of the confidential memorandum
253 is cited by the company in its marketing or is cited before a
254 governmental agency other than a state insurance
255 department or is released by the company to the news
256 media, all portions of the confidential memorandum shall be
257 no longer confidential.

258 (2) *Actuarial Opinion of Reserves after the Operative*
259 *Date of the Valuation Manual.* —

260 (A) *General.* — Every company with outstanding life
261 insurance contracts, accident and health insurance contracts,
262 or deposit-type contracts in this state and subject to rule of
263 the commissioner shall annually submit the opinion of the
264 appointed actuary as to whether the reserves and related
265 actuarial items held in support of the policies and contracts
266 are computed appropriately, are based on assumptions that

267 satisfy contractual provisions, are consistent with prior
268 reported amounts and comply with applicable laws of this
269 state. The valuation manual will prescribe the specifics of
270 this opinion including any items deemed to be necessary to
271 its scope.

272 (B) *Actuarial Analysis of Reserves and Assets*
273 *Supporting Reserves.* — Every company with outstanding
274 life insurance contracts, accident and health insurance
275 contracts, or deposit-type contracts in this state and subject
276 to rule of the commissioner, except as exempted in the
277 valuation manual, shall also annually include in the opinion
278 required by paragraph (A) of this subdivision, an opinion of
279 the same appointed actuary as to whether the reserves and
280 related actuarial items held in support of the policies and
281 contracts specified in the valuation manual, when
282 considered in light of the assets held by the company with
283 respect to the reserves and related actuarial items, including,
284 but not limited to, the investment earnings on the assets and
285 the considerations anticipated to be received and retained
286 under the policies and contracts, make adequate provision
287 for the company's obligations under the policies and
288 contracts, including, but not limited to, the benefits under
289 and expenses associated with the policies and contracts.

290 (C) *Requirement for opinion under paragraph (B) of*
291 *this subdivision.* — Each opinion required by paragraph (B)
292 of this subdivision shall be governed by the following:

293 (i) A memorandum, in form and substance as specified
294 in the valuation manual, and acceptable to the
295 commissioner, shall be prepared to support each actuarial
296 opinion.

297 (ii) If the insurance company fails to provide a
298 supporting memorandum at the request of the commissioner
299 within a period specified in the valuation manual or the
300 commissioner determines that the supporting memorandum
301 provided by the insurance company fails to meet the
302 standards prescribed by the valuation manual or is otherwise

303 unacceptable to the commissioner, the commissioner may
304 engage a qualified actuary at the expense of the company to
305 review the opinion and the basis for the opinion and prepare
306 the supporting memorandum required by the commissioner.

307 (D) *Requirement for all opinions subject to this*
308 *subdivision.* — Every opinion required by this subdivision
309 is governed by the following:

310 (i) The opinion shall be in form and substance as
311 specified in the valuation manual and acceptable to the
312 commissioner.

313 (ii) The opinion shall be submitted with the annual
314 statement reflecting the valuation of the reserve liabilities
315 for each year ending on or after the operative date of the
316 valuation manual.

317 (iii) The opinion shall apply to all policies and contracts
318 subject to paragraph (B) of this subdivision, plus other
319 actuarial liabilities as may be specified in the valuation
320 manual.

321 (iv) The opinion shall be based on standards adopted
322 from time to time by the Actuarial Standards Board or its
323 successor, and on such additional standards as may be
324 prescribed in the valuation manual.

325 (v) In the case of an opinion required to be submitted by
326 a foreign or alien company, the commissioner may accept
327 the opinion filed by that company with the insurance
328 supervisory official of another state if the commissioner
329 determines that the opinion reasonably meets the
330 requirements applicable to a company domiciled in this
331 state.

332 (vi) Except in cases of fraud or willful misconduct, the
333 appointed actuary is not liable for damages to any person,
334 other than the insurance company and the commissioner, for
335 any act, error, omission, decision, or conduct with respect
336 to the appointed actuary's opinion.

337 (vii) Disciplinary action by the commissioner against
338 the company or the appointed actuary shall be defined in
339 rules.

340 (d) Computation of minimum standards. — Except as
341 otherwise provided in subsections (e), (f), and (m) of this
342 section, the minimum standard for the valuation of all
343 policies and contracts issued prior to January 1, 1958 shall
344 be that provided by the laws in effect immediately prior to
345 that date. Except as otherwise provided in subsections (e),
346 (f), and (m) of this section, the minimum standard for the
347 valuation of all policies and contracts issued on or after
348 January 1, 1958 of this section shall be the commissioners
349 reserve valuation methods defined in subsections (g), (h),
350 (k), and (m) of this section, three and one-half percent
351 interest or in the case of life insurance policies and
352 contracts, other than annuity and pure endowment contracts,
353 issued on or after June 1, 1974, four percent interest for
354 policies issued prior to April 6, 1977, five and one-half
355 percent interest for single premium life insurance policies,
356 and four and one-half percent interest for all other policies
357 issued on and after April 6, 1977, and the following tables:

358 (1) For all ordinary policies of life insurance issued on
359 the standard basis, excluding any disability and accidental
360 death benefits in the policies:

361 (A) The commissioner's 1941 standard ordinary
362 mortality table for policies issued prior to the operative date
363 of §33-13-30(e) of this code;

364 (B) The commissioner's 1958 standard ordinary
365 mortality table for policies issued on or after the operative
366 date of §33-13-30(e) of this code and prior to the operative
367 date of §33-13-30(g) of this code: *Provided*, That for any
368 category of policies issued on female risks, all modified net
369 premiums and present values referred to in this section may
370 be calculated according to an age not more than six years
371 younger than the actual age of the insured; and

372 (C) For policies issued on or after the operative date of
373 §33-13-30(g) of this code:

374 (i) The commissioner's 1980 standard ordinary
375 mortality table;

376 (ii) At the election of the company for any one or more
377 specified plans of life insurance, the commissioner's 1980
378 standard ordinary mortality table with 10 year select
379 mortality factors; or

380 (iii) Any ordinary mortality table adopted after the year
381 1980 by the NAIC that is approved by rule promulgated by
382 the commissioner for use in determining the minimum
383 standard of valuation for the policies.

384 (2) For all industrial life insurance policies issued on the
385 standard basis, excluding any disability and accidental death
386 benefits in the policies: the 1941 standard industrial
387 mortality table for policies issued prior to the operative date
388 of §33-13-30(f) of this code and for policies issued on or
389 after the operative date, the commissioner's 1961 standard
390 industrial mortality table or any industrial mortality table
391 adopted after the year 1980 by the NAIC that is approved
392 by rule promulgated by the commissioner for use in
393 determining the minimum standard of valuation for the
394 policies.

395 (3) For individual annuity and pure endowment
396 contracts, excluding any disability and accidental death
397 benefits in policies: the 1937 standard annuity mortality
398 table or, at the option of the company, the annuity mortality
399 table for 1949, ultimate, or any modification of either of
400 these tables approved by the commissioner.

401 (4) For group annuity and pure endowment contracts,
402 excluding any disability and accidental death benefits in the
403 policies: The group annuity mortality table for 1951, any
404 modification of the table approved by the commissioner or,
405 at the option of the company, any of the tables or

406 modifications of tables specified for individual annuity and
407 pure endowment contracts.

408 (5) For total and permanent disability benefits in or
409 supplementary to ordinary policies or contracts: for policies
410 or contracts issued on or after January 1, 1966, the tables of
411 period two disablement rates and the 1930 to 1950
412 termination rates of the 1952 disability study of the society
413 of actuaries, with due regard to the type of benefit or any
414 tables of disablement rates and termination rates adopted
415 after the year 1980 by the NAIC that are approved by rule
416 promulgated by the commissioner for use in determining the
417 minimum standard of valuation for the policies; for policies
418 or contracts issued on or after January 1, 1961, and prior to
419 January 1, 1966, either those tables or, at the option of the
420 company, the Class (3) disability table (1926); and for
421 policies issued prior to January 1, 1961, the Class (3)
422 disability table (1926). Any such table shall, for active lives,
423 be combined with a mortality table permitted for calculating
424 the reserves for life insurance policies.

425 (6) For accidental death benefits in or supplementary to
426 policies issued on or after January 1, 1966, the 1959
427 accidental death benefits table or any accidental death
428 benefits table adopted after the year 1980 by the NAIC that
429 is approved by rules promulgated by the commissioner for
430 use in determining the minimum standard of valuation for
431 the policies, for policies issued on or after January 1, 1961,
432 and prior to January 1, 1966, either such table or, at the
433 option of the company, the intercompany double indemnity
434 mortality table; and for policies issued prior to January 1,
435 1961, the intercompany double indemnity mortality table.
436 Either table shall be combined with a mortality table for
437 calculating the reserves for life insurance policies.

438 (7) For group life insurance, life insurance issued on the
439 substandard basis, and other special benefits: Tables as may
440 be approved by the commissioner.

441 (e) *Computation of minimum standard for annuities.* —
442 Except as provided in subsection (f) of this section, the
443 minimum standard for the valuation of all individual
444 annuity and pure endowment contracts issued on or after the
445 operative date of this subsection, and for all annuities and
446 pure endowments purchased on or after the operative date
447 under group annuity and pure endowment contracts, shall be
448 the commissioner's reserve valuation methods defined in
449 subsections (g) and (h) of this section and the following
450 tables and interest rates:

451 (1) For individual annuity and pure endowment
452 contracts issued prior to April 6, 1977, excluding any
453 disability and accidental death benefits in the contracts: The
454 1971 individual annuity mortality table or any modification
455 of this table approved by the commissioner and six percent
456 interest for single premium immediate annuity contracts and
457 four percent interest for all other individual annuity and pure
458 endowment contracts;

459 (2) For individual single premium immediate annuity
460 contracts issued on or after April 6, 1977, excluding any
461 disability and accidental death benefits in the contracts: The
462 1971 individual annuity mortality table or any individual
463 annuity mortality table adopted after the year 1980 by the
464 NAIC that is approved by rule promulgated by the
465 commissioner for use in determining the minimum standard
466 of valuation for the contracts or any modification of these
467 tables approved by the commissioner and seven and one-
468 half percent interest;

469 (3) For individual annuity and pure endowment
470 contracts issued on or after April 6, 1977, other than single
471 premium immediate annuity contracts, excluding any
472 disability and accidental death benefits in those contracts:
473 The 1971 individual annuity mortality table or any
474 individual annuity mortality table adopted after the year
475 1980 by the NAIC that is approved by rule promulgated by
476 the commissioner for use in determining the minimum
477 standard of valuation for the contracts or any modification

478 of these tables approved by the commissioner and five and
479 one-half percent interest for single premium deferred
480 annuity and pure endowment contracts and four and one-
481 half percent interest for all other individual annuity and pure
482 endowment contracts;

483 (4) For all annuities and pure endowments purchased
484 prior to April 6, 1977, under group annuity and pure
485 endowment contracts, excluding any disability and
486 accidental death benefits purchased under those contracts:
487 The 1971 group annuity mortality table or any modification
488 of this table approved by the commissioner and six percent
489 interest;

490 (5) For all annuities and pure endowments purchased on
491 or after April 6, 1977, under group annuity and pure
492 endowment contracts, excluding any disability and
493 accidental death benefits purchased under the contracts: The
494 1971 group annuity mortality table or any group annuity
495 mortality table adopted after the year 1980 by the NAIC that
496 is approved by rule promulgated by the commissioner for
497 use in determining the minimum standard of valuation for
498 annuities and pure endowments or any modification of these
499 tables approved by the commissioner and seven and one-
500 half percent interest.

501 After June 3, 1974, any company may file with the
502 commissioner a written notice of its election to comply with
503 the provisions of this subsection after a specified date before
504 January 1, 1979, which shall be the operative date of this
505 subsection for the company provided, if a company makes
506 no election, the operative date of this section for the
507 company shall be January 1, 1979.

508 (f) *Computation of minimum standard by calendar year*
509 *of issue.* —

510 (1) The interest rates used in determining the minimum
511 standard for the valuation of the following shall be the

512 calendar year statutory valuation interest rates as defined in
513 this section:

514 (A) All life insurance policies issued in a particular
515 calendar year, on or after the operative date of §33-13-30(g)
516 of this code, as amended;

517 (B) All individual annuity and pure endowment
518 contracts issued in a particular calendar year on or after
519 January 1, 1982;

520 (C) All annuities and pure endowments purchased in a
521 particular calendar year on or after January 1, 1982, under
522 group annuity and pure endowment contracts; and

523 (D) The net increase, if any, in a particular calendar year
524 after January 1, 1982, in amounts held under guaranteed
525 interest contracts.

526 (2) *Calendar year statutory valuation interest rates.* —

527 (A) The calendar year statutory valuation interest rates,
528 I, shall be determined as follows and the results rounded to
529 the nearer one quarter of one percent:

530 (i) For life insurance: $I = .03 + W(R1 - .03) + W/2(R2 -$
531 $.09)$;

532 (ii) For single premium immediate annuities and for
533 annuity benefits involving life contingencies arising from
534 other annuities with cash settlement options and from
535 guaranteed interest contracts with cash settlement options: I
536 $= .03 + W(R - .03)$

537 Where R1 is the lesser of R and .09; R2 is the greater of
538 R and .09; R is the reference interest rate defined in this
539 subsection; and W is the weighting factor defined in this
540 subsection;

541 (iii) For other annuities with cash settlement options and
542 guaranteed interest contracts with cash settlement options,

543 valued on an issue-year basis, except as stated in
544 subparagraph (ii) of this paragraph, the formula for life
545 insurance stated in subparagraph (i) of this paragraph shall
546 apply to annuities and guaranteed interest contracts with
547 guarantee durations in excess of ten years and the formula
548 for single premium immediate annuities stated in
549 subparagraph (ii) of this paragraph shall apply to annuities
550 and guaranteed interest contracts with guarantee duration of
551 10 years or less;

552 (iv) For other annuities with no cash settlement options
553 and for guaranteed interest contracts with no cash settlement
554 options, the formula for single premium immediate
555 annuities stated in subparagraph (ii) of this paragraph shall
556 apply;

557 (v) For other annuities with cash settlement options and
558 guaranteed interest contracts with cash settlement options,
559 valued on a change in fund basis, the formula for single
560 premium immediate annuities stated in subparagraph (ii) of
561 this paragraph shall apply.

562 (B) However, if the calendar year statutory valuation
563 interest rate for any life insurance policies issued in any
564 calendar year determined without reference to this sentence
565 differs from the corresponding actual rate for similar
566 policies issued in the immediately preceding calendar year
567 by less than one half of one percent, the calendar year
568 statutory valuation interest rate for the life insurance
569 policies shall be equal to the corresponding actual rate for
570 the immediately preceding calendar year. For purposes of
571 applying the immediately preceding sentence, the calendar
572 year statutory valuation interest rate for life insurance
573 policies issued in a calendar year shall be determined for the
574 year 1980 (using the reference interest rate defined for the
575 year 1979) and shall be determined for each subsequent
576 calendar year regardless of when §33-13-30(g) of this code,
577 as amended, becomes operative.

578 (3) *Weighting factors.* —

579 (A) The weighting factors referred to in the formulas
580 stated above are given in the following tables:

581 (i) Weighting factors for life insurance:

582 Guarantee duration of 10 years or less: .50

583 Guarantee duration of more than 10 years but not more
584 than 20 years: .45

585 Guarantee duration of more than 20 years: .35

586 For life insurance, the guarantee duration is the
587 maximum number of years the life insurance can remain in
588 force on a basis guaranteed in the policy or under options to
589 convert to plans of life insurance with premium rates or
590 nonforfeiture values or both which are guaranteed in the
591 original policy;

592 (ii) Weighting factor for single premium immediate
593 annuities and for annuity benefits involving life
594 contingencies arising from other annuities with cash
595 settlement options and guaranteed interest contracts with
596 cash settlement options: .80;

597 (iii) Weighting factors for other annuities and for
598 guaranteed interest contracts, except as stated in
599 subparagraph (ii) of this paragraph, shall be as specified in
600 clauses (I), (II), and (III) of this subparagraph, according to
601 the rules and definitions in clauses (IV), (V), and (VI) of this
602 subparagraph:

603 (I) For annuities and guaranteed interest contracts
604 valued on an issue year basis, the following weighting
605 factors shall apply:

606 Guarantee duration of five years or less: Plan Type A -
607 .80; Plan Type B - .60; Plan Type C - .50

608 Guarantee duration of more than five years but not more
609 than 10 years: Plan Type A - .75; Plan Type B - .60; Plan
610 Type C - .50

611 Guarantee duration of more than 10 years but not more
612 than 20 years: Plan Type A - .65; Plan Type B - .50; Plan
613 Type C - .45

614 Guarantee duration of more than 20 years: Plan Type A
615 - .45; Plan Type B - .35; Plan Type C - .35

616 (II) For annuities and guaranteed interest contracts
617 valued on a change in fund basis, the factors shown in clause
618 (I) of this subparagraph increased by:

619 Plan Type A - .15; Plan Type B - .25; Plan Type C - .05

620 (III) For annuities and guaranteed interest contracts
621 valued on an issue-year basis (other than those with no cash
622 settlement options) which do not guarantee interest on
623 considerations received more than one year after issue or
624 purchase and for annuities and guaranteed interest contracts
625 valued on a change in fund basis which do not guarantee
626 interest rates on considerations received more than 12
627 months beyond the valuation date, the factors shown in
628 clause (I) of this subparagraph or derived in clause (II) of
629 this subparagraph increased by:

630 Plan Type A - .05; Plan Type B - .05; Plan Type C - .05

631 (IV) For other annuities with cash settlement options
632 and guaranteed interest contracts with cash settlement
633 options, the guarantee duration is the number of years for
634 which the contract guarantees interest rates in excess of the
635 calendar year statutory valuation interest rate for life
636 insurance policies with guarantee duration in excess of 20
637 years. For other annuities with no cash settlement options
638 and for guaranteed interest contracts with no cash settlement
639 options, the guaranteed duration is the number of years from
640 the date of issue or date of purchase to the date annuity
641 benefits are scheduled to commence.

642 (V) Plan type as used in the above tables is defined as
643 follows:

644 Plan Type A:

645 At any time policyholder may withdraw funds only: (1)
646 With an adjustment to reflect changes in interest rates or
647 asset values since receipt of the funds by the insurance
648 company; or (2) without such adjustment but in installments
649 over five years or more; or (3) as an immediate life annuity;
650 or (4) no withdrawal permitted;

651 Plan Type B:

652 Before expiration of the interest rate guarantee,
653 policyholder may withdraw funds only: (1) With an
654 adjustment to reflect changes in interest rates or asset values
655 since receipt of the funds by the insurance company; or (2)
656 without such adjustment but in installments over five years
657 or more; or (3) no withdrawal permitted. At the end of
658 interest rate guarantee, funds may be withdrawn without
659 such adjustment in a single sum or installments over less
660 than five years;

661 Plan Type C:

662 Policyholder may withdraw funds before expiration of
663 interest rate guarantee in a single sum or installments over
664 less than five years either: (1) Without adjustment to reflect
665 changes in interest rates or asset values since receipt of the
666 funds by the insurance company; or (2) subject only to a
667 fixed surrender charge stipulated in the contract as a
668 percentage of the fund.

669 (VI) A company may elect to value guaranteed interest
670 contracts with cash settlement options and annuities with
671 cash settlement options on either an issue-year basis or on a
672 change in fund basis. Guaranteed interest contracts with no
673 cash settlement options and other annuities with no cash
674 settlement options must be valued on an issue-year basis. As
675 used in this section, an issue-year basis of valuation refers

676 to a valuation basis under which the interest rate used
677 determine the minimum valuation standard for the entire
678 duration of the annuity or guaranteed interest contract is the
679 calendar year valuation interest rate for the year of issue or
680 year of purchase of the annuity or guaranteed interest
681 contract and the change in fund basis of valuation refers to
682 a valuation basis under which the interest rate used to
683 determine the minimum valuation standard applicable to
684 each change in the fund held under the annuity or
685 guaranteed interest contract is the calendar year valuation
686 interest rate for the year of the change in the fund.

687 (4) *The reference interest rate.* —

688 (A) Reference interest rate referred to in subdivision (2)
689 of this subsection is defined as follows:

690 (i) For all life insurance, the lesser of the average over a
691 period of 36 months and the average over a period of 12
692 months, ending on June 30 of the calendar year next
693 preceding the year of issue, of the monthly average of the
694 composite yield on seasoned corporate bonds as published
695 by Moody's Investors Service, Inc.;

696 (ii) For single premium immediate annuities and for
697 annuity benefits involving life contingencies arising from
698 other annuities with cash settlement options and guaranteed
699 interest contracts with cash settlement options, the average
700 over a period of 12 months, ending on June 30 of the
701 calendar year of issue or year of purchase, of the monthly
702 average of the composite yield on seasoned corporate bonds
703 as published by Moody's Investors Service, Inc.;

704 (iii) For other annuities with cash settlement options and
705 guaranteed interest contracts with cash settlement options,
706 valued on a year of issue basis, except as stated in
707 subparagraph (ii) of this paragraph, with guarantee duration
708 in excess of 10 years, the lesser of the average over a period
709 of 36 months and the average over a period of 12 months,
710 ending on June 30 of the calendar year of issue or purchase,

711 of the monthly average of the composite yield on seasoned
712 corporate bonds as published by Moody's Investors Service,
713 Inc.;

714 (iv) For other annuities with cash settlement options and
715 guaranteed interest contracts with cash settlement options,
716 valued on a year of issue basis, except as stated in
717 subparagraph (ii) of this paragraph, with guarantee duration
718 of 10 years or less, the average over a period of 12 months,
719 ending on June 30 of the calendar year of issue or purchase,
720 of the monthly average of the composite yield on seasoned
721 corporate bonds as published by Moody's Investors Service,
722 Inc.;

723 (v) For other annuities with no cash settlement options
724 and for guaranteed interest contracts with no cash settlement
725 options, the average over a period of 12 months, ending on
726 June 30 of the calendar year of issue or purchase, of the
727 monthly average of the composite yield on seasoned
728 corporate bonds as published by Moody's Investors Service,
729 Inc.; and

730 (vi) For other annuities with cash settlement options and
731 guaranteed interest contracts with cash settlement options,
732 valued on a change in fund basis, except as stated in
733 subparagraph (ii) of this paragraph, the average over a
734 period of 12 months, ending on June 30 of the calendar year
735 of the change in the fund, of the monthly average of the
736 composite yield on seasoned corporate bonds as published
737 by Moody's Investors Service, Inc.

738 (5) *Alternative method for determining reference*
739 *interest rates.* —

740 In the event that the monthly average of the composite
741 yield on seasoned corporate bonds is no longer published by
742 Moody's Investors Service, Inc., or in the event that the
743 NAIC determines that the monthly average of the composite
744 yield on seasoned corporate bonds as published by Moody's
745 Investors Service, Inc., is no longer appropriate for the

746 determination of the reference interest rate, then an
747 alternative method for determination of the reference
748 interest rate, which is adopted by the NAIC and approved
749 by rule promulgated by the commissioner, may be
750 substituted.

751 (g) *Reserve valuation method: Life insurance and*
752 *endowment benefits.* —

753 (1) Except as otherwise provided in subsections (h), (k),
754 and (m) of this section, reserves according to the
755 commissioner's reserve valuation method for the life
756 insurance and endowment benefits of policies providing for
757 a uniform amount of insurance and requiring the payment
758 of uniform premiums shall be the excess, if any, of the
759 present value, at the date of valuation, of the future
760 guaranteed benefits provided by the policies, over the then
761 present value of any future modified net premiums therefor.
762 The modified net premiums for any such policy shall be the
763 uniform percentage of the respective contract premiums for
764 the benefits that the present value, at the date of issue of the
765 policy, of all the modified net premiums shall be equal to
766 the sum of the then present value of the benefits provided
767 by the policy and the excess of paragraph (A) of this
768 subdivision over paragraph (B) of this subdivision, as
769 follows:

770 (A) A net level annual premium equal to the present
771 value, at the date of issue, of such benefits provided for after
772 the first policy year, divided by the present value, at the date
773 of issue, of an annuity of one per annum payable on the first
774 and each subsequent anniversary of such policy on which a
775 premium falls due: *Provided*, That such net level annual
776 premium shall not exceed the net level annual premium on
777 the 19 year premium whole life plan for insurance of the
778 same amount at an age one year higher than the age at issue
779 of such policy.

780 (B) A net one-year term premium for such benefits
781 provided for in the first policy year.

782 (2) For any life insurance policy issued on or after
783 January 1, 1985, for which the contract premium in the first
784 policy year exceeds that of the second year and for which
785 no comparable additional benefit is provided in the first year
786 for such excess and which provides an endowment benefit
787 or a cash surrender value or a combination thereof in an
788 amount greater than such excess premium, the reserve
789 according to the commissioner's reserve valuation method
790 as of any policy anniversary occurring on or before the
791 assumed ending date defined herein as the first policy
792 anniversary on which the sum of any endowment benefit
793 and any cash surrender value then available is greater than
794 such excess premium shall, except as otherwise provided in
795 subsection (k) of this section, be the greater of the reserve
796 as of such policy anniversary calculated as described in
797 subdivision (1) of this subsection and the reserve as of the
798 policy anniversary calculated as described in that
799 subdivision, but with: (i) The value defined in subdivision
800 (1) of this subsection being reduced by 15 percent of the
801 amount of such excess first-year premium; (ii) all present
802 values of benefits and premiums being determined without
803 reference to premiums or benefits provided by the policy
804 after the assumed ending date; (iii) the policy being assumed
805 to mature on the date as an endowment; and (iv) the cash
806 surrender value provided on such date being considered as
807 an endowment benefit. In making the above comparison, the
808 mortality and interest bases stated in subsections (d) and (f)
809 of this section shall be used.

810 (3) Reserves according to the commissioner's reserve
811 valuation method shall be calculated by a method consistent
812 with the principles of subdivisions (1) and (2) of this
813 subsection for:

814 (A) Life insurance policies providing for a varying
815 amount of insurance or requiring the payment of varying
816 premiums;

817 (B) Group annuity and pure endowment contracts
818 purchased under a retirement plan or plan of deferred

819 compensation, established or maintained by an employer
820 (including a partnership or sole proprietorship) or by an
821 employee organization, or by both, other than a plan
822 providing individual retirement accounts or individual
823 retirement annuities under section 408 of the Internal
824 Revenue Code (26 U.S.C. §408) as now or hereafter
825 amended;

826 (C) Disability and accidental death benefits in all
827 policies and contracts; and

828 (D) All other benefits, except life insurance and
829 endowment benefits in life insurance policies and benefits
830 provided by all other annuity and pure endowment
831 contracts.

832 (h) *Reserve valuation method: Annuity and pure*
833 *endowment benefits.* —

834 (1) This subsection shall apply to all annuity and pure
835 endowment contracts other than group annuity and pure
836 endowment contracts purchased under a retirement plan or
837 plan of deferred compensation established or maintained by
838 an employer (including a partnership or sole proprietorship)
839 or by an employee organization, or by both, other than a
840 plan providing individual retirement accounts or individual
841 retirement annuities under section 408 of the Internal
842 Revenue Code (26 U.S.C. §408) as now or hereafter
843 amended.

844 (2) Reserves according to the commissioner's annuity
845 reserve method for benefits under annuity or pure
846 endowment contracts, excluding any disability and
847 accidental death benefits in the contracts, shall be the
848 greatest of the respective excesses of the present values, at
849 the date of valuation, of the future guaranteed benefits,
850 including guaranteed nonforfeiture benefits, provided by the
851 contracts at the end of each respective contract year over the
852 present value, at the date of valuation, of any future
853 valuation considerations derived from future gross

854 considerations, required by the terms of the contract, that
855 become payable prior to the end of the respective contract
856 year. The future guaranteed benefits shall be determined by
857 using the mortality table, if any, and the interest rate, or
858 rates, specified in the contracts for determining guaranteed
859 benefits. The valuation considerations are the portions of the
860 respective gross considerations applied under the terms of
861 the contracts to determine nonforfeiture values.

862 (i) *Minimum reserves.* —

863 (1) In no event shall a company's aggregate reserves for
864 all life insurance policies, excluding disability and
865 accidental death benefits, issued on or after January 1, 1958
866 be less than the aggregate reserves calculated in accordance
867 with the methods set forth in subsections (g), (h), (k), and
868 (l) of this section and the mortality table or tables and rate
869 or rates of interest used in calculating nonforfeiture benefits
870 for the policies.

871 (2) In no event shall the aggregate reserves for all
872 policies, contracts, and benefits be less than the aggregate
873 reserves determined by the qualified actuary to be necessary
874 to render the opinion required by subsection (c) of this
875 section.

876 (j) *Optional reserve calculation.* —

877 (1) Reserves for all policies and contracts issued prior
878 to January 1, 1958 may be calculated, at the option of the
879 company, according to any standards which produce greater
880 aggregate reserves for all policies and contracts than the
881 minimum reserves required by the laws in effect
882 immediately prior to such date.

883 (2) Reserves for any category of policies, contracts or
884 benefits as established by the commissioner issued on or
885 after January 1, 1958 may be calculated, at the option of the
886 company, according to any standards which produce greater
887 aggregate reserves for such category than those calculated

888 according to the minimum standard herein provided, but the
889 rate or rates of interest used for policies and contracts, other
890 than annuity and pure endowment contracts, shall not be
891 higher than the corresponding rate or rates of interest used
892 in calculating any nonforfeiture benefits provided therein.

893 (3) Any company which at any time shall have adopted
894 any standard of valuation producing greater aggregate
895 reserves than those calculated according to the minimum
896 standard herein provided may, with the approval of the
897 commissioner, adopt any lower standard of valuation, but
898 not lower than the minimum herein provided: *Provided,*
899 That for the purposes of this section, the holding of
900 additional reserves previously determined by the appointed
901 actuary to be necessary to render the opinion required by
902 subsection (c) of this section shall not be considered to be
903 the adoption of a higher standard of valuation.

904 (k) *Reserve calculation: Valuation net premium*
905 *exceeding the gross premium charged. —*

906 (1) If in any contract year the gross premium charged by
907 any life insurance company on any policy or contract is less
908 than the valuation net premium for the policy or contract
909 calculated by the method used in calculating the reserve
910 thereon but using the minimum valuation standards of
911 mortality and rate of interest, the minimum reserve required
912 for the policy or contract shall be the greater of either the
913 reserve calculated according to the mortality table, rate of
914 interest, and method actually used for the policy or contract
915 or the reserve calculated by the method actually used for the
916 policy or contract but using the minimum valuation
917 standards of mortality and rate of interest and replacing the
918 valuation net premium by the actual gross premium in each
919 contract year for which the valuation net premium exceeds
920 the actual gross premium. The minimum valuation
921 standards of mortality and rate of interest referred to in this
922 section are those standards stated in subsections (d) and (f)
923 of this section: *Provided,* That for any life insurance policy
924 issued on or after January 1, 1985, for which the gross

925 premium in the first policy year exceeds that of the second
926 year and for which no comparable additional benefit is
927 provided in the first year for such excess and which provides
928 an endowment benefit or a cash surrender value or a
929 combination thereof in an amount greater than the excess
930 premium, the foregoing provisions of this subsection shall
931 be applied as if the method actually used in calculating the
932 reserve for the policy were the method described in
933 subsection (g) of this section, ignoring subdivision (2) of
934 said subsection.

935 (2) The minimum reserve at each policy anniversary of
936 such a policy shall be the greater of the minimum reserve
937 calculated in accordance with subsection (g) of this section,
938 including subdivision (2) of said subsection, and the
939 minimum reserve calculated in accordance with this
940 subsection.

941 (l) *Reserve calculation: Indeterminate premium plans.* —

942 In the case of any plan of life insurance which
943 provides for future premium determination, the amounts
944 of which are to be determined by the insurance company
945 based on then estimates of future experience, or in the
946 case of any plan of life insurance or annuity which is of
947 such a nature that the minimum reserves cannot be
948 determined by the methods described in subsections (g),
949 (h), and (k) of this section, the reserves which are held
950 under any such plan must:

951 (1) Be appropriate in relation to the benefits and the
952 pattern of premiums for that plan; and

953 (2) Be computed by a method which is consistent with
954 the principles of this standard valuation law as determined
955 by rules promulgated by the commissioner.

956 (m) *Minimum standard for accident and health*
957 *insurance contracts.* —

958 For accident and health insurance contracts issued on or
959 after the operative date of the valuation manual, the standard
960 prescribed in the valuation manual is the minimum standard
961 of valuation required under subdivision (2), subsection (b)
962 of this section. For accident and sickness insurance
963 contracts issued on or after January 1, 1958 and prior to the
964 operative date of the valuation manual, the minimum
965 standard of valuation is the standard adopted by the
966 commissioner by rule.

967 (n) *Valuation manual for policies issued on or after the*
968 *operative date of the valuation manual.* —

969 (1) The commissioner shall promulgate emergency
970 rules adopting a valuation manual that is substantially
971 similar to the valuation manual approved by the NAIC and
972 any amendments to the manual as may be subsequently
973 approved by the NAIC, and the rules shall be effective in
974 accordance with subdivisions (2) and (3) of this subsection.

975 (2) The operative date of the valuation manual is
976 January 1 of the first calendar year following the first July 1
977 as of which all of the following have occurred:

978 (A) The valuation manual has been adopted by the
979 NAIC by an affirmative vote of at least 42 members, or
980 three-fourths of the members voting, whichever is greater;

981 (B) The Standard Valuation Law, as amended by the
982 NAIC in 2009, or legislation including substantially similar
983 terms and provisions, has been enacted by states
984 representing greater than 75 percent of the direct premiums
985 written as reported in the following annual statements
986 submitted for 2008: Life, accident, and health annual
987 statements; health annual statements; and fraternal annual
988 statements; and

989 (C) The Standard Valuation Law, as amended by the
990 NAIC in 2009, or legislation including substantially similar
991 terms and provisions, has been enacted by at least 42 of the

992 following 55 jurisdictions: The 50 states of the United
993 States, American Samoa, the American Virgin Islands, the
994 District of Columbia, Guam, and Puerto Rico.

995 (3) Unless a change in the valuation manual specifies a
996 later effective date, changes to the valuation manual shall be
997 effective on January 1 following the date when the changes
998 have been adopted by the NAIC by an affirmative vote
999 representing:

1000 (A) At least three-fourths of the members of the NAIC
1001 voting, but not less than a majority of the total membership;
1002 and

1003 (B) Members of the NAIC representing jurisdictions
1004 totaling greater than 75 percent of the direct premiums
1005 written, as reported in the following annual statements most
1006 recently available prior to the vote in paragraph (A) of this
1007 subdivision: Life, accident, and health annual statements,
1008 health annual statements, or fraternal annual statements.

1009 (4) The valuation manual must specify all of the
1010 following:

1011 (A) Minimum valuation standards for and definitions of
1012 the policies or contracts subject to subdivision (2),
1013 subsection (b) of this section. The minimum valuation
1014 standards shall be:

1015 (i) The commissioner's reserve valuation method for
1016 life insurance contracts, other than annuity contracts,
1017 subject to subdivision (2), subsection (b) of this section;

1018 (ii) The commissioner's annuity reserve valuation
1019 method for annuity contracts subject to subdivision (2),
1020 subsection (b) of this section; and

1021 (iii) Minimum reserves for all other policies or contracts
1022 subject to subdivision (2), subsection (b) of this section.

1023 (B) Which policies or contracts or types of policies or
1024 contracts that are subject to the requirements of a principle-
1025 based valuation in subdivision (1), subsection (o) of this
1026 section and the minimum valuation standards consistent
1027 with those requirements.

1028 (C) For policies and contracts subject to a principle-
1029 based valuation under subsection (o) of this section:

1030 (i) Requirements for the format of reports to the
1031 commissioner under paragraph (C), subdivision (2),
1032 subsection (o) of this section and which shall include
1033 information necessary to determine if the valuation is
1034 appropriate and in compliance with this section;

1035 (ii) Assumptions shall be prescribed for risks over
1036 which the company does not have significant control or
1037 influence; and

1038 (iii) Procedures for corporate governance and oversight
1039 of the actuarial function and a process for appropriate
1040 waiver or modification of the procedures.

1041 (D) For policies not subject to a principle-based
1042 valuation under subsection (o), the minimum valuation
1043 standard shall either:

1044 (i) Be consistent with the minimum standard of
1045 valuation prior to the operative date of the valuation manual;
1046 or

1047 (ii) Develop reserves that quantify the benefits and
1048 guarantees, and the funding, associated with the contracts
1049 and their risks at a level of conservatism that reflects
1050 conditions that include unfavorable events that have a
1051 reasonable probability of occurring.

1052 (E) Other requirements, including, but not limited to,
1053 those relating to reserve methods, models for measuring
1054 risk, generation of economic scenarios, assumptions,
1055 margins, use of company experience, risk measurement,

1056 disclosure, certifications, reports, actuarial opinions and
1057 memoranda, transition rules and internal controls; and

1058 (F) The data and form of the data required under
1059 subsection (p) of this section, with whom the data must be
1060 submitted, and may specify other requirements including
1061 data analyses and reporting of analyses.

1062 (5) For policies issued on or after the operative date of
1063 the valuation manual, the standard prescribed in the
1064 valuation manual is the minimum standard of valuation
1065 required under subdivision (2), subsection (b) of this
1066 section, except as provided under subdivision (6) or (8) of
1067 this subsection.

1068 (6) In the absence of a specific valuation requirement or
1069 if a specific valuation requirement in the valuation manual
1070 is not, in the opinion of the commissioner, in compliance
1071 with this section, then the company shall, with respect to the
1072 requirements, comply with minimum valuation standards
1073 prescribed by rule.

1074 (7) The commissioner may engage a qualified actuary,
1075 at the expense of the company, to perform an actuarial
1076 examination of the company and opine on the
1077 appropriateness of any reserve assumption or method used
1078 by the company, or to review and opine on a company's
1079 compliance with any requirement set forth in this section.
1080 The commissioner may rely upon the opinion, regarding
1081 provisions contained within this section, of a qualified
1082 actuary engaged by the commissioner of another state,
1083 district, or territory of the United States. As used in this
1084 subdivision, term "engage" includes employment and
1085 contracting.

1086 (8) The commissioner may require a company to change
1087 any assumption or method that in the opinion of the
1088 commissioner is necessary in order to comply with the
1089 requirements of the valuation manual or this section, and the

1090 company shall adjust the reserves as required by the
1091 commissioner.

1092 (o) *Requirements of a Principle-Based Valuation.* —

1093 (1) A company must establish reserves using a
1094 principle-based valuation that meets the following
1095 conditions for policies or contracts as specified in the
1096 valuation manual:

1097 (A) Quantify the benefits and guarantees, and the
1098 funding, associated with the contracts and their risks at a
1099 level of conservatism that reflects conditions that include
1100 unfavorable events that have a reasonable probability of
1101 occurring during the lifetime of the contracts. For policies or
1102 contracts with significant tail risk, reflects conditions
1103 appropriately adverse to quantify the tail risk.

1104 (B) Incorporate assumptions, risk analysis methods and
1105 financial models, and management techniques that are
1106 consistent with, but not necessarily identical to, those utilized
1107 within the company's overall risk assessment process, while
1108 recognizing potential differences in financial reporting
1109 structures and any prescribed assumptions or methods.

1110 (C) Incorporate assumptions that are derived in one of
1111 the following manners:

1112 (i) The assumption is prescribed in the valuation
1113 manual; or

1114 (ii) For assumptions that are not prescribed, the
1115 assumptions shall either:

1116 (I) Be established utilizing the company's available
1117 experience, to the extent it is relevant and statistically
1118 credible; or

1119 (II) To the extent that company data is not available,
1120 relevant or statistically credible, be established utilizing
1121 other relevant, statistically credible experience.

1122 (D) Provide margins for uncertainty including adverse
1123 deviation and estimation error, such that the greater the
1124 uncertainty, the larger the margin and resulting reserve.

1125 (2) A company using a principle-based valuation for one
1126 or more policies or contracts subject to this section as
1127 specified in the valuation manual shall:

1128 (A) Establish procedures for corporate governance and
1129 oversight of the actuarial valuation function consistent with
1130 those described in the valuation manual.

1131 (B) Provide to the commissioner and the board of
1132 directors an annual certification of the effectiveness of the
1133 internal controls with respect to the principle-based
1134 valuation. The controls shall be designed to assure that all
1135 material risks inherent in the liabilities and associated assets
1136 subject to the valuation are included in the valuation, and
1137 that valuations are made in accordance with the valuation
1138 manual. The certification shall be based on the controls in
1139 place as of the end of the preceding calendar year.

1140 (C) Develop, and file with the commissioner upon
1141 request, a principle-based valuation report that complies
1142 with standards prescribed in the valuation manual.

1143 (3) A principle-based valuation may include a
1144 prescribed formulaic reserve component.

1145 (p) *Experience reporting for policies in force on or after*
1146 *the operative date of the valuation manual.* — A company
1147 shall submit mortality, morbidity, policyholder behavior, or
1148 expense experience and other data as prescribed in the
1149 valuation manual.

1150 (q) *Confidentiality.* —

1151 (1) For purposes of this subsection, “confidential
1152 information” means:

1153 (A) A memorandum in support of an opinion submitted
1154 under subsection (c) of this section and any other
1155 documents, materials, and other information, including, but
1156 not limited to, all working papers, and copies thereof,
1157 created, produced or obtained by, or disclosed to the
1158 commissioner or any other person in connection with the
1159 memorandum;

1160 (B) All documents, materials, and other information,
1161 including, but not limited to, all working papers, and copies
1162 thereof, created, produced or obtained by, or disclosed to the
1163 commissioner or any other person in the course of an
1164 examination made under subdivision (7), subsection (n) of
1165 this section, but only to the same extent as the documents,
1166 materials, and other information would be held confidential
1167 were they created, produced or obtained in connection with
1168 an examination made under the general examination law set
1169 forth in §33-2-9 of this code;

1170 (C) Any reports, documents, materials, and other
1171 information developed by a company in support of, or in
1172 connection with, an annual certification by the company
1173 under paragraph (B), subdivision (2), subsection (o) of this
1174 section evaluating the effectiveness of the company's
1175 internal controls with respect to a principle-based valuation
1176 and any other documents, materials, and other information,
1177 including, but not limited to, all working papers, and copies
1178 thereof, created, produced or obtained by, or disclosed to the
1179 commissioner or any other person in connection with the
1180 reports, documents, materials, and other information;

1181 (D) Any principle-based valuation report developed
1182 under paragraph (C), subdivision (2), subsection (o) of this
1183 section and any other documents, materials, and other
1184 information, including, but not limited to, all working
1185 papers, and copies thereof, created, produced or obtained
1186 by, or disclosed to the commissioner or any other person in
1187 connection with the report; and

1188 (E) Any documents, materials, data, and other
1189 information submitted by a company under subsection (p)
1190 of this section (collectively, “experience data”) and any
1191 other documents, materials, data, and other information,
1192 including, but not limited to, all working papers, and copies
1193 thereof, created or produced in connection with the
1194 experience data, in each case that include any potentially
1195 company-identifying or personally identifiable information,
1196 that is provided to or obtained by the commissioner
1197 (together with any “experience data”, the “experience
1198 materials”) and any other documents, materials, data, and
1199 other information, including, but not limited to, all working
1200 papers, and copies thereof, created, produced or obtained
1201 by, or disclosed to the commissioner or any other person in
1202 connection with the experience materials.

1203 (2) *Privilege for, and Confidentiality of, Confidential*
1204 *Information.* —

1205 (A) Except as otherwise provided in this subsection, a
1206 company’s confidential information is confidential by law
1207 and privileged, is exempt from disclosure under §29A-1-1
1208 *et seq.* of this code, is not subject to subpoena, and is not
1209 subject to discovery or admissible in evidence in any private
1210 civil action: *Provided*, That the commissioner is authorized
1211 to use the confidential information in the furtherance of any
1212 regulatory or legal action brought against the company as a
1213 part of the commissioner’s official duties.

1214 (B) Neither the commissioner nor any person who
1215 received confidential information while acting under the
1216 authority of the commissioner is permitted or required to
1217 testify in any private civil action concerning any
1218 confidential information.

1219 (C) In order to assist in the performance of the
1220 commissioner’s duties, the commissioner may share
1221 confidential information:

1222 (i) With other state, federal, and international regulatory
1223 agencies and with the NAIC and its affiliates and
1224 subsidiaries;

1225 (ii) In the case of confidential information specified in
1226 paragraphs (A) and (D), subdivision (1) of this subsection
1227 only, with the Actuarial Board for Counseling and
1228 Discipline or its successor upon request stating that the
1229 confidential information is required for the purpose of
1230 professional disciplinary proceedings and with state,
1231 federal, and international law-enforcement officials; and

1232 (iii) In the case of subparagraphs (i) and (ii) of this
1233 paragraph, provided that the recipient agrees and has the
1234 legal authority to agree, to maintain the confidentiality and
1235 privileged status of the documents, materials, data, and
1236 other information in the same manner and to the same extent
1237 as required for the commissioner.

1238 (D) The commissioner may receive documents,
1239 materials, data, and other information, including otherwise
1240 confidential and privileged documents, materials, data, or
1241 information, from the NAIC and its affiliates and
1242 subsidiaries, from regulatory or law-enforcement officials
1243 of other foreign or domestic jurisdictions, and from the
1244 Actuarial Board for Counseling and Discipline or its
1245 successor, and he or she shall maintain as confidential or
1246 privileged any document, material, data, or other
1247 information received with notice or the understanding that
1248 it is confidential or privileged under the laws of the
1249 jurisdiction that is the source of the document, material or
1250 other information.

1251 (E) The commissioner may enter into agreements
1252 governing sharing and use of information consistent with
1253 this subdivision.

1254 (F) No waiver of any applicable privilege or claim of
1255 confidentiality in the confidential information occurs as a
1256 result of disclosure to the commissioner under this section

1257 or as a result of sharing as authorized in paragraph (C) of
1258 this subdivision.

1259 (G) A privilege established under the law of any state or
1260 jurisdiction that is substantially similar to the privilege
1261 established under this subdivision is available and may be
1262 enforced in any proceeding in, and in any court of, this state.

1263 (H) In this subsection “regulatory agency”, “law-
1264 enforcement agency”, and the “NAIC” include, but are not
1265 limited to, their employees, agents, consultants, and
1266 contractors.

1267 (3) Notwithstanding subdivision (2) of this subsection,
1268 any confidential information specified in paragraphs (A)
1269 and (D), subdivision (1) of this subsection:

1270 (A) May be subject to subpoena for the purpose of
1271 defending an action seeking damages from the appointed
1272 actuary submitting the related memorandum in support of
1273 an opinion submitted under subsection (c) of this section or
1274 principle-based valuation report developed under paragraph
1275 (C), subdivision (2), subsection (o) of this section by reason
1276 of an action required by this section or by rules promulgated
1277 hereunder;

1278 (B) May otherwise be released by the commissioner
1279 with the written consent of the company; and

1280 (C) Once any portion of a memorandum in support of
1281 an opinion submitted under subsection (c) of this section or
1282 a principle-based valuation report developed under
1283 paragraph (C), subdivision (2), subsection (o) of this section
1284 is cited by the company in its marketing or is publicly
1285 volunteered to or before a governmental agency other than
1286 a state insurance department or is released by the company
1287 to the news media, all portions of the memorandum or report
1288 are no longer confidential.

●

CHAPTER 149

**(Com. Sub. for H. B. 2476 - By Delegates Westfall,
Azinger, Hott, D. Jeffries, Graves, Jennings, Criss,
Mandt, Nelson, Espinosa and Porterfield)**

[Passed March 4, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §33-6-33 of the Code of West Virginia, 1931, as amended, relating to the valuation of a motor vehicle involved in an insurance claim; requiring that an amount equal to the consumers sales tax applicable to the sale of motor vehicles be added to a cash settlement arising from a total loss of a motor vehicle.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-33. Valuation of motor vehicle involved in claim.

1 Insurance companies doing business in this state shall
2 use the most recent version of an “official used car guide”
3 approved by the Insurance Commissioner as a guide for
4 setting the minimum value of any motor vehicle involved in
5 a claim settlement arising from the total loss of a motor
6 vehicle. In addition to any cash settlement value so agreed
7 to by the claimant, there shall be added an amount equal to
8 the consumers sales tax set forth in §11-15-3c (b) of this
9 code.



CHAPTER 150

**(Com. Sub. for H. B. 2479 - By Delegates D. Jeffries,
Westfall, Hott, Azinger, Graves, Sypolt, Criss,
Mandt, Nelson, Espinosa and Porterfield)
[By Request of the Insurance Commission]**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §33-33-2, §33-33-12 and §33-33-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-33-12a; and to amend said code by adding thereto a new article, designated §33-52-1, §33-52-2, §33-52-3, §33-52-4, §33-52-5, §33-52-6, §33-52-7, §33-52-8, and §33-52-9, all relating to the corporate governance practices of an insurance company or a group of insurers; defining internal audit function; making an insurer's audit committee responsible for overseeing the insurer's internal audit function; providing that certain insurers must establish an internal audit function with respect to the insurer's governance, risk management, and internal controls; requiring the head of an insurer's internal audit function to report to the insurer's audit committee regularly, but no less than annually, about the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings; exempting certain insurers from the internal audit function requirements; stating purpose of Corporate Governance Annual Disclosure Act; defining terms; requiring an insurer to annually submit to the insurance commissioner a corporate governance annual disclosure; describing the contents of the corporate governance annual disclosure; requiring that the corporate governance annual disclosure

include a signature of the insurer's chief executive officer or corporate secretary; permitting the insurer to choose the corporate level that the corporate governance annual disclosure is applicable, depending upon how the insurer has structured its corporate governance system; allowing the insurer to comply with the corporate governance annual disclosure requirements by cross referencing other documents or referencing documents already in the possession of the insurance commissioner; requiring that documents and other information related to the corporate governance annual disclosure be confidential and privileged; permitting the insurance commissioner to share documents, materials or other corporate governance annual disclosure-related information with National Association of Insurance Commissioners and other regulatory bodies; providing that the insurance commissioner may retain third-party consultants to assist the commissioner in reviewing the corporate governance annual disclosure and related information; subjecting such third-party consultants and the National Association of Insurance Commissioners to the same confidentiality standards as the insurance commissioner; setting forth the penalty for an insurer that fails to timely provide a corporate governance annual disclosure to the insurance commissioner; and providing for effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-2. Definitions.

1 As used in this article:

2 (1) "Accountant" or "independent certified public
3 accountant" means an independent certified public
4 accountant or accounting firm in good standing with the
5 American Institute of Certified Public Accountants and in
6 all states in which the accountant is licensed to practice; for
7 Canadian and British companies, the terms mean a
8 Canadian-chartered or British-chartered accountant.

9 (2) An “affiliate” of, or person “affiliated” with a
10 specific person, is a person that directly, or indirectly
11 through one or more intermediaries, controls or is controlled
12 by, or is under common control with, the person specified.

13 (3) “Audit committee” means a committee or equivalent
14 body established by the board of directors of an entity for
15 the purpose of overseeing the accounting and financial
16 reporting processes of an insurer or group of insurers, and
17 audits of financial statements of the insurer or group of
18 insurers. The audit committee of any entity that controls a
19 group of insurers may be deemed to be the audit committee
20 for one or more of these controlled insurers solely for the
21 purposes of this article at the election of the controlling
22 person. If an audit committee is not designated by the
23 insurer, the insurer’s entire board of directors shall
24 constitute the audit committee.

25 (4) “Audited financial report” means and includes those
26 items specified in section four of this article.

27 (5) “Indemnification” means an agreement of indemnity
28 or a release from liability where the intent or effect is to shift
29 or limit in any manner the potential liability of the person or
30 firm for failure to adhere to applicable auditing or other
31 professional standards, whether or not resulting in part from
32 knowing of other misrepresentations made by the insurer or
33 its representatives.

34 (6) “Independent board member” has the same meaning
35 as described in subdivision (4), section 12 of this article.

36 (7) “Insurer” means any domestic insurer as defined in
37 section six, article one of this chapter and includes any
38 domestic stock insurance company, mutual insurance
39 company, reciprocal insurance company, farmers’ mutual
40 fire insurance company, fraternal benefit society, hospital
41 service corporation, medical service corporation, health
42 care corporation, health maintenance organization, captive

43 insurance company or risk retention group and any licensed
44 foreign or alien insurer defined in article one of this chapter.

45 (8) “Group of insurers” means those licensed insurers
46 included in the reporting requirements of article 27 of this
47 chapter, or a set of insurers as identified by management for
48 the purpose of assessing the effectiveness of internal control
49 over financial reporting.

50 (9) “Internal audit function” means a person or persons
51 that provide independent, objective and reasonable
52 assurance designed to add value and improve an
53 organization’s operations and accomplish its objectives by
54 bringing a systematic, disciplined approach to evaluate and
55 improve the effectiveness of risk management, control and
56 governance processes.

57 (10) “Internal control over financial reporting” means a
58 process effected by an entity’s board of directors,
59 management and other personnel designed to provide
60 reasonable assurance regarding the reliability of the
61 financial statements. The process includes the requirements
62 set forth in subdivisions (2) through (7), subsection (b),
63 section four of this article and those policies and procedures
64 that:

65 (A) Pertain to the maintenance of records that, in
66 reasonable detail, accurately and fairly reflect the
67 transactions and dispositions of assets;

68 (B) Provide reasonable assurance that transactions are
69 recorded as necessary to permit preparation of the financial
70 statements and that receipts and expenditures are being
71 made only in accordance with authorizations of
72 management and directors; and

73 (C) Provide reasonable assurance regarding prevention
74 or timely detection of unauthorized acquisition, use or
75 disposition of assets that could have a material effect on the
76 financial statements.

77 (11) “SEC” means the United States Securities and
78 Exchange Commission.

79 (12) “Section 404” means section 404 of the Sarbanes-
80 Oxley Act of 2002 and the SEC’s rules and regulations
81 promulgated thereunder.

82 (13) “Section 404 report” means management’s report
83 on “internal control over financial reporting” as defined by
84 the SEC and the related attestation report of the independent
85 certified public accountant as described in subdivision (1)
86 of this section.

87 (14) “SOX Compliant Entity” means an entity that
88 either is required to be compliant with, or voluntarily is
89 compliant with, all of the following provisions of the
90 Sarbanes-Oxley Act of 2002:

91 (A) The preapproval requirements of Section 201,
92 Section 10A(i) of the Securities Exchange Act of 1934;

93 (B) The audit committee independence requirements of
94 Section 301, Section 10A(m)(3) of the Securities Exchange
95 Act of 1934; and

96 (C) The internal control over financial reporting
97 requirements of Section 404, Item 308 of SEC Regulation
98 S-K.

§33-33-12. Requirements for audit committees.

1 This section does not apply to foreign or alien insurers
2 licensed in this state or an insurer that is a SOX Compliant
3 Entity or a direct or indirect wholly-owned subsidiary of a
4 SOX Compliant Entity.

5 (1) The audit committee is directly responsible for the
6 appointment, compensation and oversight of the work of
7 any accountant, including resolution of disagreements
8 between management and the accountant regarding
9 financial reporting, for the purpose of preparing or issuing

10 the audited financial report or related work pursuant to this
11 article. Each accountant shall report directly to the audit
12 committee.

13 (2) The audit committee of an insurer or group of
14 insurers is responsible for overseeing the insurer's internal
15 audit function and granting the person or persons
16 performing the function suitable authority and resources to
17 fulfill their responsibilities as required by §33-33-12a of this
18 code.

19 (3) Each member of the audit committee shall be a
20 member of the board of directors of the insurer or a member
21 of the board of directors of an entity elected pursuant to
22 subdivision (3), section two of this article and subdivision
23 (6) of this section.

24 (4) In order to be considered independent for purposes
25 of this section, a member of the audit committee may not,
26 other than in his or her capacity as a member of the audit
27 committee, the board of directors, or any other board
28 committee, accept any consulting, advisory or other
29 compensatory fee from the entity or be an affiliated person
30 of the entity or subsidiary thereof. However, if law requires
31 board participation by otherwise nonindependent members,
32 that law shall prevail and such members may participate in
33 the audit committee and be designated as independent for
34 audit committee purposes, unless they are an officer or
35 employee of the insurer or one of its affiliates.

36 (5) If a member of the audit committee ceases to be
37 independent for reasons outside the member's reasonable
38 control, that person, with notice by the responsible entity to
39 the state, may remain an audit committee member of the
40 responsible entity until the earlier of the next annual
41 meeting of the responsible entity or one year from the
42 occurrence of the event that caused the member to be no
43 longer independent.

44 (6) To exercise the election of the controlling person to
45 designate the audit committee for purposes of this article,
46 the ultimate controlling person shall provide written notice
47 to the commissioners of the affected insurers. Notification
48 shall be made timely prior to the issuance of the statutory
49 audit report and include a description of the basis for the
50 election. The election can be changed through notice to the
51 commissioner by the insurer, which shall include a
52 description of the basis for the change. The election shall
53 remain in effect for perpetuity, until rescinded.

54 (7)(A) The audit committee shall require the accountant
55 that performs for an insurer any audit required by this article
56 to timely report to the audit committee in accordance with
57 the requirements of Statement of Auditing Standards (SAS)
58 No. 61, "Communication with Audit Committees" or its
59 replacement, including:

60 (i) All significant accounting policies and material
61 permitted practices;

62 (ii) All material alternative treatments of financial
63 information within statutory accounting principles that have
64 been discussed with management officials of the insurer,
65 ramifications of the use of the alternative disclosures and
66 treatments, and the treatment preferred by the accountant;
67 and

68 (iii) Other material written communications between the
69 accountant and the management of the insurer, such as any
70 management letter or schedule of unadjusted differences.

71 (B) If an insurer is a member of an insurance holding
72 company system, the reports required by paragraph (A) of
73 this subdivision may be provided to the audit committee on
74 an aggregate basis for insurers in the holding company
75 system, provided that any substantial differences among
76 insurers in the system are identified to the audit committee.

77 (8) The proportion of independent audit committee
78 members shall meet or exceed the following criteria with
79 respect to prior calendar year, direct and assumed
80 premiums:

81 \$0 - \$300 million: No minimum requirements;

82 Over \$300 million - \$500 million: Majority (50 percent
83 or more) of members shall be independent;

84 Over \$500 million: Supermajority (75 percent or more)
85 of members shall be independent.

86 (A) The commissioner has authority afforded by state
87 law to require the entity's board to enact improvements to
88 the independence of the audit committee membership if the
89 insurer is in a risk based capital action level event, meets
90 one or more of the standards of an insurer deemed to be in
91 hazardous financial condition, or otherwise exhibits
92 qualities of a troubled insurer.

93 (B) All insurers with less than \$500 million in prior year
94 direct written and assumed premiums are encouraged to
95 structure their audit committees with at least a
96 supermajority of independent audit committee members.

97 (C) Prior calendar year direct written and assumed
98 premiums shall be the combined total of direct premiums
99 and assumed premiums from nonaffiliates for the reporting
100 entities.

101 (9) An insurer with direct written and assumed
102 premium, excluding premiums reinsured with the Federal
103 Crop Insurance Corporation and Federal Flood Program,
104 less than \$500 million may make application to the
105 commissioner for a waiver from this section's requirements
106 based upon hardship. The insurer shall file, with its annual
107 statement filing, the approval for relief from this section
108 with the states that it is licensed in or doing business in and
109 the National Association of Insurance Commissioners. If
110 the nondomestic state accepts electronic filing with the

111 National Association of Insurance Commissioners, the
112 insurer shall file the approval in an electronic format
113 acceptable to the National Association of Insurance
114 Commissioners.

§33-33-12a. Internal Audit Function Requirements.

1 (a) An insurer is exempt from the requirements of this
2 section if:

3 (1) The insurer has annual direct written and unaffiliated
4 assumed premium, including international direct and
5 assumed premium but excluding premiums reinsured with
6 the Federal Crop Insurance Corporation and Federal Flood
7 Program, less than \$500 million; and

8 (2) If the insurer is a member of a group of insurers, the
9 group has annual direct written and unaffiliated assumed
10 premium, including international direct and assumed
11 premium but excluding premiums reinsured with the
12 Federal Crop Insurance Corporation and Federal Flood
13 Program, less than \$1 billion.

14 (b) The insurer or group of insurers shall establish an
15 internal audit function providing independent, objective and
16 reasonable assurance to the audit committee and insurer
17 management regarding the insurer's governance, risk
18 management and internal controls. This assurance shall be
19 provided by performing general and specific audits, reviews
20 and tests and by employing other techniques deemed
21 necessary to protect assets, evaluate control effectiveness
22 and efficiency, and evaluate compliance with policies and
23 regulations.

24 (c) In order to ensure that internal auditors remain
25 objective, the internal audit function must be
26 organizationally independent. Specifically, the internal
27 audit function may not defer ultimate judgment on audit
28 matters to others, and shall appoint an individual to head the
29 internal audit function who will have direct and unrestricted
30 access to the board of directors. Organizational

31 independence does not preclude dual-reporting
32 relationships.

33 (d) The head of the internal audit function shall report
34 to the audit committee regularly, but no less than annually,
35 on the periodic audit plan, factors that may adversely impact
36 the internal audit function's independence or effectiveness,
37 material findings from completed audits and the
38 appropriateness of corrective actions implemented by
39 management as a result of audit findings.

40 (e) If an insurer is a member of an insurance holding
41 company system or included in a group of insurers, the
42 insurer may satisfy the internal audit function requirements
43 set forth in this section at the ultimate controlling parent
44 level, an intermediate holding company level or the
45 individual legal entity level.

§33-33-16. Exemptions and effective dates.

1 (a) Upon written application of any insurer, the
2 commissioner may grant an exemption from compliance
3 with any and all provisions of this article if the
4 commissioner finds, upon review of the application, that
5 compliance with this article would constitute a financial or
6 organizational hardship upon the insurer. An exemption
7 may be granted at any time and from time to time for a
8 specified period or periods. Within 10 days from a denial of
9 an insurer's written request for an exemption from this
10 article, the insurer may request in writing a hearing on its
11 application for an exemption.

12 (b) Unless otherwise provided in this section, the
13 provisions of this article shall become effective on January
14 1, 2010.

15 (c) Domestic insurers retaining a certified public
16 accountant on the effective date of this article who qualify
17 as independent shall comply with this article for the year
18 ending December 31, 2010, and each year thereafter, unless
19 the commissioner permits otherwise.

20 (d) Domestic insurers not retaining a certified public
21 accountant on the effective date of this article who qualifies
22 as independent may meet the following schedule for
23 compliance unless the commissioner permits otherwise:

24 (1) As of December 31, 2010, file with the
25 commissioner an audited financial report; and

26 (2) For the year ending December 31, 2010, and each
27 year thereafter, such insurers shall file with the
28 commissioner all reports and communication required by
29 this article.

30 (e) Foreign insurers shall comply with this article for the
31 year ending December 31, 2010, and each year thereafter,
32 unless the commissioner permits otherwise.

33 (f) The requirements of subsection (d), section six of
34 this article shall be in effect for audits of the year beginning
35 January 1, 2010, and each year thereafter.

36 (g) The requirements of section twelve of this article are
37 to be in effect January 1, 2010, and each year thereafter. An
38 insurer or group of insurers that is not required to have
39 independent audit committee members or only a majority of
40 independent audit committee members, as opposed to a
41 supermajority, because the total written and assumed
42 premium is below the threshold and subsequently becomes
43 subject to one of the independence requirements due to
44 changes in premium shall have one year following the year
45 the threshold exceeded to comply with the independence
46 requirements. An insurer that becomes subject to one of the
47 independence requirements as a result of a business
48 combination shall have one calendar year following the date
49 of acquisition or combination to comply with the
50 independence requirements.

51 (h) The requirements of section fifteen of this article are
52 effective beginning with the reporting period ending
53 December 31, 2010, and each year thereafter. An insurer or

54 group of insurers that is not required to file a report because
55 the total written premium is below the threshold and
56 subsequently becomes subject to the reporting requirements
57 shall have two years following the year the threshold is
58 exceeded to file a report. An insurer acquired in a business
59 combination shall have two calendar years following the
60 date of acquisition or combination to comply with the
61 reporting requirements.

62 (i) The requirements of §33-33-12a of this code are
63 effective on January 1, 2020, and each year thereafter. If an
64 insurer or group of insurers that is exempt from the
65 requirements of §33-33-12a of this code no longer qualifies
66 for that exemption, it shall have one year after the year the
67 threshold is exceeded to comply with the requirements of
68 this article.

ARTICLE 52. CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT.

§33-52-1. Short title, purpose and scope of article.

1 (a) This article may be cited as the “Corporate
2 Governance Annual Disclosure Act”.

3 (b) The purpose of this article is to:

4 (1) Provide the commissioner a summary of an insurer’s
5 or insurance group’s corporate governance structure,
6 policies and practices to permit the commissioner to gain
7 and maintain an understanding of the insurer’s corporate
8 governance framework;

9 (2) Outline the requirements for completing a corporate
10 governance annual disclosure with the commissioner;

11 (3) Set forth the procedures for filing the corporate
12 governance annual disclosure; and

13 (4) Provide for the confidential treatment of the
14 corporate governance annual disclosure and related

15 information that will contain confidential and sensitive
16 information related to an insurer or insurance group's
17 internal operations and proprietary and trade secret
18 information which, if made public, could potentially cause
19 the insurer or insurance group competitive harm or
20 disadvantage.

21 (c) Nothing in this article limits the commissioner's
22 examination authority, or the rights or obligations of third
23 parties, under §33-2-9 of this code.

24 (d) The requirements of this article apply to all licensed
25 insurers domiciled in this state.

§33-52-2. Definitions.

1 As used in this article:

2 (1) "Board" means the board of directors of an insurer
3 or insurance group.

4 (2) "Corporate Governance Annual Disclosure" or
5 "CGAD" means a confidential report filed by the insurer or
6 insurance group made in accordance with the requirements
7 of this article.

8 (3) "Insurance group" means those insurers and
9 affiliates included within an insurance holding company
10 system as defined in §33-27-2 of this code.

11 (4) "Insurer" means every person engaged in the
12 business of making contracts of insurance, except that it
13 shall not include agencies, authorities or instrumentalities of
14 the United States, its possessions and territories, the
15 Commonwealth of Puerto Rico, the District of Columbia, or
16 a state or political subdivision of a state.

17 (5) "ORSA summary report" means the report filed in
18 accordance with §33-40B-5 of this code.

19 (6) “Senior management” means any corporate officer
20 responsible for reporting information to the board at regular
21 intervals or providing this information to shareholders or
22 regulators and shall include, for example and without
23 limitation, the chief executive officer (CEO), chief financial
24 officer (CFO), chief operations officer (COO), chief
25 procurement officer (CPO), chief legal officer (CLO), chief
26 information officer (CIO), chief technology officer (CTO),
27 chief revenue officer (CRO), chief visionary officer (CVO),
28 or any other “C” level executive.

§33-52-3. Disclosure Requirements.

1 (a) An insurer, or the insurance group of which the
2 insurer is a member, shall annually submit to the
3 commissioner a CGAD that contains the information
4 described in §33-52-4 of this code. Notwithstanding any
5 request from the commissioner made pursuant to subsection
6 (c) of this section, if the insurer is a member of an insurance
7 group, the insurer shall submit the report required by this
8 section to the commissioner of the lead state for the
9 insurance group, in accordance with the laws of the lead
10 state, as determined by the procedures outlined in the most
11 recent financial analysis handbook adopted by the National
12 Association of Insurance Commissioners.

13 (b) The CGAD must include a signature of the insurer’s
14 or insurance group’s chief executive officer or corporate
15 secretary attesting to the best of that individual’s belief and
16 knowledge that the insurer or insurance group has
17 implemented the corporate governance practices and that a
18 copy of the CGAD has been provided to the insurer’s or
19 insurance group’s board or the appropriate committee
20 thereof.

21 (c) An insurer not required to submit a CGAD under this
22 section shall do so upon the commissioner’s request.

23 (d) For purposes of completing the CGAD, the insurer
24 or insurance group may provide information regarding

25 corporate governance at the ultimate controlling parent
26 level, an intermediate holding company level and/or the
27 individual legal entity level, depending upon how the
28 insurer or insurance group has structured its system of
29 corporate governance. The insurer or insurance group is
30 encouraged to make the CGAD disclosures at the level at
31 which the insurer's or insurance group's risk appetite is
32 determined, or at which the earnings, capital, liquidity,
33 operations, and reputation of the insurer are overseen
34 collectively and at which the supervision of those factors are
35 coordinated and exercised, or the level at which legal
36 liability for failure of general corporate governance duties
37 would be placed. If the insurer or insurance group
38 determines the level of reporting based on these criteria, it
39 shall indicate which of the three criteria was used to
40 determine the level of reporting and explain any subsequent
41 changes in level of reporting.

42 (e) The review of the CGAD and any additional requests
43 for information shall be made through the lead state as
44 determined by the procedures within the most recent
45 financial analysis handbook referenced in subsection (a) of
46 this section.

47 (f) Insurers providing information substantially similar
48 to the information required by this article in other
49 documents provided to the commissioner, including proxy
50 statements filed in conjunction with a holding company's
51 Form B requirements or other state or federal filings
52 provided to the commissioner, are not required to duplicate
53 that information in the CGAD, but are only required to
54 cross reference the document in which the information is
55 included.

56 (g) Documentation and supporting information relevant
57 to the CGAD shall be maintained by the insurer or insurance
58 group and made available upon examination or upon request
59 of the commissioner.

§33-52-4. Contents of Corporate Governance Annual Disclosure.

1 (a) The insurer or insurance group shall be as descriptive
2 as possible in completing the CGAD, with inclusion of
3 attachments or example documents that are used in the
4 governance process, since these may provide a means to
5 demonstrate the strengths of their governance framework
6 and practices.

7 (b) The CGAD shall describe the insurer's or insurance
8 group's corporate governance framework and structure,
9 including consideration of the following:

10 (1) The board and various committees thereof ultimately
11 responsible for overseeing the insurer or insurance group
12 and the level(s) at which that oversight occurs, including,
13 but not limited to, ultimate control level, intermediate
14 holding company or legal entity. The insurer or insurance
15 group shall describe and discuss the rationale for the current
16 board size and structure; and

17 (2) The duties of the board and each of its significant
18 committees and how they are governed, including, but not
19 limited to, bylaws, charters or informal mandates, as well as
20 how the board's leadership is structured, including a
21 discussion of the roles of chief executive officer and
22 chairman of the board within the organization.

23 (c) The insurer or insurance group shall describe the
24 policies and practices of the most senior governing entity
25 and significant committees thereof, including a discussion
26 of the following factors:

27 (1) How the qualifications, expertise, and experience of
28 each board member meet the needs of the insurer or
29 insurance group;

30 (2) How an appropriate amount of independence is
31 maintained on the board and its significant committees;

32 (3) The number of meetings held by the board and its
33 significant committees over the past year as well as
34 information on director attendance;

35 (4) The processes in place for the board to evaluate its
36 performance and the performance of its committees, as well
37 as any recent measures taken to improve performance,
38 including any board or committee training programs that
39 have been put in place; and

40 (5) How the insurer or insurance group identifies,
41 nominates and elects members to the board and its
42 committees. The discussion should include, for example:

43 (A) Whether a nomination committee is in place to
44 identify and select individuals for consideration;

45 (B) Whether term limits are placed on directors;

46 (C) How the election and reelection processes function;
47 and

48 (D) Whether a board diversity policy is in place and if
49 so, how it functions.

50 (d) The insurer or insurance group shall describe the
51 policies and practices for directing senior management,
52 including a description of the following factors:

53 (1) Any processes or practices, such as suitability
54 standards, to determine whether officers and key persons in
55 control functions have the appropriate background,
56 experience and integrity to fulfill their prospective roles,
57 including:

58 (A) Identification of the specific positions for which
59 suitability standards have been developed and a description
60 of the standards employed; and

61 (B) Any changes in an officer's or key person's
62 suitability as outlined by the insurer's or insurance group's

63 standards and procedures to monitor and evaluate such
64 changes.

65 (2) The insurer's or insurance group's code of business
66 conduct and ethics, the discussion of which considers, for
67 example:

68 (A) Compliance with laws, rules, and regulations; and

69 (B) Proactive reporting of any illegal or unethical
70 behavior.

71 (3) The insurer's or insurance group's processes for
72 performance evaluation, compensation and corrective
73 action to ensure effective senior management throughout
74 the organization, including a description of the general
75 objectives of significant compensation programs and what
76 the programs are designed to reward. The description shall
77 include sufficient detail to allow the commissioner to
78 understand how the organization ensures that compensation
79 programs do not encourage and/or reward excessive risk
80 taking. Elements to be discussed may include, for example:

81 (A) The board's role in overseeing management
82 compensation programs and practices;

83 (B) The various elements of compensation awarded in
84 the insurer's or insurance group's compensation programs
85 and how the insurer or insurance group determines and
86 calculates the amount of each element of compensation
87 paid;

88 (C) How compensation programs are related to both
89 company and individual performance over time;

90 (D) Whether compensation programs include risk
91 adjustments and how those adjustments are incorporated
92 into the programs for employees at different levels;

93 (E) Any clawback provisions built into the programs to
94 recover awards or payments if the performance measures

95 upon which they are based are restated or otherwise
96 adjusted; and

97 (F) Any other factors relevant in understanding how the
98 insurer or insurance group monitors its compensation
99 policies to determine whether its risk management
100 objectives are met by incentivizing its employees.

101 (4) The insurer's or insurance group's plans for chief
102 executive officer and senior management succession.

103 (e) The insurer or insurance group shall describe the
104 processes by which the board, its committees and senior
105 management ensure an appropriate amount of oversight to
106 the critical risk areas impacting the insurer's business
107 activities, including a discussion of:

108 (1) How oversight and management responsibilities are
109 delegated between the board, its committees and senior
110 management;

111 (2) How the board is kept informed of the insurer's
112 strategic plans, the associated risks, and steps that senior
113 management is taking to monitor and manage those risks;
114 and

115 (3) How reporting responsibilities are organized for
116 each critical risk area. The description should allow the
117 commissioner to understand the frequency at which
118 information on each critical risk area is reported to and
119 reviewed by senior management and the board. This
120 description may include, for example, the following critical
121 risk areas of the insurer:

122 (A) Risk management processes: *Provided*, That an
123 insurer or insurance group may refer to its ORSA summary
124 report;

125 (B) Actuarial function;

126 (C) Investment decision-making processes;

- 127 (D) Reinsurance decision-making processes;
- 128 (E) Business strategy/finance decision-making processes;
- 129 (F) Compliance function;
- 130 (G) Financial reporting/internal auditing; and
- 131 (H) Market conduct decision-making processes.
- 132 (f) The insurer or insurance group has discretion over
133 the responses to the CGAD inquiries: *Provided*, That the
134 CGAD shall contain the material information necessary to
135 permit the commissioner to gain an understanding of the
136 insurer's or insurance group's corporate governance
137 structure, policies, and practices. The commissioner may
138 request additional information that he or she deems material
139 and necessary to provide the commissioner with a clear
140 understanding of the corporate governance policies, the
141 reporting or information system or controls implementing
142 those policies.

§33-52-5. Filing procedures.

- 1 (a) An insurer, or the insurance group of which the
2 insurer is a member, required to file a CGAD by §33-52-3
3 of this code, shall, no later than June 1 of each calendar year,
4 submit to the commissioner a CGAD that contains the
5 information described in §33-52-4 of this code.
- 6 (b) The insurer or insurance group has discretion
7 regarding the appropriate format for providing the
8 information required by this article and is permitted to
9 customize the CGAD to provide the most relevant
10 information necessary to permit the commissioner to gain
11 an understanding of the corporate governance structure,
12 policies and practices utilized by the insurer or insurance
13 group.
- 14 (c) Notwithstanding subsection (a) of this section, and
15 as outlined in §33-52-3 of this code, if the CGAD is

16 completed at the insurance group level, then it must be filed
17 with the lead state of the group as determined by the
18 procedures outlined in the most recent financial analysis
19 handbook adopted by the National Association of Insurance
20 Commissioners. In these instances, a copy of the CGAD
21 must also be provided to the chief regulatory official of any
22 state in which the insurance group has a domestic insurer,
23 upon request.

24 (d) An insurer or insurance group may comply with this
25 section by referencing other existing documents, including,
26 but not limited to, ORSA summary report, holding company
27 Form B or F filings, Securities and Exchange Commission
28 (SEC) proxy statements or foreign regulatory reporting
29 requirements, if the documents provide information that is
30 comparable to the information described in §33-52-4 of this
31 code. The insurer or insurance group shall clearly reference
32 the location of the relevant information within the CGAD
33 and attach the referenced document if it is not already filed
34 or available to the commissioner.

35 (e) Each year following the initial filing of the CGAD,
36 the insurer or insurance group shall file an amended version
37 of the previously filed CGAD indicating where changes
38 have been made. If no changes were made in the
39 information or activities reported by the insurer or insurance
40 group, the filing should so state.

§33-52-6. Confidentiality.

1 (a) Documents, materials or other information,
2 including the CGAD, in the possession or control of the
3 commissioner that are obtained by, created by or disclosed
4 to the commissioner or any other person under this article,
5 are recognized by this state as being proprietary and to
6 contain trade secrets. All such documents, materials or other
7 information are confidential by law and privileged, are not
8 subject to the provisions of chapter 29e-b of this code, are
9 not subject to subpoena, and are not subject to discovery or
10 admissible in evidence in any private civil action. The

11 commissioner may use the documents, materials or other
12 information in the furtherance of any regulatory or legal
13 action brought as a part of the commissioner's official
14 duties. The commissioner shall not otherwise make the
15 documents, materials or other information public without
16 the prior written consent of the insurer. Nothing in this
17 section requires written consent of the insurer before the
18 commissioner may share or receive confidential documents,
19 materials or other CGAD-related information pursuant to
20 subsection (c) of this section to assist in the performance of
21 the commissioner's regulatory duties.

22 (b) Neither the commissioner nor any person who
23 received documents, materials or other CGAD-related
24 information, through examination or otherwise, while
25 acting under the authority of the commissioner, or with
26 whom such documents, materials or other information are
27 shared pursuant to this article is permitted or required to
28 testify in any private civil action concerning any
29 confidential documents, materials, or information subject to
30 subsection (a) of this section.

31 (c) In order to assist in the performance of the
32 commissioner's regulatory duties, the commissioner may:

33 (1) Share documents, materials or other CGAD-related
34 information including the confidential and privileged
35 documents, materials or information subject to subsection
36 (a) of this section, including proprietary and trade secret
37 documents and materials with other state, federal and
38 international financial regulatory agencies, members of any
39 supervisory college as defined in §33-27-6a of this code, the
40 National Association of Insurance Commissioners, and
41 third party consultants pursuant to §33-52-7 of this code:
42 *Provided*, That the recipient agrees in writing to maintain
43 the confidentiality and privileged status of the CGAD-
44 related documents, material or other information and has
45 verified in writing the legal authority to maintain
46 confidentiality; and

47 (2) Receive documents, materials or other CGAD-
48 related information, including otherwise confidential and
49 privileged documents, materials or information, including
50 proprietary and trade-secret information or documents, from
51 regulatory officials of other state, federal and international
52 financial regulatory agencies, members of any supervisory
53 college as defined in §33-27-6a of this code, and the
54 National Association of Insurance Commissioners, and
55 shall maintain as confidential or privileged any documents,
56 materials or information received with notice or the
57 understanding that it is confidential or privileged under the
58 laws of the jurisdiction that is the source of the document,
59 material or information.

60 (d) The sharing of information and documents by the
61 commissioner pursuant to this article does not constitute a
62 delegation of regulatory authority or rulemaking, and the
63 commissioner is solely responsible for the administration,
64 execution and enforcement of the provisions of this article.

65 (e) No waiver of any applicable privilege or claim of
66 confidentiality in the documents, proprietary and trade-
67 secret materials or other CGAD-related information may
68 occur as a result of disclosure of such CGAD-related
69 information or documents to the commissioner under this
70 section or as a result of sharing as authorized in this article.

**§33-52-7. National Association of Insurance Commissioners
and third-party consultants.**

1 (a) The commissioner may retain, at the insurer's expense,
2 third-party consultants, including attorneys, actuaries,
3 accountants and other experts not otherwise a part of the
4 commissioner's staff as may be reasonably necessary to assist
5 the commissioner in reviewing the CGAD and related
6 information or the insurer's compliance with this article.

7 (b) Any persons retained under subsection (a) of this
8 section is under the direction and control of the commissioner
9 and may act only in a purely advisory capacity.

10 (c) The National Association of Insurance
11 Commissioners and third-party consultants are subject to
12 the same confidentiality standards and requirements as the
13 commissioner.

14 (d) As part of the retention process, a third-party
15 consultant shall verify to the commissioner, with notice to
16 the insurer, that it is free of a conflict of interest and that it
17 has internal procedures in place to monitor compliance with
18 a conflict and to comply with the confidentiality standards
19 and requirements of this article.

20 (e) A written agreement with the National Association
21 of Insurance Commissioners and/or a third-party consultant
22 governing sharing and use of information provided pursuant
23 to this article shall contain the following provisions and
24 expressly require the written consent of the insurer prior to
25 making public information provided under this article:

26 (1) Specific procedures and protocols for maintaining
27 the confidentiality and security of CGAD-related
28 information shared with the National Association of
29 Insurance Commissioners or a third-party consultant
30 pursuant to this article;

31 (2) Procedures and protocols for sharing by the National
32 Association of Insurance Commissioners only with other
33 state regulators from states in which the insurance group has
34 domiciled insurers. The agreement shall provide that the
35 recipient agrees in writing to maintain the confidentiality
36 and privileged status of the CGAD-related documents,
37 materials or other information and has verified in writing
38 the legal authority to maintain confidentiality;

39 (3) A provision specifying that ownership of the
40 CGAD-related information shared with the National
41 Association of Insurance Commissioners or a third-party
42 consultant remains with the commissioner and the use of the
43 information by the National Association of Insurance
44 Commissioners or third-party consultant is subject to the
45 direction of the commissioner;

46 (4) A provision that prohibits the National Association
47 of Insurance Commissioners or a third-party consultant
48 from storing the information shared pursuant to this article
49 in a permanent database after the underlying analysis is
50 completed;

51 (5) A provision requiring the National Association of
52 Insurance Commissioners or third-party consultant to
53 provide prompt notice to the commissioner and to the
54 insurer or insurance group regarding any subpoena, request
55 for disclosure, or request for production of the insurer's
56 CGAD-related information; and

57 (6) A requirement that the National Association of
58 Insurance Commissioners or a third-party consultant to
59 consent to intervention by an insurer in any judicial or
60 administrative action in which the National Association of
61 Insurance Commissioners or a third-party consultant may be
62 required to disclose confidential information about the
63 insurer shared with the National Association of Insurance
64 Commissioners or a third-party consultant pursuant to this
65 article.

§33-52-8. Sanctions.

1 Any insurer failing, without just cause, to timely file the
2 CGAD as required in this article shall be required, after
3 notice and hearing, to pay a penalty of up to \$1,000 for each
4 day's delay, to be recovered by the commissioner. Any
5 penalty so recovered shall be paid into the General Revenue
6 Fund of this state. The commissioner may reduce the
7 penalty if the insurer demonstrates to the commissioner that
8 the imposition of the penalty would constitute a financial
9 hardship to the insurer.

§33-52-9. Effective date.

1 The requirements of this article are effective on January
2 1, 2020. The first filing of the CGAD shall be in 2020.

●

CHAPTER 151

**(H. B. 2480 - By Delegates Hott, Westfall, Azinger, D.
Jeffries, Graves, Jennings, Criss, Mandt, Nelson,
Espinosa and Porterfield)
[By Request of the Insurance Commission]**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §33-27-2 and §33-27-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-27-6b, all relating to the regulation of an internationally active insurance group; defining group-wide supervisor and internationally active insurance group; providing authority for the insurance commissioner to act as a group-wide supervisor for an internationally active insurance group; permitting the insurance commissioner to acknowledge another regulatory official as the group-wide supervisor for an internationally active insurance group under certain criteria; requiring insurance companies to submit information necessary for the insurance commissioner to determine whether he or she may act as the group-wide supervisor for an internationally active insurance group; authorizing specific regulatory actions when the insurance commissioner is acting as a group-wide supervisor for an internationally active insurance group; allowing the insurance commissioner to enter into agreements with insurers regarding his or her role as group-wide supervisor for an internationally active insurance group; making insurers liable for the reasonable expenses of the insurance commissioner's participation as a group-wide supervisor for an internationally active insurance group; and rendering information provided by insurers to the insurance commissioner in connection with the commissioner's role as

a group-wide supervisor for an internationally active insurance group as confidential and privileged.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2. Definitions.

1 As used in this article:

2 (a) An “affiliate” of or person “affiliated” with a specific
3 person is a person that, directly or indirectly through one or
4 more intermediaries, controls or is controlled by or is under
5 common control with the person specified.

6 (b) “Commissioner” means the West Virginia Insurance
7 Commissioner, his or her deputies or the West Virginia
8 offices of the Insurance Commissioner, as appropriate.

9 (c) “Control” (including the terms “controlling”,
10 “controlled by” and “under common control with”) means
11 the possession, direct or indirect, of the power to direct or
12 cause the direction of the management and policies of a
13 person, whether through the ownership of voting securities,
14 by contract other than a commercial contract for goods or
15 nonmanagement services or otherwise, unless the power is
16 the result of an official position with or corporate office held
17 by the person. Control shall be presumed to exist if any
18 person, directly or indirectly, owns, controls, holds with the
19 power to vote or holds proxies representing ten percent or
20 more of the voting securities of any other person. This
21 presumption may be rebutted by a showing made in the
22 manner provided by subsection (k), section four of this
23 article that control does not exist in fact. The commissioner
24 may determine after furnishing all persons in interest notice
25 and opportunity to be heard and making specific findings of
26 fact to support the determination that control exists in fact
27 notwithstanding the absence of a presumption to that effect.

28 (d) “Enterprise risk” means any activity, circumstance,
29 event or series of events involving one or more affiliates of
30 an insurer that, if not remedied promptly, is likely to have a
31 material adverse effect upon the financial condition or
32 liquidity of the insurer or its insurance holding company
33 system as a whole, including, but not limited to, anything
34 that would cause the insurer’s risk-based capital to fall into
35 company action level, as set forth in article forty of this
36 chapter, or would cause the insurer to be in hazardous
37 financial condition, as set forth in article thirty-four of this
38 chapter.

39 (e) “Group-wide supervisor” means the regulatory
40 official authorized to engage in conducting and coordinating
41 group-wide supervision activities who is determined or
42 acknowledged by the commissioner under §33-27-6b of this
43 code to have sufficient significant contacts with the
44 internationally active insurance group.

45 (f) “Insurance holding company system” consists of two
46 or more affiliated persons, one or more of which is an
47 insurer.

48 (g) “Insurer” means any person or persons or
49 corporation, partnership or company authorized by the laws
50 of this state to transact the business of insurance in this state,
51 except that it shall not include agencies, authorities or
52 instrumentalities of the United States, its possessions and
53 territories, the commonwealth of Puerto Rico, the District
54 of Columbia or a state or political subdivision of a state.

55 (h) “Internationally active insurance group” means an
56 insurance holding company system that includes an insurer
57 registered under §33-27-4 of this code and meets the
58 following criteria:

59 (1) Premiums written in at least three countries;

60 (2) The percentage of gross premiums written outside
61 the United States is at least 10 percent of the insurance

62 holding company system's total gross written premiums;
63 and

64 (3) Based on a three-year rolling average, the total assets
65 of the insurance holding company system are at least \$50
66 billion or the total gross written premiums of the insurance
67 holding company system are at least \$10 billion.

68 (i) "Person" means an individual, a corporation, a
69 limited liability company, a partnership, an association, a
70 joint-stock company, a trust, an unincorporated
71 organization, a depository institution or any similar entity or
72 any combination of the foregoing acting in concert, but does
73 not include any joint venture partnership exclusively
74 engaged in owning, managing, leasing or developing real or
75 tangible personal property.

76 (j) A "security holder" of a specified person is one who
77 owns any security of such person, including common stock,
78 preferred stock, debt obligations and any other security
79 convertible into or evidencing the right to acquire any of the
80 foregoing.

81 (k) A "subsidiary" of a specified person is an affiliate
82 controlled by such person directly or indirectly through one
83 or more intermediaries.

84 (l) "Voting security" includes any security convertible
85 into or evidencing a right to acquire a voting security.

§33-27-6b. Group-wide supervision of internationally active insurance groups.

1 (a) The commissioner is authorized to act as the group-
2 wide supervisor for any internationally active insurance
3 group in accordance with the provisions of this section.
4 However, the commissioner may otherwise acknowledge
5 another regulatory official as the group-wide supervisor
6 where the internationally active insurance group:

7 (1) Does not have substantial insurance operations in the
8 United States;

9 (2) Has substantial insurance operations in the United
10 States, but not in this state; or

11 (3) Has substantial insurance operations in the United
12 States and this state, but the commissioner has determined
13 pursuant to the factors set forth in subsections (c) and (g) of
14 this section that the other regulatory official is the
15 appropriate group-wide supervisor.

16 (b) An insurance holding company system that does not
17 otherwise qualify as an internationally active insurance
18 group may request that the commissioner make a
19 determination or acknowledgment as to a group-wide
20 supervisor pursuant to this section.

21 (c) In cooperation with other state, federal and
22 international regulatory agencies, the commissioner will
23 identify a single group-wide supervisor for an
24 internationally active insurance group. The commissioner
25 may determine that the commissioner is the appropriate
26 group-wide supervisor for an internationally active
27 insurance group that conducts substantial insurance
28 operations concentrated in this state. However, the
29 commissioner may acknowledge that a regulatory official
30 from another jurisdiction is the appropriate group-wide
31 supervisor for the internationally active insurance group.
32 The commissioner shall consider the following factors when
33 making a determination or acknowledgment under this
34 subsection:

35 (1) The place of domicile of the insurers within the
36 internationally active insurance group that hold the largest
37 share of the group's written premiums, assets or liabilities;

38 (2) The place of domicile of the top-tiered insurer(s) in
39 the insurance holding company system of the internationally
40 active insurance group;

41 (3) The location of the executive offices or largest
42 operational offices of the internationally active insurance
43 group;

44 (4) Whether another regulatory official is acting or is
45 seeking to act as the group-wide supervisor under a
46 regulatory system that the commissioner determines to be:

47 (A) Substantially similar to the system of regulation
48 provided under the laws of this state; or

49 (B) Otherwise sufficient in terms of providing for
50 group-wide supervision, enterprise risk analysis, and
51 cooperation with other regulatory officials; and

52 (5) Whether another regulatory official acting or
53 seeking to act as the group-wide supervisor provides the
54 commissioner with reasonably reciprocal recognition and
55 cooperation.

56 However, a commissioner identified under this section
57 as the group-wide supervisor may determine that it is
58 appropriate to acknowledge another supervisor to serve as
59 the group-wide supervisor. The acknowledgment of the
60 group-wide supervisor shall be made after consideration of
61 the factors listed in subdivisions (1) through (5) of this
62 subsection, and shall be made in cooperation with and
63 subject to the acknowledgment of other regulatory officials
64 involved with supervision of members of the internationally
65 active insurance group, and in consultation with the
66 internationally active insurance group.

67 (d) Notwithstanding any other provision of law, when
68 another regulatory official is acting as the group-wide
69 supervisor of an internationally active insurance group, the
70 commissioner shall acknowledge that regulatory official as
71 the group-wide supervisor. However, the commissioner
72 shall make a determination or acknowledgment as to the
73 appropriate group-wide supervisor for such an
74 internationally active insurance group pursuant to

75 subsection (c) of this section in the event of a material
76 change in the internationally active insurance group that
77 results in:

78 (1) The internationally active insurance group's insurers
79 domiciled in this state holding the largest share of the
80 group's premiums, assets or liabilities; or

81 (2) This state being the place of domicile of the top-
82 tiered insurer(s) in the insurance holding company system
83 of the internationally active insurance group.

84 (e) Pursuant to §33-27-6 of this code, the commissioner
85 is authorized to collect from any insurer registered pursuant
86 to §33-27-4 of this code all information necessary to
87 determine whether the commissioner may act as the group-
88 wide supervisor of an internationally active insurance group
89 or if the commissioner may acknowledge another regulatory
90 official to act as the group-wide supervisor. Prior to issuing
91 a determination that an internationally active insurance
92 group is subject to group-wide supervision by the
93 commissioner, the commissioner shall notify the insurer
94 registered pursuant to §33-27-4 of this code and the ultimate
95 controlling person within the internationally active
96 insurance group. The internationally active insurance group
97 shall have not less than 30 days to provide the commissioner
98 with additional information pertinent to the pending
99 determination. The commissioner shall publish on the
100 agency's internet website the identity of internationally
101 active insurance groups that the commissioner has
102 determined are subject to group-wide supervision by the
103 commissioner.

104 (f) If the commissioner is the group-wide supervisor for
105 an internationally active insurance group, the commissioner
106 is authorized to engage in any of the following group-wide
107 supervision activities:

108 (1) Assess the enterprise risks within the internationally
109 active insurance group to ensure that:

110 (A) The material financial condition and liquidity risks
111 to the members of the internationally active insurance group
112 that are engaged in the business of insurance are identified
113 by management; and

114 (B) Reasonable and effective mitigation measures are in
115 place;

116 (2) Request from any member of an internationally
117 active insurance group subject to the commissioner's
118 supervision information necessary and appropriate to assess
119 enterprise risk, including, but not limited to, information
120 about the members of the internationally active insurance
121 group regarding:

122 (A) Governance, risk assessment and management;

123 (B) Capital adequacy; and

124 (C) Material intercompany transactions;

125 (3) Coordinate and, through the authority of the
126 regulatory officials of the jurisdictions where members of
127 the internationally active insurance group are domiciled,
128 compel development and implementation of reasonable
129 measures designed to ensure that the internationally active
130 insurance group is able to timely recognize and mitigate
131 enterprise risks to members of such internationally active
132 insurance group that are engaged in the business of
133 insurance;

134 (4) Communicate with other state, federal and
135 international regulatory agencies for members within the
136 internationally active insurance group and share relevant
137 information subject to the confidentiality provisions of
138 section seven of this article, through supervisory colleges as
139 set forth in §33-27-6 of this code or otherwise;

140 (5) Enter into agreements with or obtain documentation
141 from any insurer registered under §33-27-4 of this code, any
142 member of the internationally active insurance group, and

143 any other state, federal and international regulatory agencies
144 for members of the internationally active insurance group,
145 providing the basis for or otherwise clarifying the
146 commissioner's role as group-wide supervisor, including
147 provisions for resolving disputes with other regulatory
148 officials. Such agreements or documentation shall not serve
149 as evidence in any proceeding that any insurer or person
150 within an insurance holding company system not domiciled
151 or incorporated in this state is doing business in this state or
152 is otherwise subject to jurisdiction in this state; and

153 (6) Other group-wide supervision activities, consistent
154 with the authorities and purposes enumerated above, as
155 considered necessary by the commissioner.

156 (g) If the commissioner acknowledges that another
157 regulatory official from a jurisdiction that is not accredited
158 by the National Association of Insurance Commissioners is
159 the group-wide supervisor, the commissioner is authorized
160 to reasonably cooperate, through supervisory colleges or
161 otherwise, with group-wide supervision undertaken by the
162 group-wide supervisor: *Provided, That:*

163 (1) The commissioner's cooperation is in compliance
164 with the laws of this state; and

165 (2) The regulatory official acknowledged as the group-
166 wide supervisor also recognizes and cooperates with the
167 commissioner's activities as a group-wide supervisor for
168 other internationally active insurance groups where
169 applicable. Where such recognition and cooperation is not
170 reasonably reciprocal, the commissioner is authorized to
171 refuse recognition and cooperation.

172 (h) The commissioner is authorized to enter into
173 agreements with or obtain documentation from any insurer
174 registered under §33-27-4 of this code, any affiliate of the
175 insurer, and other state, federal and international regulatory
176 agencies for members of the internationally active insurance

177 group, that provide the basis for or otherwise clarify a
178 regulatory official's role as group-wide supervisor.

179 (i) A registered insurer subject to this section shall be
180 liable for and shall pay the reasonable expenses of the
181 commissioner's participation in the administration of this
182 section, including the engagement of attorneys, actuaries
183 and any other professionals and all reasonable travel
184 expenses.

§33-27-7. Confidential treatment.

1 (a) Documents, materials or other information in the
2 possession or control of the commissioner that are obtained
3 by or disclosed to the commissioner or any other person in
4 the course of an examination or investigation made pursuant
5 to §33-27-6 of this code and all information reported or
6 provided to the commissioner pursuant to §33-27-3(b) (12)
7 or §33-27-3(b) (13) of this code; §33-27-4 of this code; §33-
8 27-5 of this code; or §33-27-6b of this code is confidential
9 by law and privileged, is exempt from disclosure pursuant
10 to chapter 29-b of this code, is not open to public inspection,
11 is not subject to subpoena, is not subject to discovery or
12 admissible in evidence in any criminal, private civil or
13 administrative action and is not subject to production
14 pursuant to court order: *Provided*, That the commissioner is
15 authorized to use the documents, materials or other
16 information in the furtherance of any regulatory or legal
17 action brought as part of the commissioner's official duties.
18 The commissioner may not otherwise make the documents,
19 materials or other information public without the prior
20 written consent of the insurer to which it pertains unless the
21 commissioner, after giving the insurer and its affiliates who
22 would be affected thereby notice and opportunity to be
23 heard, determines that the interests of policyholders,
24 shareholders or the public will be served by the publication
25 thereof, in which event he or she may publish all or any part
26 thereof in any manner as he or she may consider
27 appropriate.

28 (b) Neither the commissioner nor any person who
29 received documents, materials or other information while
30 acting under the authority of the commissioner or with
31 whom such documents, materials or other information are
32 shared pursuant to this article may be permitted or required
33 to testify in any private civil action concerning any
34 confidential documents, materials, or information subject to
35 subsection (a) of this section.

36 (c) In order to assist in the performance of the
37 commissioner's duties, the commissioner:

38 (1) May share documents, materials or other
39 information, including the confidential and privileged
40 documents, materials or information subject to subsection
41 (a) of this section, with other state, federal and international
42 regulatory agencies, with the National Association of
43 Insurance Commissioners and its affiliates and subsidiaries,
44 and with state, federal, and international law enforcement
45 authorities, including members of any supervisory college
46 described in §33-27-6a of this code, if the recipient agrees
47 in writing to maintain the confidentiality and privileged
48 status of the document, material or other information, and
49 has verified in writing the legal authority to maintain
50 confidentiality;

51 (2) Notwithstanding subdivision (1) of this subsection,
52 the commissioner may only share confidential and
53 privileged documents, material, or information reported
54 pursuant to §33-27-4(1) of this code, with commissioners of
55 states having statutes or regulations substantially similar to
56 subdivision (1) of this subsection and who have agreed in
57 writing not to disclose such information;

58 (3) May receive documents, materials or information,
59 including otherwise confidential and privileged documents,
60 materials or information from the National Association of
61 Insurance Commissioners and its affiliates and subsidiaries
62 and from regulatory and law-enforcement officials of other
63 foreign or domestic jurisdictions, and shall maintain as

64 confidential or privileged any document, material or
65 information received with notice or the understanding that
66 it is confidential or privileged under the laws of the
67 jurisdiction that is the source of the document, material or
68 information; and

69 (4) Shall enter into written agreements with the National
70 Association of Insurance Commissioners governing sharing
71 and use of information provided pursuant to this article
72 consistent with this subsection that:

73 (A) Specify procedures and protocols regarding the
74 confidentiality and security of information shared with the
75 National Association of Insurance Commissioners and its
76 affiliates and subsidiaries pursuant to this article, including
77 procedures and protocols for sharing by the National
78 Association of Insurance Commissioners with other state,
79 federal or international regulators;

80 (B) Specify that ownership of information shared with
81 the National Association of Insurance Commissioners and
82 its affiliates and subsidiaries pursuant to this article remains
83 with the commissioner, and the National Association of
84 Insurance Commissioners' use of the information is subject
85 to the direction of the commissioner;

86 (C) Require prompt notice to be given to an insurer
87 whose confidential information in the possession of the
88 National Association of Insurance Commissioners pursuant
89 to this article is subject to a request or subpoena to the
90 National Association of Insurance Commissioners for
91 disclosure or production; and

92 (D) Require the National Association of Insurance
93 Commissioners and its affiliates and subsidiaries to consent
94 to intervention by an insurer in any judicial or
95 administrative action in which the National Association of
96 Insurance Commissioners and its affiliates and subsidiaries
97 may be required to disclose confidential information about
98 the insurer shared with the National Association of

99 Insurance Commissioners and its affiliates and subsidiaries
100 pursuant to this article.

101 (d) The sharing of information by the commissioner
102 pursuant to this article does not constitute a delegation of
103 regulatory authority, and the commissioner is solely
104 responsible for the administration, execution and
105 enforcement of the provisions of this article.

106 (e) No waiver of any applicable privilege or claim of
107 confidentiality in the documents, materials or information
108 occurs as a result of disclosure to the commissioner under
109 this section or as a result of sharing as authorized in
110 subsection (c) of this section.

111 (f) Documents, materials or other information in the
112 possession or control of the National Association of
113 Insurance Commissioners pursuant to this article is
114 confidential by law and privileged, is exempt from
115 disclosure pursuant to chapter 29B of this code, is not
116 subject to subpoena, and is not subject to discovery or
117 admissible in evidence in any private civil action.



CHAPTER 152

**(Com. Sub. for H. B. 2617 - By Delegates Westfall,
Hott, D. Jeffries, Espinosa and Porterfield)**

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §33-6-31d of the Code of West Virginia, 1931, as amended, relating to the form for making offer of optional uninsured and underinsured coverage by insurers; requiring Insurance Commissioner to provide for the use of electronic means of delivery and electronic signing of

form; defining electronic means; requiring an insurer, when offering to place an insured with an affiliate of the insurer, to make available a new uninsured and underinsured motorist coverage offer form; and providing that last form previously signed governs if insured does not return the form.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31d. Form for making offer of optional uninsured and underinsured coverage.

1 (a) Optional limits of uninsured motor vehicle coverage
2 and underinsured motor vehicle coverage required by §33-
3 6-31 of this code shall be made available to the named
4 insured at the time of initial application for liability
5 coverage and upon any request of the named insured on a
6 form prepared and made available by the Insurance
7 Commissioner. The contents of the form shall be prescribed
8 by the commissioner and shall specifically inform the
9 named insured of the coverage offered and the rate
10 calculation for the coverage, including, but not limited to,
11 levels and amounts of the coverage available and the
12 number of vehicles which will be subject to the coverage.
13 The commissioner shall provide for the use of electronic
14 means of delivery and electronic signing when issuing the
15 prescribed form. The form shall allow any named insured to
16 waive any or all of the coverage offered.

17 (b) Any insurer who issues a motor vehicle insurance
18 policy in this state shall provide the form to each person who
19 applies for the issuance of a policy by delivering the form
20 to the applicant or by mailing the form to the applicant.
21 Insurers may deliver the form by electronic means. Delivery
22 by “electronic means” includes delivery of the form to an
23 electronic mail address at which an applicant or
24 policyholder has consented to receive notices or
25 documents, by posting on an electronic network or site
26 accessible via the Internet, electronic device, or mobile

27 application, at or from which the applicant or policyholder
28 has consented to receive delivery, or by any other delivery
29 method that has been consented to by the applicant or
30 policyholder. Any document delivered electronically
31 satisfies any font, size, color, spacing, or other format
32 requirements that are established for printed documents,
33 provided that the format in the document delivered
34 electronically has reasonably similar proportions or
35 emphasis for the characters relative to the rest of the
36 electronic document. The applicant shall complete, date,
37 and sign the form and return the form to the insurer within
38 30 days after receipt of the form. Any signature executed in
39 conformity with the Uniform Electronic Transactions Act in
40 §39A-1-1 *et seq.* of this code is enforceable as provided by
41 that act. An insurer or agent of the insurer is not liable for
42 payment of any damages applicable under any optional
43 uninsured or underinsured coverage authorized by §33-6-31
44 of this code for any incident which occurs from the date the
45 form was mailed or delivered to the applicant until the
46 insurer receives the form and accepts payment of the
47 appropriate premium for the coverage requested in the form
48 from the applicant: *Provided*, That if prior to the insurer's
49 receipt of the executed form the insurer issues a policy to
50 the applicant which provides for optional uninsured or
51 underinsured coverage, the insurer is liable for payment of
52 claims against the optional coverage up to the limits
53 provided in the policy. The contents of a form described in
54 this section which has been signed by an applicant creates a
55 presumption that the applicant and all named insureds
56 received an effective offer of the optional coverages
57 described in this section and that the applicant exercised a
58 knowing and intelligent election or rejection of the offer as
59 specified in the form. The election or rejection is binding on
60 all persons insured under the policy.

61 (c) Failure of the applicant or a named insured to return
62 the form described in this section to the insurer as required
63 by this section within the time periods specified in this
64 section creates a presumption that the person received an

65 effective offer of the optional coverages described in this
66 section and that the person exercised a knowing and
67 intelligent rejection of the offer. The rejection is binding on
68 all persons insured under the policy.

69 (d) The insurer shall make the forms available to any
70 named insured who requests different coverage limits on or
71 after the effective date of this section. An insurer is not
72 required to make the form available or notify any person of
73 the availability of the optional coverages authorized by this
74 section except as required by this section.

75 (e) Notwithstanding any of the provisions of this article
76 to the contrary, including §33-6-31f of this code, for
77 insurance policies in effect on December 31, 2015, insurers
78 are not required to offer or obtain new uninsured or
79 underinsured motorist coverage offer forms as described in
80 this section on any insurance policy to comply with the
81 amount of the minimum required financial responsibility
82 limits set forth in §17D-4-2(b) of this code. All offer forms
83 that were executed prior to January 1, 2016, shall remain in
84 full force and effect.

85 (f) If an insurer offers to place an insured with an
86 affiliate of the insurer, the insurer shall make available a
87 new uninsured and underinsured motorist coverage offer
88 form, in the manner provided by and pursuant to subsections
89 (a) and (b) of this section. A named insured shall complete,
90 date, and sign the form as provided by subsection (b) of this
91 section and return the form to the insurer within 30 days
92 after receipt of the form. If an insured does not return the
93 form within 30 days, then the last form previously signed by
94 the insured for the insurer or any affiliate governs the
95 amount of uninsured and underinsured motorist coverage
96 provided by the newly issuing insurer and remains binding
97 on all persons insured under the policy.

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CHAPTER 153

(H. B. 2647 - By Delegates Westfall, Maynard, Hartman, Atkinson and Espinosa)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-38, relating to establishing a limited lines insurance license for self-service storage providers; defining terms; providing for licensure of owners; setting forth requirements for the sale of self-service storage insurance; providing for sale by employees and authorized representatives of the owner; setting forth the authority of owners; and providing for suspension of privileges.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-38. Self-Service Storage Limited License Act.

1 (a) Definitions. For purposes of this section, the
2 following terms have the following meanings:

3 (1) “Leased space” means the individual storage space
4 at the self-service storage facility which is leased or rented
5 to an occupant pursuant to a rental agreement;

6 (2) “Location” means any physical location in the State
7 of West Virginia or any website, call center site, or similar
8 location directed to residents of the State of West Virginia;

9 (3) “Occupant” means a person entitled to the use of a
10 leased space at a self-service storage facility under a rental
11 agreement, or the person’s sublessee, successor, or assign;

12 (4) “Owner” means the owner, operator, lessor, or
13 sublessor of a self-service storage facility or the owner’s
14 agent or any other person authorized to manage the facility
15 or to receive rent from any occupant under a rental
16 agreement;

17 (5) “Personal property” means movable property not
18 affixed to land and includes, but is not limited to, goods,
19 wares, merchandise, motor vehicles, and household items
20 and furnishings;

21 (6) “Rental agreement” means any agreement or lease
22 that establishes or modifies the terms, conditions or rules
23 concerning the lawful and reasonable use and occupancy of
24 leased space at a self-service storage facility;

25 (7) “Self-service storage facility” means any real
26 property used for renting or leasing individual storage
27 spaces, other than storage spaces which are leased or rented
28 as an incident to the lease or rental of residential property or
29 dwelling units, to which the occupants have access for
30 storing or removing their personal property;

31 (8) “Self-service storage insurance” means personal
32 property insurance offered in connection with and incidental
33 to the lease or rental of leased space at a self-service storage
34 facility that provides coverage to occupants at the self-
35 service storage facility where the insurance is transacted for
36 the loss of or damage to personal property that occurs at that
37 facility or when the property is in transit to or from that
38 facility during the period of the rental agreement; and

39 (9) “Supervising entity” means a business entity that is
40 a licensed insurance producer or an insurer.

41 (b) Licensure of owners.

42 (1) An owner shall hold a limited lines license under this
43 section if the owner sells, solicits, or offers coverage for
44 self-service storage insurance. Notwithstanding any other
45 provision of this section to the contrary, an owner is not
46 required to be licensed solely to display and make available
47 to occupants and prospective occupants brochures and other
48 promotional materials created by or on behalf of an
49 authorized insurer or surplus lines insurer.

50 (2) A limited lines license issued under this section is
51 limited to authorizing an owner and the owner's employees
52 and authorized representatives to sell, solicit, and offer
53 coverage for self-service storage insurance to occupants.

54 (3) A limited lines license issued under this section
55 authorizes an owner and the owner's employees and
56 authorized representatives to sell, solicit, and offer self-
57 service storage insurance coverage at each location at which
58 the owner conducts business.

59 (4) An owner shall maintain, and share with its
60 supervising entity, a list of all locations in this state at which
61 self-service storage insurance is offered on its behalf. The
62 supervising entity shall submit the list to the Insurance
63 Commissioner within 30 days upon request.

64 (5) An owner and its employees and authorized
65 representatives are not subject to the agent pre-licensing
66 education, examination, or continuing education
67 requirements of this article.

68 (c) Requirements for Sale of Self-Service Storage
69 Insurance.

70 (1) At every location where self-service storage
71 insurance is offered, the owner shall make brochures or
72 other written or electronic materials available to occupants
73 which:

74 (A) Disclose that self-service storage insurance may
75 provide a duplication of coverage already provided by an

76 occupant's homeowner's insurance policy, renter's
77 insurance policy, or other source of coverage;

78 (B) State that the enrollment by the occupant for the
79 self-service storage insurance coverage offered by the
80 owner is not required in order to lease or rent leased space
81 from the owner;

82 (C) Provide the actual terms of the self-service storage
83 insurance coverage, or summarize the material terms of the
84 insurance coverage, including:

85 (i) The identity of the insurer;

86 (ii) The identity of the supervising entity;

87 (iii) The amount of any applicable deductible and how
88 it is to be paid;

89 (iv) Benefits of the coverage; and

90 (v) Key terms and conditions of coverage;

91 (D) Summarize the process for filing a claim;

92 (E) State that the occupant may cancel enrollment for
93 the self-service storage insurance coverage at any time and
94 the person paying the premium shall receive a refund of any
95 applicable unearned premium.

96 (2) Self-service storage insurance may be provided
97 under an individual policy or under a commercial,
98 corporate, group, or master policy.

99 (3) Eligibility and underwriting standards for occupants
100 electing to enroll in coverage shall be established for each
101 self-service storage insurance program.

102 (d) Authority of owners.

103 (1) The employees and authorized representatives of
104 owners may sell, solicit, and offer self-service storage

105 insurance to occupants and are not subject to licensure as an
106 insurance producer under this article provided that:

107 (A) The owner obtains a limited lines license to
108 authorize the owner's employees and authorized
109 representatives to sell, solicit, and offer self-service storage
110 insurance;

111 (B) The insurer issuing the self-service storage
112 insurance appoints a supervising entity to supervise the
113 administration of the program including development of a
114 training program for employees and authorized
115 representatives of the owner who sell, solicit, or offer self-
116 service storage insurance. The training required by this
117 subdivision shall comply with the following:

118 (i) The training shall be delivered to all employees and
119 authorized representatives of the owner who sell, solicit, or
120 offer self-service storage insurance;

121 (ii) The training may be provided in electronic form.
122 However, if provided in an electronic form the supervising
123 entity shall implement a supplemental education program
124 regarding the self-service storage insurance that is provided
125 and overseen by licensed employees of the supervising
126 entity; and

127 (iii) Each employee and authorized representative
128 selling, soliciting, or offering self-service storage insurance
129 shall receive basic instruction about the self-service storage
130 insurance offered to occupants and the disclosures required
131 under paragraph (C) of this subdivision.

132 (C) An employee or authorized representative of an
133 owner does not advertise, represent, or otherwise hold
134 himself or herself out as a licensed insurance producer,
135 unless so licensed;

136 (D) An employee or authorized representative of an
137 owner is compensated based primarily on the number of
138 occupants enrolled for self-service storage insurance

139 coverage. Employees and authorized representatives may
140 receive compensation for enrolling occupants for self-
141 service storage insurance coverage as long as the
142 compensation for those activities is incidental to their
143 overall compensation;

144 (2) The charges for self-service storage insurance
145 coverage may be billed and collected by the owner. Any
146 charge to the occupant for coverage that is not included in
147 the cost associated with the lease or rental of leased space
148 shall be separately itemized on the occupant's bill. If the
149 coverage is included in the lease or rental of leased space,
150 the owner shall clearly and conspicuously disclose to the
151 occupant that the self-service storage insurance coverage is
152 included with the lease or rental of leased space. An owner
153 billing and collecting the charges is not required to maintain
154 the funds in a segregated account, provided that the owner
155 is authorized by the insurer to hold the funds in an
156 alternative manner and remits the amounts to the
157 supervising entity or insurer within 60 days of receipt. All
158 premiums received by an owner from an occupant for self-
159 service storage insurance shall be considered funds held by
160 the owner in a fiduciary capacity for the benefit of the
161 insurer. Owners may receive compensation for billing and
162 collection services.

163 (e) Suspension of Privileges.

164 (1) If an owner or its employee or authorized
165 representative violates any provision of this section, the
166 commissioner may do any of the following:

167 (A) After notice and hearing, impose fines not to exceed
168 \$500 per violation or \$5,000 in the aggregate for such
169 conduct.

170 (B) After notice and hearing, impose other penalties that
171 the commissioner considers necessary and reasonable to
172 carry out the purpose of this article, including:

173 (i) Suspending the privilege of transacting self-service
174 storage insurance pursuant to this section at specific
175 business locations where violations have occurred; and

176 (ii) Suspending or revoking the ability of individual
177 employees or authorized representatives to act under this
178 section.

179 (2) If a supervising entity is determined by the
180 commissioner to have not performed its required duties
181 under this section or has otherwise violated any provision of
182 this section, it is subject to the administrative actions set
183 forth in §33-12-24 of this code.



CHAPTER 154

**(Com. Sub. for H. B. 2690 - By Delegates Westfall,
Azinger, Nelson, Williams and Porterfield)**

[Passed February 28, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §33-26A-19 of the Code of West Virginia, 1931, as amended, relating to guaranty associations; and making revisions consistent with the National Association of Insurance Commissioners Life and Health Insurance Guaranty Association Model Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY.

§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 or
8 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 for
11 the purpose of sales, solicitation, or inducement to purchase
12 any form of insurance or other coverage covered by the West
13 Virginia Life and Health Insurance Guaranty Association Act:
14 *Provided*, That this section shall not apply to the association or
15 any other entity which does not sell or solicit insurance or
16 coverage by a health maintenance organization.

17 (b) Within 180 days of the effective date of this article,
18 the association shall prepare a summary document
19 describing the general purposes and current limitations of
20 the act and complying with §33-26A-19(c) of this code.
21 This document shall be submitted to the commissioner for
22 approval. Sixty days after receiving such approval, no
23 member insurer may deliver a policy or contract described
24 in §33-26A-3(b)(1) of this code to a policy owner, contract
25 owner, certificate holder, or enrollee unless the summary
26 document is delivered to the policy owner, contract owner,
27 certificate holder, or enrollee prior to or at the time of
28 delivery of the policy or contract. The document shall also
29 be available upon request by a policy owner, contract
30 owner, certificate holder, or enrollee. The distribution,
31 delivery, or contents or interpretation of this document shall
32 not guarantee that either the policy or the contract or the
33 policy owner, contract owner, certificate holder, or enrollee
34 is covered in the event of the impairment or insolvency of a
35 member insurer. The description document shall be revised
36 by the association as amendments to the article may require.
37 Failure to receive this document does not give the policy

38 owner, contract owner, certificate holder, enrollee, or
39 insured any greater rights than those stated in this article.

40 (c) The document prepared under §33-26A-19(b) of this
41 code shall contain a clear and conspicuous disclaimer on its
42 face. The commissioner shall establish the form and content
43 of the disclaimer. The disclaimer shall:

44 (1) State the name and address of the association and
45 insurance department;

46 (2) Prominently warn the policy owner, contract owner,
47 certificate holder, or enrollee that the association may not
48 cover the policy or contract or, if coverage is available, it
49 will be subject to substantial limitations and exclusions and
50 conditioned on continued residence in the state;

51 (3) State the types of policies or contracts for which
52 guaranty funds will provide coverage;

53 (4) State that the member insurer and its agents are
54 prohibited by law from using the existence of the
55 association for the purpose of sales, solicitation, or
56 inducement to purchase any form of insurance or health
57 maintenance organization coverage;

58 (5) Emphasize that the policy owner, contract owner,
59 certificate holder, or enrollee should not rely on coverage
60 under the association when selecting an insurer or health
61 maintenance organization;

62 (6) Explain rights available and procedures for filing a
63 complaint to allege a violation of any provisions of this
64 article; and

65 (7) Provide other information as directed by the
66 commissioner.

67 (d) A member insurer shall retain evidence of compliance
68 with §33-26A-19(b) of this code for so long as the policy or
69 contract for which the notice is given remains in effect.

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CHAPTER 155

**(Com. Sub. for H. B. 2770 - By Delegates Rohrbach,
Ellington, Barrett, Queen, Waxman, Byrd, Westfall,
Nelson and Porterfield)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4t; to amend said code by adding thereto a new section, designated §33-16-3ee; to amend said code by adding thereto a new section, designated §33-24-7t; to amend said code by adding thereto a new section, designated §33-25-8q; and to amend said code by adding thereto a new section, designated §33-25A-8t, all relating to establishing the Fairness in Cost-Sharing Calculation Act; providing for definitions; establishing health plan cost sharing calculations; establishing pharmacy benefits cost sharing calculations; providing for an effective date; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4t. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:

2 “Cost sharing” means any copayment, coinsurance, or
3 deductible required by or on behalf of an insured in order to
4 receive a specific health care item or service covered by a
5 health plan.

6 “Drug” means the same as the term is defined in §30-5-
7 4(19).

8 “Person” means a natural person, corporation, mutual
9 company, unincorporated association, partnership, joint
10 venture, limited liability company, trust, estate, foundation,
11 nonprofit corporation, unincorporated organization, or
12 government or governmental subdivision or agency.

13 “Pharmacy benefits manager” means the same as that
14 term is defined in §33-51-3 of this code.

15 (b) When calculating an insured’s contribution to any
16 applicable cost sharing requirement, including, but not
17 limited to, the annual limitation on cost sharing subject to
18 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

19 (1) An insurer shall include any cost sharing amounts
20 paid by the insured or on behalf of the insured by another
21 person; and

22 (2) A pharmacy benefits manager shall include any cost
23 sharing amounts paid by the insured or on behalf of the
24 insured by another person.

25 (c) The commissioner is authorized to propose rules for
26 legislative approval in accordance with §29A-3-1 *et seq.* of
27 this code, to implement the provisions of this section.

28 (d) This section is effective for policy, contract, plans,
29 or agreements beginning on or after January 1, 2020. This
30 section applies to all policies, contracts, plans, or
31 agreements, subject to this article that are delivered,
32 executed, issued, amended, adjusted, or renewed in this
33 state on or after the effective date of this section.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3ee. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:

2 “Cost sharing” means any copayment, coinsurance, or
3 deductible required by or on behalf of an insured in order to

4 receive a specific health care item or service covered by a
5 health plan.

6 “Drug” means the same as the term is defined in §30-5-
7 4(19).

8 “Person” means a natural person, corporation, mutual
9 company, unincorporated association, partnership, joint
10 venture, limited liability company, trust, estate, foundation,
11 nonprofit corporation, unincorporated organization, or
12 government or governmental subdivision or agency.

13 “Pharmacy benefits manager” means the same as that
14 term is defined in §33-51-3 of this code.

15 (b) When calculating an insured’s contribution to any
16 applicable cost sharing requirement, including, but not
17 limited to, the annual limitation on cost sharing subject to
18 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

19 (1) An insurer shall include any cost sharing amounts
20 paid by the insured or on behalf of the insured by another
21 person; and

22 (2) A pharmacy benefits manager shall include any cost
23 sharing amounts paid by the insured or on behalf of the
24 insured by another person.

25 (c) The commissioner is authorized to propose rules
26 for legislative approval in accordance with §29A-3-1 *et*
27 *seq.* of this code, to implement the provisions of this
28 section.

29 (d) This section is effective for policy, contract, plans,
30 or agreements beginning on or after January 1, 2020. This
31 section applies to all policies, contracts, plans, or
32 agreements, subject to this article that are delivered,
33 executed, issued, amended, adjusted, or renewed in this
34 state on or after the effective date of this section.

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

§33-24-7t. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:

2 “Cost sharing” means any copayment, coinsurance, or
3 deductible required by or on behalf of an insured in order to
4 receive a specific health care item or service covered by a
5 health plan.

6 “Drug” means the same as the term is defined in §30-5-
7 4(19).

8 “Person” means a natural person, corporation, mutual
9 company, unincorporated association, partnership, joint
10 venture, limited liability company, trust, estate, foundation,
11 nonprofit corporation, unincorporated organization, or
12 government or governmental subdivision or agency.

13 “Pharmacy benefits manager” means the same as that
14 term is defined in §33-51-3 of this code.

15 (b) When calculating an insured’s contribution to any
16 applicable cost sharing requirement, including, but not
17 limited to, the annual limitation on cost sharing subject to
18 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

19 (1) An insurer shall include any cost sharing amounts
20 paid by the insured or on behalf of the insured by another
21 person; and

22 (2) A pharmacy benefits manager shall include any cost
23 sharing amounts paid by the insured or on behalf of the
24 insured by another person.

25 (c) The commissioner is authorized to propose rules for
26 legislative approval in accordance with §29A-3-1 *et seq.* of
27 this code, to implement the provisions of this section.

28 (d) This section is effective for policy, contract, plans,
29 or agreements beginning on or after January 1, 2020. This
30 section applies to all policies, contracts, plans, or
31 agreements, subject to this article that are delivered,
32 executed, issued, amended, adjusted, or renewed in this
33 state on or after the effective date of this section.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8q. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:

2 “Cost sharing” means any copayment, coinsurance, or
3 deductible required by or on behalf of an insured in order to
4 receive a specific health care item or service covered by a
5 health plan.

6 “Drug” means the same as the term is defined in §30-5-
7 4(19).

8 “Person” means a natural person, corporation, mutual
9 company, unincorporated association, partnership, joint
10 venture, limited liability company, trust, estate, foundation,
11 nonprofit corporation, unincorporated organization, or
12 government or governmental subdivision or agency.

13 “Pharmacy benefits manager” means the same as that
14 term is defined in §33-51-3 of this code.

15 (b) When calculating an insured’s contribution to any
16 applicable cost sharing requirement, including, but not
17 limited to, the annual limitation on cost sharing subject to
18 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

19 (1) An insurer shall include any cost sharing amounts
20 paid by the insured or on behalf of the insured by another
21 person; and

22 (2) A pharmacy benefits manager shall include any cost
23 sharing amounts paid by the insured or on behalf of the
24 insured by another person.

25 (c) The commissioner is authorized to propose rules for
26 legislative approval in accordance with §29A-3-1 *et seq.* of
27 this code, to implement the provisions of this section.

28 (d) This section is effective for policy, contract, plans,
29 or agreements beginning on or after January 1, 2020. This
30 section applies to all policies, contracts, plans, or
31 agreements, subject to this article that are delivered,
32 executed, issued, amended, adjusted, or renewed in this
33 state on or after the effective date of this section.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8t. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:

2 “Cost sharing” means any copayment, coinsurance, or
3 deductible required by or on behalf of an insured in order to
4 receive a specific health care item or service covered by a
5 health plan.

6 “Drug” means the same as the term is defined in §30-5-
7 4(19).

8 “Person” means a natural person, corporation, mutual
9 company, unincorporated association, partnership, joint
10 venture, limited liability company, trust, estate, foundation,
11 nonprofit corporation, unincorporated organization, or
12 government or governmental subdivision or agency.

13 “Pharmacy benefits manager” means the same as that
14 term is defined in §33-51-3 of this code.

15 (b) When calculating an insured’s contribution to any
16 applicable cost sharing requirement, including, but not
17 limited to, the annual limitation on cost sharing subject to
18 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

19 (1) An insurer shall include any cost sharing amounts
20 paid by the insured or on behalf of the insured by another
21 person; and

22 (2) A pharmacy benefits manager shall include any cost
23 sharing amounts paid by the insured or on behalf of the
24 insured by another person.

25 (c) The commissioner is authorized to propose rules for
26 legislative approval in accordance with §29A-3-1 *et seq.* of
27 this code, to implement the provisions of this section.

28 (d) This section is effective for policy, contract, plans,
29 or agreements beginning on or after January 1, 2020. This
30 section applies to all policies, contracts, plans, or
31 agreements, subject to this article that are delivered,
32 executed, issued, amended, adjusted, or renewed in this
33 state on or after the effective date of this section.

CHAPTER 156

(H. B. 2954 - By Delegate Summers)

[Passed March 7, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §33-45-1 and §33-45-2 of the Code of West Virginia, 1931, as amended, all relating to ethics and fairness in insurer business practices; clarifying “provider” definition; correcting citations; and requiring payment for services of a provider who provides services during the credentialing period.

Be it enacted by the Legislature of West Virginia:

ARTICLE 45. ETHICS AND FAIRNESS IN INSURER BUSINESS PRACTICES.

§33-45-1. Definitions.

1 As used in this article:

2 (1) "Claim" means each individual request for
3 reimbursement or proof of loss made by or on behalf of an
4 insured or a provider to an insurer, or its intermediary,
5 administrator or representative, with which the provider has
6 a provider contract for payment for health care services
7 under any health plan.

8 (2) "Clean claim" means a claim:

9 (A) That has no material defect or impropriety,
10 including all reasonably required information and
11 substantiating documentation, to determine eligibility or to
12 adjudicate the claim; or

13 (B) With respect to which an insurer has failed timely to
14 notify the person submitting the claim of any such defect or
15 impropriety in accordance with section two of this article.

16 (3) "Commissioner" means the Insurance
17 Commissioner of West Virginia.

18 (4) "Health care services" means items or services
19 furnished to any individual for the purpose of preventing,
20 alleviating, curing, or healing human illness, injury or
21 physical or mental disability.

22 (5) "Health plan" means any individual or group health
23 care plan, subscription contract, evidence of coverage,
24 certificate, health services plan; medical or hospital services
25 plan as defined in article twenty four of this chapter;
26 accident and sickness insurance policy or certificate;
27 managed care health insurance plan, or health maintenance
28 organization subject to state regulation pursuant to §33-25a-
29 1 *et seq.*, of this code; which is offered, arranged, issued or
30 administered in the state by an insurer authorized under this
31 chapter, a third-party administrator or an intermediary.
32 Health plan does not mean:

33 (A) Coverages issued pursuant to Title XVIII of the
34 Social Security Act, 42 U.S.C. §1395 *et seq.* (Medicare),
35 Title XIX of the Social Security Act, 42 U.S.C. §1396 *et*
36 *seq.* or Title XX of the Social Security Act, 42 U.S.C. §1397
37 *et seq.* (Medicaid), 5 U.S.C. §8901 *et seq.*, or 10 U.S.C.
38 §1071 *et seq.* (CHAMPUS); or §5-16-1 *et seq.*, of this code
39 (PEIA);

40 (B) Accident only, credit or disability insurance, long-
41 term care insurance, CHAMPUS supplement, Medicare
42 supplement, workers' compensation coverages or limited
43 benefits policy as defined in article sixteen-e of this chapter;
44 or

45 (C) Any a third-party administrator or an intermediary
46 acting on behalf of providers as denoted in §33-45-1(5)(A)
47 or §33-45-1(5)(B) of this code.

48 (6) "Insured" means a person who is provided health
49 insurance coverage or other health care services coverage
50 from an insurer under a health plan.

51 (7) "Insurer" means any person required to be licensed
52 under this chapter which offers or administers as a third
53 party administrator health insurance; operates a health plan
54 subject to this chapter; or provides or arranges for the
55 provision of health care services through networks or
56 provider panels which are subject to regulation as the
57 business of insurance under this chapter. "Insurer" also
58 includes intermediaries. "Insurer" does not include:

59 (A) Credit accident and sickness insurance;

60 (B) Accident and sickness policies which provide
61 benefits for loss of income due to disability;

62 (C) Any policy of liability of workers' compensation
63 insurance;

64 (D) Hospital indemnity or other fixed indemnity
65 insurance;

66 (E) Life insurance, including endowment or annuity
67 contracts, or contracts supplemental thereto, which contain
68 only provisions relating to accident and sickness insurance
69 that:

70 (i) Provide additional benefits in cases of death by
71 accidental means; or

72 (ii) Operate to safeguard the contracts against lapse, in
73 the event that the insured shall become totally and
74 permanently disabled as defined by the contract or
75 supplemental contract; and

76 (F) Property and casualty insurance.

77 (8) “Provider contract” means any contract between a
78 provider and

79 (A) An insurer;

80 (B) A health plan; or

81 (C) An intermediary, relating to the provision of health
82 care services.

83 (9) “Retroactive denial” means the practice of denying
84 previously paid claims by withholding or setting off against
85 payments, or in any other manner reducing or affecting the
86 future claim payments to the provider, or to seek direct cash
87 reimbursement from a provider for a payment previously
88 made to the provider.

89 (10) “Provider” means a person or other entity which
90 holds a valid license or permit, including a valid temporary
91 license or permit pursuant to chapter 30 of this code, to
92 provide specific health care services in this state.

93 (11) “Intermediary” means a physician, hospital,
94 physician-hospital organization, independent provider
95 organization, or independent provider network which
96 receives compensation for arranging one or more health

97 care services to be rendered by providers to insureds of a
98 health plan or insurer. An intermediary does not include an
99 individual provider or group practice that utilizes only its
100 employees, partners or shareholders and their professional
101 licenses to render services.

§33-45-2. Minimum fair business standards contract provisions required; processing and payment of health care services; provider claims; commissioner's jurisdiction.

1 (a) Every provider contract entered into, amended,
2 extended, or renewed by an insurer on or after August 1,
3 2001, shall contain specific provisions which shall require
4 the insurer to adhere to and comply with the following
5 minimum fair business standards in the processing and
6 payment of claims for health care services:

7 (1) An insurer shall either pay or deny a clean claim
8 within 40 days of receipt of the claim if submitted manually
9 and within 30 days of receipt of the claim if submitted
10 electronically, except in the following circumstances:

11 (A) Another payor or party is responsible for the claim;

12 (B) The insurer is coordinating benefits with another
13 payor;

14 (C) The provider has already been paid for the claim;

15 (D) The claim was submitted fraudulently; or

16 (E) There was a material misrepresentation in the claim.

17 (2) Each insurer shall maintain a written or electronic
18 record of the date of receipt of a claim. The person
19 submitting the claim shall be entitled to inspect the record
20 on request and to rely on that record or on any other relevant
21 evidence as proof of the fact of receipt of the claim. If an
22 insurer fails to maintain an electronic or written record of
23 the date a claim is received, the claim shall be considered

24 received three business days after the claim was submitted
25 based upon the written or electronic record of the date of
26 submittal by the person submitting the claim.

27 (3) An insurer shall, within 30 days after receipt of a
28 claim, request electronically or in writing from the person
29 submitting the claim any information or documentation that
30 the insurer reasonably believes will be required to process
31 and pay the claim or to determine if the claim is a clean
32 claim. The insurer shall use all reasonable efforts to ask for
33 all desired information in one request, and shall if necessary,
34 within 15 days of the receipt of the information from the
35 first request, only request or require additional information
36 one additional time if such additional information could not
37 have been reasonably identified at the time of the original
38 request or to specifically identify a material failure to
39 provide the information requested in the initial request.
40 Upon receipt of the information requested under this
41 subsection which the insurer reasonably believes will be
42 required to adjudicate the claim or to determine if the claim
43 is a clean claim, an insurer shall either pay or deny the claim
44 within 30 days. No insurer may refuse to pay a claim for
45 health care services rendered pursuant to a provider contract
46 which are covered benefits if the insurer fails to timely
47 notify the person submitting the claim within 30 days of
48 receipt of the claim of the additional information requested
49 unless such failure was caused in material part by the person
50 submitting the claims: *Provided*, That nothing herein shall
51 preclude such an insurer from imposing a retroactive denial
52 of payment of such a claim if permitted by the provider
53 contract unless such retroactive denial of payment of the
54 claim would violate §33-45-2(a)(7) of this code. This
55 subsection does not require an insurer to pay a claim that is
56 not a clean claim except as provided herein.

57 (4) Interest, at a rate of 10 percent per annum, accruing
58 after the 40-day period provided in §33-45-2(a)(1) of this
59 code owing or accruing on any claim under any provider
60 contract or under any applicable law, shall be paid and

61 accompanied by an explanation of the assessment on each
62 claim of interest paid, without necessity of demand, at the
63 time the claim is paid or within 30 days thereafter.

64 (5) Every insurer shall establish and implement
65 reasonable policies to permit any provider with which there
66 is a provider contract:

67 (A) To promptly confirm in advance during normal
68 business hours by a process agreed to between the parties
69 whether the health care services to be provided are a covered
70 benefit; and

71 (B) To determine the insurer's requirements applicable
72 to the provider (or to the type of health care services which
73 the provider has contracted to deliver under the provider
74 contract) for:

75 (i) Precertification or authorization of coverage
76 decisions;

77 (ii) Retroactive reconsideration of a certification or
78 authorization of coverage decision or retroactive denial of a
79 previously paid claim;

80 (iii) Provider-specific payment and reimbursement
81 methodology; and

82 (iv) Other provider-specific, applicable claims
83 processing and payment matters necessary to meet the terms
84 and conditions of the provider contract, including
85 determining whether a claim is a clean claim.

86 (C) Every insurer shall make available to the provider
87 within 20 business days of receipt of a request, reasonable
88 access either electronically or otherwise, to all the policies
89 that are applicable to the particular provider or to particular
90 health care services identified by the provider. In the event
91 the provision of the entire policy would violate any
92 applicable copyright law, the insurer may instead comply
93 with this subsection by timely delivering to the provider a

94 clear explanation of the policy as it applies to the provider
95 and to any health care services identified by the provider.

96 (6) Every insurer shall pay a clean claim if the insurer
97 has previously authorized the health care service or has
98 advised the provider or enrollee in advance of the provision
99 of health care services that the health care services are
100 medically necessary and a covered benefit, unless:

101 (A) The documentation for the claim provided by the
102 person submitting the claim clearly fails to support the claim
103 as originally authorized; or

104 (B) The insurer's refusal is because:

105 (i) Another payor or party is responsible for the
106 payment;

107 (ii) The provider has already been paid for the health
108 care services identified on the claim;

109 (iii) The claim was submitted fraudulently or the
110 authorization was based in whole or material part on
111 erroneous information provided to the insurer by the
112 provider, enrollee, or other person not related to the insurer;

113 (iv) The person receiving the health care services was
114 not eligible to receive them on the date of service and the
115 insurer did not know, and with the exercise of reasonable
116 care could not have known, of the person's eligibility status;

117 (v) There is a dispute regarding the amount of charges
118 submitted; or

119 (vi) The service provided was not a covered benefit and
120 the insurer did not know, and with the exercise of reasonable
121 care could not have known, at the time of the certification
122 that the service was not covered.

123 (7) A previously paid claim may be retroactively denied
124 only in accordance with this subdivision.

125 (A) No insurance company may retroactively deny a
126 previously paid claim unless:

127 (i) The claim was submitted fraudulently;

128 (ii) The claim contained material misrepresentations;

129 (iii) The claim payment was incorrect because the
130 provider was already paid for the health care services
131 identified on the claim or the health care services were not
132 delivered by the provider;

133 (iv) The provider was not entitled to reimbursement;

134 (v) The service provided was not covered by the health
135 benefit plan; or

136 (vi) The insured was not eligible for reimbursement.

137 (B) A provider to whom a previously paid claim has
138 been denied by a health plan in accordance with this section
139 shall, upon receipt of notice of retroactive denial by the plan,
140 notify the health plan within 40 days of the provider's intent
141 to pay or demand written explanation of the reasons for the
142 denial.

143 (i) Upon receipt of explanation for retroactive denial,
144 the provider shall reimburse the plan within 30 days for
145 allowing an offset against future payments or provide
146 written notice of dispute.

147 (ii) Disputes shall be resolved between the parties
148 within 30 days of receipt of notice of dispute. The parties
149 may agree to a process to resolve the disputes in a provider
150 contract.

151 (iii) Upon resolution of dispute, the provider shall pay
152 any amount due or provide written authorization for an
153 offset against future payments.

154 (C) A health plan may retroactively deny a claim only
155 for the reasons set forth in §33-45-2(a)(7)(A)(iii) through

156 §33-45-2(a)(7)(A)(vi) of this code for a period of one year
157 from the date the claim was originally paid. There shall be
158 no time limitations for retroactively denying a claim for the
159 reasons set forth in §33-45-2(a)(7)(A)(i) and §33-45-
160 2(a)(7)(A)(ii) of this code.

161 (8) No provider contract may fail to include or attach at
162 the time it is presented to the provider for execution:

163 (A) The fee schedule, reimbursement policy or
164 statement as to the manner in which claims will be
165 calculated and paid which is applicable to the provider or to
166 the range of health care services reasonably expected to be
167 delivered by that type of provider on a routine basis; and

168 (B) All material addenda, schedules, and exhibits
169 thereto applicable to the provider or to the range of health
170 care services reasonably expected to be delivered by that
171 type of provider under the provider contract.

172 (9) No amendment to any provider contract or to any
173 addenda, schedule, or exhibit, or new addenda, schedule,
174 exhibit, applicable to the provider to the extent that any of
175 them involve payment or delivery of care by the provider,
176 or to the range of health care services reasonably expected
177 to be delivered by that type of provider, is effective as to the
178 provider, unless the provider has been provided with the
179 applicable portion of the proposed amendment, or of the
180 proposed new addenda, schedule, or exhibit, and has failed
181 to notify the insurer within 20 business days of receipt of
182 the documentation of the provider's intention to terminate
183 the provider contract at the earliest date thereafter permitted
184 under the provider contract.

185 (10) In the event that the insurer's provision of a policy
186 required to be provided under §33-45-2(a)(8) and §33-45-
187 2(a)(9) of this code would violate any applicable copyright
188 law, the insurer may instead comply with this section by
189 providing a clear, written explanation of the policy as it
190 applies to the provider.

191 (11) The insurer shall complete a credential check of
192 any new provider and accept or reject the provider within
193 four months following the submission of the provider's
194 completed application: *Provided*, That time frame may be
195 extended for an additional three months because of delays
196 in primary source verification. The insurer shall make
197 available to providers a list of all information required to be
198 included in the application. A provider who provides
199 services during the credentialing period shall be paid for the
200 services: *Provided*, That nothing in this subdivision
201 prevents an insurer from obtaining refund of overpayments
202 to a provider when the provider fails to become credentialed
203 after having gone through the credentialing process.

204 (b) Without limiting the foregoing, in the processing of
205 any payment of claims for health care services rendered by
206 providers under provider contracts and in performing under
207 its provider contracts, every insurer subject to regulation by
208 this article shall adhere to and comply with the minimum
209 fair business standards required under §33-45-2(a) of this
210 code. The commissioner has jurisdiction to determine if an
211 insurer has violated the standards set forth in §33-45-2(a) of
212 this code by failing to include the requisite provisions in its
213 provider contracts. The commissioner has jurisdiction to
214 determine if the insurer has failed to implement the
215 minimum fair business standards set out in §33-45-2(a)(1)
216 and §33-45-2(a)(2) of this code in the performance of its
217 provider contracts.

218 (c) No insurer is in violation of this section if its failure
219 to comply with this section is caused in material part by the
220 person submitting the claim or if the insurer's compliance is
221 rendered impossible due to matters beyond the insurer's
222 reasonable control, such as an act of God, insurrection,
223 strike, fire, or power outages, which are not caused in
224 material part by the insurer.

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CHAPTER 157

(S. B. 377 - By Senator Maynard)

[Passed February 20, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2019.]

AN ACT to amend and reenact §21-5C-1 of the Code of West Virginia, 1931, as amended, relating to minimum wage and maximum hours standards for employees; excluding seasonal amusement park workers from maximum hour requirements; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

1 As used in this article:

2 (a) “Commissioner” means the Commissioner of Labor
3 or his or her duly authorized representatives.

4 (b) “Wage and hour director” means the wage and hour
5 director appointed by the Commissioner of Labor as Chief
6 of the Wage and Hour Division.

7 (c) “Wage” means compensation due an employee by
8 reason of his or her employment.

9 (d) “Employ” means to hire or permit to work.

10 (e) “Employer” includes the State of West Virginia, its
11 agencies, departments, and all its political subdivisions, any
12 individual, partnership, association, public or private
13 corporation, or any person or group of persons acting

14 directly or indirectly in the interest of any employer in
15 relation to an employee; and who employs during any
16 calendar week six or more employees as herein defined in
17 any one separate, distinct, and permanent location or
18 business establishment: *Provided*, That prior to January 1,
19 2015, the term “employer” does not include any individual,
20 partnership, association, corporation, person or group of
21 persons, or similar unit if 80 percent of the persons
22 employed by him or her are subject to any federal act
23 relating to minimum wage, maximum hours, and overtime
24 compensation: *Provided, however*, That after December 31,
25 2014, for the purposes of §21-5C-3 of this code, the term
26 “employer” does not include any individual, partnership,
27 association, corporation, person or group of persons, or
28 similar unit if 80 percent of the persons employed by him or
29 her are subject to any federal act relating to maximum hours
30 and overtime compensation.

31 (f) “Employee” includes any individual employed by an
32 employer but shall not include: (1) Any individual employed
33 by the United States; (2) any individual engaged in the
34 activities of an educational, charitable, religious, fraternal, or
35 nonprofit organization where the employer-employee
36 relationship does not in fact exist, or where the services
37 rendered to such organizations are on a voluntary basis; (3)
38 newsboys, shoeshine boys, golf caddies, pinboys, and pin
39 chasers in bowling lanes; (4) traveling salesmen and outside
40 salesmen; (5) services performed by an individual in the
41 employ of his or her parent, son, daughter, or spouse; (6) any
42 individual employed in a bona fide professional, executive, or
43 administrative capacity; (7) any person whose employment is
44 for the purpose of on-the-job training; (8) any person having a
45 physical or mental handicap so severe as to prevent his or her
46 employment or employment training in any training or
47 employment facility other than a nonprofit sheltered
48 workshop; (9) any individual employed in a boys or girls
49 summer camp; (10) any person 62 years of age or over who
50 receives old-age or survivors benefits from the Social Security
51 Administration; (11) any individual employed in agriculture as

52 the word “agriculture” is defined in the Fair Labor Standards
53 Act of 1938, as amended; (12) any individual employed as a
54 firefighter by the state or agency thereof; (13) ushers in
55 theaters; (14) any individual employed on a part-time basis
56 who is a student in any recognized school or college; (15) any
57 individual employed by a local or interurban motorbus carrier;
58 (16) so far as the maximum hours and overtime compensation
59 provisions of this article are concerned, any salesman, parts
60 man, or mechanic primarily engaged in selling or servicing
61 automobiles, trailers, trucks, farm implements, or aircraft if
62 employed by a nonmanufacturing establishment primarily
63 engaged in the business of selling such vehicles to ultimate
64 purchasers; (17) any employee with respect to whom the
65 United States Department of Transportation has statutory
66 authority to establish qualifications and maximum hours of
67 service; (18) any person employed on a per diem basis by the
68 Senate, the House of Delegates, or the Joint Committee on
69 Government and Finance of the Legislature of West Virginia,
70 other employees of the Senate or House of Delegates
71 designated by the presiding officer thereof, and additional
72 employees of the Joint Committee on Government and
73 Finance designated by such joint committee; (19) any person
74 employed as a seasonal employee of a commercial whitewater
75 outfitter where the seasonal employee works less than seven
76 months in any one calendar year and, in such case, only for the
77 limited purpose of exempting the seasonal employee from the
78 maximum hours provisions of §21-5C-3 of this code; or (20)
79 any person employed as a seasonal employee of an amusement
80 park where the seasonal employee works less than seven
81 months in any one calendar year and, in such case, only for the
82 limited purpose of exempting the seasonal employee from the
83 maximum hours provisions of §21-5C-3 of this code.

84 (g) “Work week” means a regularly recurring period of
85 168 hours in the form of seven consecutive 24-hour periods,
86 need not coincide with the calendar week, and may begin
87 any day of the calendar week and any hour of the day.

88 (h) “Hours worked” means the hours for which an
89 employee is employed: *Provided*, That in determining hours
90 worked for the purposes of §21-5C-2 and §21-5C-3 of this
91 code, there shall be excluded any time spent in changing
92 clothes or washing at the beginning or end of each workday,
93 time spent in walking, riding, or traveling to and from the
94 actual place of performance of the principal activity or
95 activities which the employee is employed to perform and
96 activities which are preliminary to or postliminary to the
97 principal activity or activities, subject to such exceptions as
98 the commissioner may by rules define.

99 (i) “Amusement park” means any person or
100 organization which holds a permit for the operation of an
101 amusement ride or amusement attraction under §21-10-1 *et*
102 *seq.* of this code.

CHAPTER 158

**(Com. Sub. for H. B. 2049 - By Delegates Foster,
Porterfield, Waxman, Kessinger, Cowles, Hardy, Fast
and Jennings)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §21-5-7 of the Code of West Virginia, 1931, as amended, relating to a prime contractor’s responsibility for wages and benefits of employees of a subcontractor; establishing personal and civil liability for the employer and its shareholders, owners, directors, and officers to the prime contractor for any sums paid under this section, including attorney’s fees; requiring notice to prime contractor by certified mail within 100 days of the missing wages becoming payable to the employee; instituting a one-year statute of limitations; requiring the employer of the employee to whom

wages and fringe benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor; requiring when an employee to whom wages and fringe benefits are due is represented by a union or other plan administrator that the union or other plan administrator must whenever feasible immediately upon notice of a claim cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor; providing that if the union or its agents or other plan administrator become aware that an employer is not timely in the payment of wages and fringe benefits the union or other plan administrator must immediately notify the affected employee and the prime contractor for whom the affected employee provided work; and providing that a prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-7. Prime contractor's responsibility for wages and benefits.

1 (a) Whenever any person, firm, or corporation shall
 2 contract with another for the performance of any work
 3 which the prime contracting person has undertaken to
 4 perform for another, the prime contractor shall become
 5 civilly liable to employees engaged in the performance of
 6 work under the contract for the payment of wages and fringe
 7 benefits relating to such work only, exclusive of attorney's
 8 fees, interest, liquidated damages, or any other damages of
 9 any kind, as provided in §21-5-4(e) of this code, or other
 10 applicable law and/or common law, to the extent that the
 11 employer of the employee fails to pay the wages and fringe
 12 benefits: for work performed under the contract with the
 13 prime contractor. The employer, and its shareholders,
 14 owners, directors, and officers shall be personally and

15 civilly liable to the prime contractor for any sums paid under
16 this section, including attorney's fees.

17 (b) Any individual or entity seeking redress pursuant to
18 subsection (a) of this section must:

19 (1) Notify the prime contractor, by certified mail, only
20 that wages or fringe benefits have not been paid within 100
21 days of the date the wages or fringe benefits become payable
22 to the employee; and

23 (2) Commence the action within one year of the date the
24 employee delivered notice to the prime contractor pursuant
25 to subdivision (1) of this subsection.

26 (c) The employer of the employee to whom wages
27 and/or fringe benefits are owed, shall whenever feasible
28 provide, immediately upon request by the employee or the
29 prime contractor, complete payroll records relating to work
30 performed under the contract with the prime contractor.

31 (d) Whenever the employee to whom wages and/or
32 fringe benefits are due is represented by a union or other
33 plan administrator, the union or other plan administrator,
34 shall whenever feasible, immediately upon notice of a claim
35 hereunder, cooperate with the employee and the prime
36 contractor to identify and quantify the wages and fringe
37 benefits owed for work performed under the contract with
38 the prime contractor. Further, if the union or agents thereof
39 or other plan administrator, including, but not limited to,
40 third party administrators, trustees, administrators, or
41 employees, become aware that an employer is not timely in
42 the payment of wages and/or fringe benefits, the union or
43 other plan administrator shall immediately notify the
44 affected employee and the prime contractor for whom the
45 affected employee provided work.

46 (e) A prime contractor must notify the owner and the
47 architect prior to the completion of the contract if any
48 subcontractor has not been paid in full.

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CHAPTER 159

(Com. Sub. for S. B. 157 - By Senator Maynard)

[Passed February 28, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

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 legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Department of Administration to promulgate a legislative rule relating to purchasing; authorizing the Department of Administration to promulgate a legislative rule relating to state-owned vehicles; and authorizing the Department of Administration to promulgate a legislative rule relating to leasing of space and acquisition of real property on behalf of state spending units.

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 18, 2018, authorized under the authority of §5A-3-4 of this
3 code, relating to the Department of Administration
4 (purchasing, 148 CSR 1), is authorized.

5 (b) The legislative rule filed in the State Register on July
6 20, 2018, authorized under the authority of §5A-12-5 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 November
10 14, 2018, relating to the Department of Administration
11 (state-owned vehicles, 148 CSR 3), is authorized.

12 (c) The legislative rule filed in the State Register on July
13 19, 2018, authorized under the authority of §5A-10-11 of
14 this code, modified by the Department of Administration to
15 meet the objections of the Legislative Rule-Making Review
16 Committee and refiled in the State Register on November
17 14, 2018, relating to the Department of Administration
18 (leasing of space and acquisition of real property on behalf
19 of state spending units, 148 CSR 19), is authorized.



CHAPTER 160

(Com. Sub. for S. B. 163 - By Senator Maynard)

[Passed March 5, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, relating generally to authorizing agencies under the Department of Environmental Protection to promulgate rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; 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 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 hazardous waste treatment, storage, and disposal facilities; authorizing the

Department of Environmental Protection to promulgate a legislative rule relating to requirements for determining conformity of transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Laws to applicable air quality implementation plans (transportation conformity); authorizing the Department of Environmental Protection to promulgate a legislative rule relating to provisions for determination of compliance with air quality management rules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to cross-state air pollution rule to control annual nitrogen oxides emissions, annual sulfur dioxide emissions, and ozone season nitrogen oxides emissions; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards.

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 24, 2018, authorized under the authority of §22-5-4 of this
3 code, relating to the Department of Environmental
4 Protection (emission standards for hazardous air pollutants,
5 45 CSR 34), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 24, 2018, authorized under the authority of §22-5-4 of this
8 code, relating to the Department of Environmental Protection
9 (ambient air quality standards, 45 CSR 8), is authorized.

10 (c) The legislative rule filed in the State Register on July
11 24, 2018, authorized under the authority of §22-5-4 of this
12 code, relating to the Department of Environmental
13 Protection (standards of performance for new stationary
14 sources, 45 CSR 16), is authorized.

15 (d) The legislative rule filed in the State Register on July
16 24, 2018, authorized under the authority of §22-5-4 of this
17 code, relating to the Department of Environmental
18 Protection (control of air pollution from hazardous waste
19 treatment, storage, and disposal facilities, 45 CSR 25), is
20 authorized.

21 (e) The legislative rule filed in the State Register on July
22 24, 2018, authorized under the authority of §22-5-4 of this
23 code, relating to the Department of Environmental
24 Protection (requirements for determining conformity of
25 transportation plans, programs, and projects developed,
26 funded, or approved under Title 23 U.S.C. or the Federal
27 Transit Laws, to applicable air quality implementation plans
28 (transportation conformity), 45 CSR 36), is authorized.

29 (f) The legislative rule filed in the State Register on July
30 24, 2018, authorized under the authority of §22-5-4 of this
31 code, relating to the Department of Environmental
32 Protection (provisions for determination of compliance with
33 air quality management rules, 45 CSR 38), is authorized.

34 (g) The legislative rule filed in the State Register on July
35 24, 2018, authorized under the authority of §22-5-4 of this
36 code, relating to the Department of Environmental Protection
37 (cross-state air pollution rule to control annual nitrogen oxides
38 emissions, annual sulfur dioxide emissions, and ozone season
39 nitrogen oxides emissions, 45 CSR 43), is authorized.

40 (h) The legislative rule filed in the State Register on July
41 27, 2018, authorized under the authority of §22-11-4 of this
42 code, modified by the Department of Environmental
43 Protection to meet the objections of the Legislative Rule-
44 Making Review Committee and refiled in the State Register
45 on December 10, 2018, relating to the Department of
46 Environmental Protection (requirements governing water
47 quality standards, 47 CSR 2), is authorized with the
48 following amendment:

49 On page 18, after subdivision 8.5.a., by adding a new
50 subdivision 8.6. to read as follows:

51 “8.6. On or before April 1, 2020, the Secretary shall
52 propose updates to the numeric human health criteria found
53 in Appendix E., subsection 8.23. Organics and subsection
54 8.25 Phenolic Materials to be presented to the 2021
55 Legislative Session. The Secretary shall allow for
56 submission of proposed human health criteria until October
57 1, 2019, and for public comment and agency review for an
58 appropriate time thereafter.

CHAPTER 161

(Com. Sub. for S. B. 175 - By Senator Maynard)

[Passed March 6, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §64-5-1 and §64-5-2 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Health and Human Resources to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to collection and exchange of data related to overdoses; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to behavioral health centers licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to assisted living residences; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to food establishments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to

food manufacturing facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to newborn screening system; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication-assisted treatment—office-based, medication-assisted treatment; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management clinic licensure; and authorizing the Health Care Authority to promulgate a legislative rule relating to cooperative agreement approval and compliance.

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 27, 2018, authorized under the authority of §16-5T-5 of this
3 code, relating to the Department of Health and Human
4 Resources (collection and exchange of data related to
5 overdoses, 69 CSR 14), is authorized with the following
6 amendment:

7 On page 4, by striking out all of subsection 2.16 and
8 inserting a new subsection to read as follows:

9 “2.16. “Overdose” means an acute condition, including,
10 but not limited to, extreme physical illness, decreased level
11 of consciousness, respiratory depression, coma, or death
12 believed to be caused by abuse and misuse of prescription
13 or illicit drugs or by substances that a layperson would
14 reasonably believe to be a drug”.

15 (b) The legislative rule filed in the State Register on July
16 27, 2018, authorized under the authority of §27-9-1 of this
17 code, modified by the Department of Health and Human
18 Resources to meet the objections of the Legislative Rule-

19 Making Review Committee and refiled in the State Register
20 on December 6, 2018, relating to the Department of Health
21 and Human Resources (behavioral health centers licensure,
22 64 CSR 11), is authorized with the following amendment:

23 On page 22, by adding a new subsection 4.11 to read as
24 follows:

25 ‘4.11 For the purposes of substance use disorder
26 services, if a provider is enrolled to accept West Virginia
27 Medicaid and is authorized to provide behavioral health
28 services in its state, the Office of Health Facility Licensure
29 and Certification may through reciprocity authorize it as a
30 West Virginia Behavioral Health Center under this rule.’

31 On page 48, subdivision 9.1.2., by deleting the words
32 “assessment and”.

33 (c) The legislative rule filed in the State Register on July
34 27, 2018, authorized under the authority of §16-5D-5 of this
35 code, modified by the Department of Health and Human
36 Resources to meet the objections of the Legislative Rule-
37 Making Review Committee and refiled in the State Register
38 on November 15, 2018, relating to the Department of Health
39 and Human Resources (assisted living residences, 64 CSR
40 14), is authorized with the following amendment:

41 On page 42, subdivision 11.8.1., by striking out the
42 words “federal or state law or this rule” and inserting in lieu
43 thereof the words “subdivision 11.8.2., of this rule”.

44 (d) The legislative rule filed in the State Register on July
45 26, 2018, authorized under the authority of §16-1-4 of this
46 code, modified by the Department of Health and Human
47 Resources to meet the objections of the Legislative Rule-
48 Making Review Committee and refiled in the State Register
49 on November 30, 2018, relating to the Department of Health
50 and Human Resources (food establishments, 64 CSR 17), is
51 authorized.

52 (e) The legislative rule filed in the State Register on July
53 26, 2018, authorized under the authority of §16-1-4 of this
54 code, modified by the Department of Health and Human
55 Resources to meet the objections of the Legislative Rule-
56 Making Review Committee and refiled in the State Register
57 on November 30, 2018, relating to the Department of Health
58 and Human Resources (food manufacturing facilities, 64
59 CSR 43), is authorized.

60 (f) The legislative rule filed in the State Register on July
61 26, 2018, authorized under the authority of §16-1-4 of this
62 code, relating to the Department of Health and Human
63 Resources (newborn screening system, 64 CSR 91), is
64 authorized with the following amendment:

65 On page 5, after subsection 5.29 by adding the
66 following:

67 5.30. Lysosomal Storage Disorders;

68 5.31. X-Linked Adrenoleukodystorphy, X-ALD; and

69 5.32. Spinal Muscular Atrophy, SMA.

70 (g) The legislative rule filed in the State Register on July
71 27, 2018, authorized under the authority of §16-5Y-1 of this
72 code, modified by the Department of Health and Human
73 Resources to meet the objections of the Legislative Rule-
74 Making Review Committee and refiled in the State Register
75 on November 15, 2018, relating to the Department of Health
76 and Human Resources (medication-assisted treatment—
77 office-based medication-assisted treatment, 69 CSR 12), is
78 authorized with the following amendments:

79 On page 39, by inserting a subsection, 22.9 to read as
80 follows, “Each OBMAT program shall provide or make
81 referrals for each patient to obtain contraceptive drugs,
82 devices or procedures.

83 (h) The legislative rule filed in the State Register on July
84 27, 2018, authorized under the authority of §16-5H-9 of this

85 code, relating to the Department of Health and Human
86 Resources (chronic pain management clinic licensure, 69
87 CSR 8), is authorized.

§64-5-2. Health Care Authority.

1 The legislative rule filed in the State Register on July
2 26, 2018, authorized under the authority of §16-29B-28 of
3 this code, relating to the Health Care Authority (cooperative
4 agreement approval and compliance, 65 CSR 6), is
5 authorized.

CHAPTER 162

(S. B. 177 - By Senator Maynard)

[Passed January 31, 2019; in effect from passage.]
[Approved by the Governor on February 14, 2019.]

AN ACT to amend and reenact §64-6-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Fire Commission to promulgate a legislative rule relating to the State Building Code.

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, 2018, authorized under the authority of §29-3-5b of this
3 code, relating to the Fire Commission (State Building Code,
4 87 CSR 4), is authorized.



CHAPTER 163

(Com. Sub. for S. B. 187 - By Senator Maynard)

[Passed March 6, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

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 certain agencies under the Department of Tax and Revenue to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between the Commissioner of the Tax Division of the Department of Revenue and the Commissioner of the Division of Labor of the Department of Commerce, the Commissioner of the Insurance Commission of the Department of Revenue, the Commissioner of the Division of Motor Vehicles of the Department of Transportation, the Commissioner of the Bureau of Employment Programs, and the Office of the Governor; 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 aircraft operated under a fractional ownership program; authorizing the State Tax Department to promulgate a legislative rule relating to citizen tax credit for property taxes paid; authorizing the State Tax Department to promulgate a legislative rule relating to administration of tax on purchases of wine and liquor inside and outside of municipalities; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between Tax Division and Division of Environmental

Protection; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between the State Tax Division and the Alcohol Beverage Control Administration; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information pursuant to written agreement; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between the State Tax Department and the West Virginia Lottery; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between the State Tax Department and the Office of the State Fire Marshal; authorizing the Lottery Commission to promulgate a legislative rule relating to West Virginia Lottery sports wagering rule; 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, 2018, authorized under the authority of §11-10-5 of this
3 code, relating to the State Tax Department (exchange of
4 information agreement between the Commissioner of the
5 Tax Division of the Department of Revenue and the
6 Commissioner of the Division of Labor of the Department
7 of Commerce, the Commissioner of the Insurance
8 Commission of the Department of Revenue, the
9 Commissioner of the Division of Motor Vehicles of the
10 Department of Transportation, the Commissioner of the
11 Bureau of Employment Programs and the Office of the
12 Governor, 110 CSR 50D), is authorized.

13 (b) The legislative rule filed in the State Register on July
14 27, 2018, authorized under the authority of §11-10-5t of this

15 code, modified by the State Tax Department to meet the
16 objections of the Legislative Rule-Making Review
17 Committee and refiled in the State Register on December 6,
18 2018, relating to the State Tax Department (payment of
19 taxes by electronic funds transfer, 110 CSR 10F), is
20 authorized.

21 (c) The legislative rule filed in the State Register on July
22 27, 2018, authorized under the authority of §11-15-9p of
23 this code, relating to the State Tax Department (aircraft
24 operated under a fractional ownership program, 110 CSR
25 15K), is authorized.

26 (d) The legislative rule filed in the State Register on July
27 27, 2018, authorized under the authority of §11-21-21 of
28 this code, relating to the State Tax Department (citizen tax
29 credit for property taxes paid, 110 CSR 21B), is authorized.

30 (e) The legislative rule filed in the State Register on July
31 27, 2018, authorized under the authority of §60-3A-21 of
32 this code, relating to the State Tax Department
33 (administration of tax on purchases of wine and liquor
34 inside and outside of municipalities, 110 CSR 49), is
35 authorized.

36 (f) The legislative rule filed in the State Register on July
37 27, 2018, authorized under the authority of §11-10-5 of this
38 code, relating to the State Tax Department (exchange of
39 information agreement between Tax Division and Division
40 of Environmental Protection, 110 CSR 50A), is authorized.

41 (g) The legislative rule filed in the State Register on July
42 27, 2018, authorized under the authority of §11-10-5 of this
43 code, relating to the State Tax Department (exchange of
44 information agreement between the State Tax Division and
45 the Alcohol Beverage Control Administration, 110 CSR
46 50B), is authorized.

47 (h) The legislative rule filed in the State Register on July
48 27, 2018, authorized under the authority of §11-10-5 of this

49 code, relating to the State Tax Department (exchange of
50 information pursuant to written agreement, 110 CSR 50C),
51 is authorized.

52 (i) The legislative rule filed in the State Register on July
53 27, 2018, authorized under the authority of §11-10-5 of this
54 code, relating to the State Tax Department (exchange of
55 information agreement between the State Tax Department
56 and the West Virginia Lottery, 110 CSR 50E), is authorized.

57 (j) The legislative rule filed in the State Register on July
58 27, 2018, authorized under the authority of §11-10-5 of this
59 code, relating to the State Tax Department (exchange of
60 information agreement between the State Tax Department
61 and the Office of the State Fire Marshal, 110 CSR 50F), is
62 authorized.

§64-7-2. Lottery Commission.

1 The legislative rule filed in the State Register on
2 October 4, 2018, authorized under the authority of §29-
3 22D-4 of this code, modified by the Lottery Commission to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December 3,
6 2018, relating to the Lottery Commission (West Virginia
7 Lottery sports wagering rule, 179 CSR 9), is authorized.

§64-7-3. Racing Commission.

1 The legislative rule filed in the State Register on July
2 26, 2018, authorized under the authority of §19-23-6 of this
3 code, modified by the Racing Commission to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on November
6 28, 2018, relating to the Racing Commission (thoroughbred
7 racing, 178 CSR 1), is authorized.



CHAPTER 164

(Com. Sub. for S. B. 199 - By Senator Maynard)

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 22, 2019.]

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, and §64-9-11 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Athletic Commission to promulgate a legislative rule relating to administrative rules of the West Virginia State Athletic Commission; 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 industrial hemp; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to rural rehabilitation loan program; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to captive cervid farming; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to farm-to-food bank tax credit; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to agritourism; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to farmers markets; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to seed certification program; authorizing the Board of Licensed Dietitians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing the Board of Medicine to promulgate a legislative rule relating to

licensing and disciplinary procedures: physicians; podiatric physicians and surgeons; authorizing the Board of Medicine to promulgate a legislative rule relating to permitting and disciplinary procedures: educational permits for graduate medical interns, residents, and fellows; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; 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 Board of Pharmacy rules for registration of pharmacy technicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to regulations governing pharmacy permits; authorizing the Board of Pharmacy to promulgate a legislative rule relating to regulations governing pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to rules for the substitution of biological pharmaceuticals; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to policies, standards, and criteria for the evaluation, approval, and national nursing accreditation of precensure nursing education programs; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to requirements for registration and licensure, and conduct constituting professional misconduct; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to advanced practice registered nurse licensure requirements; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to scope of professional nursing practice; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to fees for services rendered by the board and supplemental renewal fee for the Center for Nursing; authorizing the Board of Examiners for Registered Professional Nurses to

promulgate a legislative rule relating to dialysis technicians; authorizing the Secretary of State to promulgate a legislative rule relating to filing and formatting rules and related documents and other documents for publication in the State Register; authorizing the Secretary of State to promulgate a legislative rule relating to loan and grant programs under the Help America Vote Act for the purchase of voting equipment, election systems, software, services, and upgrades; authorizing the Secretary of State to promulgate a legislative rule relating to early voting in-person satellite precincts; authorizing the Secretary of State to promulgate a legislative rule relating to notaries public; authorizing the Board of Social Work Examiners to promulgate a legislative rule relating to qualifications for the profession of social work; authorizing the Board of Social Work Examiners to promulgate a legislative rule relating to code of ethics; and authorizing the Treasurer's Office to promulgate a legislative rule relating to reporting and claiming unknown and unlocatable interest owners' reserved interests.

Be it enacted by the Legislature of West Virginia:

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

§64-9-1. Athletic Commission.

1 The legislative rule filed in the State Register on July
2 24, 2018, 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 December 4,
6 2018, relating to the Athletic Commission (administrative
7 rules of the West Virginia State Athletic Commission, 177
8 CSR 1), is authorized.

§64-9-2. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on July
2 27, 2018, 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 10, 2018, 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 27, 2018, authorized under the authority of §19-12E-7 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 11, 2018, relating to the Commissioner of Agriculture
14 (industrial hemp, 61 CSR 29), is authorized with the
15 following amendments:

16 On page 4, section 4, by inserting a new subsection 4.1
17 to read as follows:

18 4.1. Within 60 days of being issued a license, the
19 licensee shall certify to the Commissioner that he or she has
20 provided a copy of that license to both the sheriff of the
21 county in which the hemp is being grown and the local
22 detachment of the West Virginia State Police.

23 And,

24 By renumbering the remaining subsections.

25 (c) The legislative rule filed in the State Register on July
26 26, 2018, authorized under the authority of §19-1-11 of this
27 code, modified by the Commissioner of Agriculture to meet
28 the objections of the Legislative Rule-Making Review
29 Committee and refiled in the State Register on December 4,
30 2018, relating to the Commissioner of Agriculture (rural
31 rehabilitation loan program, 61 CSR 33), is authorized.

32 (d) The legislative rule filed in the State Register on July
33 27, 2018, authorized under the authority of §19-2H-12 of
34 this code, modified by the Commissioner of Agriculture to
35 meet the objections of the Legislative Rule-Making Review
36 Committee and refiled in the State Register on December 4,

37 2018, relating to the Commissioner of Agriculture (captive
38 cervid farming, 61 CSR 34), is authorized with the
39 following amendment:

40 On page 1, subsection 1.6, after the word “Standards”
41 by inserting the words “effective June 13, 2012,”.

42 (e) The legislative rule filed in the State Register on
43 January 9, 2018, authorized under the authority of §11-
44 13DD-5 of this code, relating to the Commissioner of
45 Agriculture (farm-to-food bank tax credit, 61 CSR 36), is
46 authorized with the following amendment:

47 On page 4, after subdivision 5.6.b. by inserting a new
48 subsection 5.7. to read as follows:

49 5.7. All applications for tax credits must be received by
50 the Department of Agriculture no later than January 31 of
51 the year following the year in which the donation was made.

52 (f) The legislative rule filed in the State Register on July
53 27, 2018, authorized under the authority of §19-36-1 of this
54 code, modified by the Commissioner of Agriculture to meet
55 the objections of the Legislative Rule-Making Review
56 Committee and refiled in the State Register on November
57 26, 2018, relating to the Commissioner of Agriculture
58 (agritourism, 61 CSR 37), is authorized.

59 (g) The legislative rule filed in the State Register on July
60 27, 2018, authorized under the authority of §19-35-4 of this
61 code, modified by the Commissioner of Agriculture to meet
62 the objections of the Legislative Rule-Making Review
63 Committee and refiled in the State Register on November
64 26, 2018, relating to the Commissioner of Agriculture
65 (farmers markets, 61 CSR 38), is authorized with the
66 following amendment:

67 On page 8, by striking out paragraph “11.2.a.” in its
68 entirety and renumbering the remaining paragraphs
69 accordingly.

70 (h) The legislative rule filed in the State Register on July
71 27, 2018, authorized under the authority of §19-16-3a of this
72 code, modified by the Commissioner of Agriculture to meet
73 the objections of the Legislative Rule-Making Review
74 Committee and refiled in the State Register on December
75 11, 2018, relating to the Commissioner of Agriculture (seed
76 certification program, 61 CSR 39), is authorized.

§64-9-3. Board of Licensed Dietitians.

1 The legislative rule filed in the State Register on July
2 24, 2018, 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 September
6 20, 2018, relating to the Board of Licensed Dietitians
7 (licensure and renewal requirements, 31 CSR 1), is
8 authorized.

§64-9-4. Board of Medicine.

1 (a) The legislative rule filed in the State Register on July
2 25, 2018, authorized under the authority of §30-3-7 of this
3 code, relating to the Board of Medicine (licensing and
4 disciplinary procedures: physicians; podiatric physicians
5 and surgeons, 11 CSR 1A), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 25, 2018, authorized under the authority of §30-3-7 of this
8 code, relating to the Board of Medicine (permitting and
9 disciplinary procedures: educational permits for graduate
10 medical interns, residents, and fellows, 11 CSR 12), is
11 authorized.

§64-9-5. Board of Osteopathic Medicine.

1 The legislative rule filed in the State Register on July
2 26, 2018, authorized under the authority of §30-14-14 of
3 this code, relating to the Board of Osteopathic Medicine
4 (licensing procedures for osteopathic physicians, 24 CSR
5 1), is authorized with the following amendment:

6 On page 16, striking paragraph “18.1.hh.2” in its
7 entirety and renumber the remaining paragraphs
8 accordingly.

§64-9-6. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on July
2 27, 2018, 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.

5 (b) The legislative rule filed in the State Register on July
6 27, 2018, authorized under the authority of §30-5-7 of this
7 code, relating to the Board of Pharmacy (board of pharmacy
8 rules for registration of pharmacy technicians, 15 CSR 7), is
9 authorized with the following amendments:

10 On page 5, subsection 4.2 after the words, “minimum
11 of” by striking out “960” and inserting in lieu thereof “500”;

12 On page 5, subsection 4.2 after the words, “within a” by
13 striking out “15” and inserting in lieu thereof “12”;

14 On page 5, subsection 4.3 after the words, “a pharmacy
15 in a” by striking out “960” and inserting in lieu thereof
16 “500”;

17 On page 6, subdivision 4.4.c after the word, “Within”
18 by striking out “15” and inserting in lieu thereof “12”;

19 And,

20 On page 6, subdivision 4.4.e after the words “within
21 the” by striking out “15” and inserting in lieu thereof “12”.

22 (c) The legislative rule filed in the State Register on July
23 27, 2018, authorized under the authority of §30-5-7 of this
24 code, relating to the Board of Pharmacy (regulations
25 governing pharmacy permits, 15 CSR 15), is authorized.

26 (d) The legislative rule filed in the State Register on July
27 27, 2018, authorized under the authority of §30-5-7 of this

28 code, relating to the Board of Pharmacy (regulations
29 governing pharmacists, 15 CSR 16), is authorized.

30 (e) The legislative rule filed in the State Register on
31 November 16, 2018, authorized under the authority of §30-
32 5-12c of this code, modified by the Board of Pharmacy to
33 meet the objections of the Legislative Rule-Making Review
34 Committee and refiled in the State Register on November
35 16, 2018, relating to the Board of Pharmacy (rules for the
36 substitution of biological pharmaceuticals, 15 CSR 17), is
37 authorized.

§64-9-7. Real Estate Appraiser Licensing and Certification Board.

1 The legislative rule filed in the State Register on July
2 27, 2018, authorized under the authority of §30-38-9 of this
3 code, modified by the Real Estate Appraiser Licensing and
4 Certification Board to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on October 3, 2018, relating to the Real Estate
7 Appraiser Licensing and Certification Board (requirements
8 for licensure and certification, 190 CSR 2), is authorized
9 with the following amendments:

10 On page 3, subdivision 4.1.d. after the word
11 “misdemeanor” by striking out the words “involving moral
12 turpitude” and inserting in lieu thereof the following: “that
13 bears a rational nexus to the occupation requiring
14 licensure”;

15 On page 29, subdivision 8.2.c. after the word
16 “misdemeanor by striking out the words “involving moral
17 turpitude” and inserting in lieu thereof the following: “that
18 bears a rational nexus to the occupation requiring licensure;

19 And,

20 On page 30, subdivision 9.2.f. after the word
21 “misdemeanor” by striking out the words “involving moral

22 turpitude” and inserting in lieu thereof the following: “that
23 bears a rational nexus to the occupation requiring licensure.

§64-9-8. Registered Professional Nurses.

1 (a) The legislative rule filed in the State Register on July
2 26, 2018, authorized under the authority of §30-7-4 of this
3 code, modified by the Registered Professional Nurses to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on November
6 29, 2018, relating to the Registered Professional Nurses
7 (policies, standards, and criteria for the evaluation, approval
8 and national nursing accreditation of prelicensure nursing
9 education programs, 19 CSR 1), is authorized.

10 (b) The legislative rule filed in the State Register on July
11 25, 2018, authorized under the authority of §30-5-7 of this
12 code, modified by the Board of Examiners for Registered
13 Professional Nurses to meet the objections of the
14 Legislative Rule-Making Review Committee and refiled in
15 the State Register on November 28, 2018, relating to the
16 Board of Examiners for Registered Professional Nurses
17 (requirements for registration and licensure and conduct
18 constituting professional misconduct, 19 CSR 3), is
19 authorized.

20 (c) The legislative rule filed in the State Register on July
21 25, 2018, authorized under the authority of §30-7-4 of this
22 code, relating to the Board of Registered Professional
23 Nurses (advanced practice registered nurse licensure
24 requirements, 19 CSR 7), is authorized.

25 (d) The legislative rule filed in the State Register on July
26 26, 2018, authorized under the authority of §30-7-4 of this
27 code, modified by the Board of Examiners for Registered
28 Professional Nurses to meet the objections of the
29 Legislative Rule-Making Review Committee and refiled in
30 the State Register on November 20, 2018, relating to the
31 Board of Examiners for Registered Professional Nurses

32 (scope of professional nursing practice, 19 CSR 10), is
33 authorized.

34 (e) The legislative rule filed in the State Register on July
35 26, 2018, authorized under the authority of §30-7-4 of this
36 code, modified by the Board of Registered Professional
37 Nurses to meet the objections of the Legislative Rule-
38 Making Review Committee and refiled in the State Register
39 on November 28, 2018, relating to the Board of Registered
40 Professional Nurses (fees for services rendered by the board
41 and supplemental renewal fee for the center for nursing, 19
42 CSR 12), is authorized.

43 (f) The legislative rule filed in the State Register on July
44 25, 2018, authorized under the authority of §30-7C-7 of this
45 code, modified by the Board of Examiners for Registered
46 Professional Nurses to meet the objections of the
47 Legislative Rule-Making Review Committee and refiled in
48 the State Register on November 28, 2018, relating to the
49 Board of Examiners for Registered Professional Nurses
50 (dialysis technicians, 19 CSR 13), is authorized.

§64-9-9. Secretary of State.

1 (a) The legislative rule filed in the State Register on July
2 6, 2018, authorized under the authority of §29A-2-6 of this
3 code, relating to the Secretary of State (filing and formatting
4 rules and related documents and other documents for
5 publication in the State Register, 153 CSR 6), is authorized
6 with the following amendment:

7 On page 4, subdivision 5.1, after the words “New series
8 rules” by striking out the word “may” and inserting in lieu
9 thereof the word “shall”.

10 (b) The legislative rule filed in the State Register on July
11 10, 2018, authorized under the authority of §3-1-48 of this
12 code, relating to the Secretary of State (loan and grant
13 programs under the Help America Vote Act (HAVA) for the
14 purchase of voting equipment, election systems, software,
15 services, and upgrades, 153 CSR 10), is authorized.

16 (c) The legislative rule filed in the State Register on July
17 10, 2018, authorized under the authority of §3-3-2a of this
18 code, relating to the Secretary of State (early voting in-
19 person satellite precincts, 153 CSR 13), is authorized with
20 the following amendment:

21 On page 3, subsection 5.5, after the words “If more than
22 one satellite precinct” by striking the words “locations are”
23 and inserting in lieu thereof the words “location is”.

24 (d) The legislative rule filed in the State Register on July
25 30, 2018, authorized under the authority of §39-4-25 of this
26 code, relating to the Secretary of State (notaries public, 153
27 CSR 46), is authorized.

§64-9-10. Board of Social Work Examiners.

1 (a) The legislative rule filed in the State Register on July
2 25, 2018, authorized under the authority of §30-30-6 of this
3 code, modified by the Board of Social Work Examiners to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on November
6 16, 2018, relating to the Board of Social Work Examiners
7 (qualifications for the profession of social work, 25 CSR 1),
8 is authorized.

9 (b) The legislative rule filed in the State Register on July
10 23, 2018, authorized under the authority of §30-30-6 of this
11 code, relating to the Board of Social Work (code of ethics,
12 25 CSR 7), is authorized.

§64-9-11. Treasurer’s Office.

1 The legislative rule filed in the State Register on July
2 27, 2018, authorized under the authority of §37B-2-7 of this
3 code, modified by the Treasurer’s Office to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December
6 13, 2018, relating to the Treasurer’s Office (reporting and
7 claiming unknown and unlocatable interest owners reserved
8 interests, 112 CSR 16), is authorized.



CHAPTER 165

(Com. Sub. for S. B. 223 - By Senator Maynard)

[Passed March 6, 2019; in effect from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §64-10-1, §64-10-2, and §64-10-3 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Division of Labor to promulgate a legislative rule relating to wage payment and collection; authorizing the Division of Labor to promulgate a legislative rule relating to child labor; authorizing the Division of Labor to promulgate a legislative rule relating to regulation of heating, ventilating, and cooling work; authorizing the Office of Miners' Health, Safety, and Training to promulgate a legislative rule relating to a rule governing the safety of those employed in and around surface mines in West Virginia; authorizing the Office of Miners' Health, Safety, and Training to promulgate a legislative rule relating to a rule governing the submission and approval of a comprehensive mine safety program for coal mining operations in the State of West Virginia; authorizing the Office of Miners' Health, Safety, and Training to promulgate a legislative rule relating to rules for operating diesel equipment in underground mines in West Virginia; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to rules for Cabwaylingo State Forest trail system two-year pilot project permitting ATVs and ORVs.

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 Labor.

1 (a) The legislative rule filed in the State Register on July
2 25, 2018, authorized under the authority of §21-5-13 of this
3 code, relating to the Division of Labor (wage payment and
4 collection, 42 CSR 5), is authorized.

5 (b) The legislative rule filed in the State Register on July
6 25, 2018, authorized under the authority of §21-6-11 of this
7 code, modified by the Division of Labor to meet the
8 objections of the Legislative Rule-Making Review
9 Committee and refiled in the State Register on September
10 26, 2018, relating to the Division of Labor (child labor, 42
11 CSR 9), is authorized.

12 (c) The legislative rule filed in the State Register on July
13 25, 2018, authorized under the authority of §21-16-5 of this
14 code, relating to the Division of Labor (regulation of
15 heating, ventilating, and cooling work, 42 CSR 34), is
16 authorized.

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

1 (a) The legislative rule filed in the State Register on July
2 25, 2018, authorized under the authority of §22A-1-38 of
3 this code, relating to the Office of Miners' Health, Safety
4 and Training (rule governing the safety of those employed
5 in and around surface mines in West Virginia, 56 CSR 3), is
6 authorized with the following amendment:

7 On page 58, subdivision 40.5.6., after the words "stand
8 to the", by inserting the word "side".

9 (b) The legislative rule filed in the State Register on July
10 25, 2018, authorized under the authority of §22A-1-6 of this
11 code, relating to the Office of Miners' Health, Safety, and

12 Training (rule governing the submission and approval of a
13 comprehensive mine safety program for coal mining
14 operations in the State of West Virginia, 56 CSR 8), is
15 authorized.

16 (c) The legislative rule filed in the State Register on July
17 25, 2018, authorized under the authority of §22A-2A-308 of
18 this code, relating to the Office of Miners' Health, Safety,
19 and Training (rules for operating diesel equipment in
20 underground mines in West Virginia, 56 CSR 23), is
21 authorized.

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

1 (a) The legislative rule filed in the State Register on July
2 27, 2018, authorized under the authority of §20-2-23a of this
3 code, modified by the Division of Natural Resources to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 1,
6 2018, relating to the Division of Natural Resources
7 (commercial whitewater outfitters, 58 CSR 12), is
8 authorized with the following amendment:

9 On page 19, after subsection 14.6.1., by striking out all
10 of section 15, and renumbering the remaining sections
11 accordingly.

12 (b) The legislative rule filed in the State Register on July
13 27, 2018, authorized under the authority of §20-3-3a of this
14 code, modified by the Division of Natural Resources to
15 meet the objections of the Legislative Rule-Making Review
16 Committee and refiled in the State Register on October 1,
17 2018, relating to the Division of Natural Resources (rules
18 for Cabwaylingo State Forest trail system two-year pilot
19 project permitting ATVs and ORVs, 58 CSR 36), is
20 authorized.



CHAPTER 166

(Com. Sub. for S. B. 240 - By Senators Maynard, Trump, Cline and Swope)

[Passed February 11, 2019; in effect from passage.]
[Approved by the Governor on February 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §64-12-1, §64-12-2, §64-12-3, §64-12-4, §64-12-5, §64-12-6, and §64-12-7, all relating generally to repealing certain legislative rules promulgated by certain agencies, boards, and commissions which are no longer authorized or are obsolete; authorizing certain agencies and commissions under the Department of Administration, Department of Environmental Protection, Department of Military Affairs and Public Safety, Department of Tax and Revenue, Department of Transportation, miscellaneous agencies, boards, and commissions, and the Bureau of Commerce to repeal certain legislative rules; repealing the Department of Administration legislative rule relating to the state Purchasing Card Program; repealing the Department of Environmental Protection legislative rule relating to abandoned mine lands reclamation; repealing the Department of Environmental Protection legislative rule relating to certification of gas wells; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to handbook of inmate rules and procedures; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to furlough program for regional jails; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the authority; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to work program for regional

jail inmates; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to West Virginia minimum standards for construction, operation, and maintenance of jails; repealing the Insurance Commission legislative rule relating to health insurance benefits for temporomandibular and craniomandibular disorders; repealing the Insurance Commission legislative rule relating to guaranteed loss ratios as applied to individual sickness and accident insurance policies; repealing the Insurance Commission legislative rule relating to external review of coverage denials; repealing the Insurance Commission legislative rule relating to small employer eligibility requirements; repealing the Division of Motor Vehicles legislative rule relating to eligibility for reinstatement following suspension or revocation of driving privileges; repealing the Board of Social Work Examiners legislative rule relating to applications; and repealing the Division of Labor legislative rule relating to the Safety Glazing Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. REPEAL OF UNAUTHORIZED AND OBSOLETE RULES.

§64-12-1. Department of Administration.

1 The legislative rule effective March 18, 2002,
2 authorized under the authority of §12-3-10a of this code,
3 relating to the Department of Administration (state
4 Purchasing Card Program, 148 CSR 7), is repealed.

§64-12-2. Department of Environmental Protection.

1 (a) The legislative rule effective June 1, 1995, authorized
2 under the authority of §22-1-3 of this code, relating to the
3 Department of Environmental Protection (abandoned mine
4 lands reclamation rule, 59 CSR 1), is repealed.

5 (b) The legislative rule effective May 10, 2001,
6 authorized under the authority of §22-1-3 of this code,
7 relating to the Department of Environmental Protection
8 (certification of gas wells, 35 CSR 7), is repealed.

§64-12-3. Department of Military Affairs and Public Safety.

1 (a) The legislative rule effective October 8, 1994,
2 authorized under the authority of §31-20-5(v) of this code,
3 relating to the Regional Jail and Correctional Facility
4 Authority (handbook of inmate rules and procedures, 94 CSR
5 5), is repealed.

6 (b) The legislative rule effective March 21, 2008,
7 authorized under the authority of §31-20-29 of this code,
8 relating to the Regional Jail and Correctional Facility
9 Authority (furlough program for regional jails, 94 CSR 6), is
10 repealed.

11 (c) The legislative rule effective April 28, 2014,
12 authorized under the authority of §31-20-10(h) of this code,
13 relating to the Regional Jail and Correctional Facility
14 Authority (criteria and procedures for determination of
15 projected cost per day for inmates incarcerated in regional
16 jails operated by the authority, 94 CSR 7), is repealed.

17 (d) The legislative rule effective March 21, 2008,
18 authorized under the authority of §31-20-31 of this code,
19 relating to the Regional Jail and Correctional Facility
20 Authority (work program for regional jail inmates, 94 CSR
21 8), is repealed.

22 (e) The legislative rule effective June 3, 1996, authorized
23 under the authority of §31-20-9 of this code, relating to the
24 Regional Jail and Correctional Facility Authority (West
25 Virginia minimum standards for construction, operation, and
26 maintenance of jails, 95 CSR 1), is repealed.

§64-12-4. Department of Tax and Revenue.

1 (a) The legislative rule effective May 31, 1991,
2 authorized under the authority of §33-2-10 of this code,
3 relating to the Insurance Commissioner (health insurance
4 benefits for temporomandibular and craniomandibular
5 disorders, 114 CSR 29), is repealed.

6 (b) The legislative rule effective April 29, 2008,
7 authorized under the authority of §33-2-10 of this code,
8 relating to the Insurance Commissioner (guaranteed loss
9 ratios as applied to individual sickness and accident
10 insurance policies, 114 CSR 31), is repealed.

11 (c) The legislative rule effective July 1, 2002,
12 authorized under the authority of §33-2-10 of this code,
13 relating to the Insurance Commissioner (external review of
14 coverage denials, 114 CSR 58), is repealed.

15 (d) The legislative rule effective May 6, 2005,
16 authorized under the authority of §33-2-10 of this code,
17 relating to the Insurance Commissioner (small employer
18 eligibility requirements, 114 CSR 73), is repealed.

§64-12-5. Department of Transportation.

1 The legislative rule effective April 2, 1986, authorized
2 under the authority of §17A-2-9 of this code, relating to the
3 Division of Motor Vehicles (eligibility for reinstatement
4 following suspension or revocation of driving privileges, 91
5 CSR 16), is repealed.

§64-12-6. Miscellaneous agencies, boards, and commissions.

1 The legislative rule effective July 1, 2013, authorized
2 under the authority of §30-30-6 of this code, relating to the
3 Board of Social Work Examiners (applications, 25 CSR 4),
4 is repealed.

§64-12-7. Bureau of Commerce.

1 The legislative rule effective August 6, 1971, authorized
2 under the authority of §47-5-1 of this code, relating to the
3 Division of Labor (Safety Glazing Act, 42 CSR 13), is
4 repealed.



CHAPTER 167

(S. B. 545 - By Senator Azinger)

[Passed March 2, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §64-7-4 of the Code of West Virginia, 1931, as amended, relating to authorizing the Office of the Insurance Commissioner to promulgate a legislative rule relating to HIV testing; and eliminating outdated testing protocols.

Be it enacted by the Legislature of West Virginia:

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

§64-7-4. Office of the Insurance Commissioner.

1 The legislative rule filed in the State Register on April
2 3, 2003, authorized under the authority of §33-2-10(a) of
3 this code, relating to standards for AIDS-related
4 underwriting questions and AIDS testing in connection with
5 applications for life or health insurance policies (AIDS
6 Regulations, 114 CSR 27) is authorized with the following
7 amendment:

8 “5.9. The testing is required to be administered on a
9 nondiscriminatory basis for all individuals in the same
10 underwriting class. No proposed insured may be denied
11 coverage or rated a substandard risk on the basis of HIV
12 testing unless acceptable testing protocol is followed
13 including the use of FDA-licensed tests.

14 5.10. If any confirmatory test produces a negative result,
 15 the testing ceases and the proposed insured cannot be denied
 16 coverage based on AIDS-related testing.”

CHAPTER 168

**(H. B. 2853 - By Delegates Higginbotham, Jennings,
 Skaff, Queen, Phillips, Bibby, Wilson, Atkinson and
 Byrd)**

[Passed March 7, 2019; in effect ninety days from passage.]
 [Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §10-1-14a, relating to establishing the West Virginia Program for Open Education Resources; defining open education resource materials; providing duties of Library Commission; and requiring annual report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-14a. West Virginia Program for Open Education Resources; material description.

1 (a)(1) The State Library Commission shall establish the
 2 West Virginia Program for Open Education Resources to
 3 encourage and facilitate the use of open education resource
 4 materials in both higher education and kindergarten through
 5 12th grade in West Virginia schools.

6 (2) “Open education resource materials” means
 7 teaching, learning and resource materials in any medium,
 8 digital or otherwise, that reside in the public domain or have
 9 been released under an open license that permits low cost

10 access, use, adaptation and redistribution by others with no
11 or limited restrictions.

12 (b) The Library Commission, in consultation with the
13 Higher Education Policy Commission, the West Virginia
14 Council for Community and Technical College Education
15 and the State Superintendent of Schools, or his or her
16 designee, shall:

17 (1) Ascertain what institutions or faculty are currently
18 using OER material.

19 (2) Identify material currently associated with core
20 general education courses and readily available for use by
21 faculty and institutions;

22 (3) Identify any statutory or other impediments which
23 interfere with selection and use of OER material by
24 administrators or teachers at all levels of instruction in West
25 Virginia schools;

26 (4) Identify sources of potential grants for funding for
27 teachers and institutions to use open education resources for
28 classes and courses, and propose a competitive application
29 system to award grant funding for those faculty and
30 institutions seeking to use the materials;

31 (5) Establish a digital clearing house that will function
32 as a publicly-accessible database for material;

33 (6) Develop strategies to leverage further open resource
34 material to benefit higher education institutions and school
35 systems, as well as private and foundation support for the
36 project; and

37 (7) Report no later than July 1st of each year the
38 program's findings, progress and recommendations to the
39 Legislative Manager, the Governor, and the chairs of the
40 Legislature's House and Senate Committees on Education.

●

CHAPTER 169

(Com. Sub. for H. B. 2761 - By Delegate Westfall)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §38-14-2, §38-14-3, §38-14-4, §38-14-5, §38-14-7, §38-14-8, and §38-14-9 of the Code of West Virginia, 1931, as amended, all relating to modernizing the self-service storage lien law; modifying late fees; redefining certain terms; providing modern methods of satisfying a self-service storage lien; and providing a new effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. SELF-SERVICE STORAGE LIEN ACT.

§38-14-2. Definitions.

1 As used in this article, unless the context clearly
2 requires otherwise:

3 (1) “Default” means the failure by the occupant to
4 perform on time any obligation or duty set forth in the rental
5 agreement or this article;

6 (2) “Last known address” means that address or
7 electronic mail address provided by the occupant in the
8 rental agreement or the address or electronic mail address
9 provided by the occupant in a subsequent written notice of
10 a change of address;

11 (3) “Leased space” means the individual storage space
12 at the self-service storage facility which is rented to an
13 occupant pursuant to a rental agreement;

14 (4) “Occupant” means a person, a sublessee, successor,
15 or assign, entitled to the use of a leased space at a self-
16 service storage facility under a rental agreement;

17 (5) “Operator” means the owner, operator, lessor, or
18 sublessor of a self-service storage facility, an agent, or any
19 other person authorized to manage the facility. The operator
20 is not a warehouseman, unless the operator issues a
21 warehouse receipt, bill of lading, or other document of title
22 for the personal property stored;

23 (6) “Personal property” means movable property, not
24 affixed to land. Personal property includes goods, wares,
25 merchandise, motor vehicles, trailers, watercraft, and
26 household items and furnishings;

27 (7) “Rental agreement” means any written agreement
28 that establishes or modifies the terms, conditions, or rules
29 concerning the use and occupancy of leased space at a self-
30 service storage facility;

31 (8) “Self-service storage facility” means any real
32 property used for renting or leasing individual storage
33 spaces in which the occupants themselves customarily store
34 and remove their own personal property on a “self-service”
35 basis; and

36 (9) “Verified mail” means any method of mailing that is
37 offered by the United States Postal Service or private
38 delivery service that provides evidence of mailing.

§38-14-3. Self-service storage lien.

1 (a) The operator has a lien on all personal property
2 stored within each leased space for agreed rent, labor, late
3 fees, and other charges and for expenses reasonably
4 incurred in its sale or disposition pursuant to this article. The
5 lien attaches as of the date the personal property is stored
6 within each leased space and remains a lien until the
7 occupant has satisfied the terms of the rental agreement.

8 (b) In the case of any motor vehicle or watercraft which
9 is subject to a lien previously recorded on the certificate of
10 title, the operator has a lien on the vehicle or watercraft as
11 long as the motor vehicle or watercraft remains stored
12 within the leased space.

13 (c) The rental agreement shall contain:

14 (1) A statement advising the occupant of the existence
15 of the lien and that the personal property stored within the
16 leased space may be sold to satisfy the lien if the occupant
17 is in default;

18 (2) A statement advising the occupant that personal
19 property stored in the leased space may be towed or
20 removed from the self-service storage facility if the personal
21 property is a motor vehicle, trailer, or watercraft and the
22 occupant is in default for more than 60 days; and

23 (3) A statement advising the occupant that a sale of
24 personal property stored in the leased space to satisfy the
25 lien if the occupant is in default may be advertised:

26 (A) In a newspaper of general circulation in the
27 jurisdiction where the sale is to be held or where the self-
28 service storage facility is located;

29 (B) By electronic mail or text; or

30 (C) On an online website.

§38-14-4. Late fees.

1 The operator may charge a late fee not to exceed \$20 or
2 20 percent of the monthly rental fee, whichever is greater,
3 for each month the occupant defaults for a period of five
4 days or more.

§38-14-5. Enforcement of lien.

1 (a)(1) If the occupant is in default for a period of more
2 than 60 days, the operator may enforce the lien by selling

3 the personal property stored in the leased space at a public
4 sale or dispose of the personal property if the operator can
5 demonstrate by photographs or other images and affidavit
6 of a knowledgeable and credible person that the personal
7 property lacks a value sufficient to cover the reasonable
8 expense of a public auction plus the amount of the self-
9 service storage lien.

10 (2) Proceeds from the sale shall be applied to satisfy the
11 lien, and any surplus shall be disbursed as provided in
12 subsection (e) of this section.

13 (b)(1) Before conducting a sale under subsection (a) of
14 this section, the operator shall, subject to subdivision (2) of
15 this subsection, notify the occupant of the default by hand
16 delivery, verified mail, electronic mail, or text at the
17 occupant's last known address.

18 (2)(A) The operator may not notify the occupant of the
19 default by electronic mail unless:

20 (i) The rental agreement specifies, in bold type, that
21 notice may be given by electronic mail or text; and

22 (ii) The occupant provides the occupant's initials next
23 to the statement in the rental agreement specifying that
24 notice of default may be given by electronic mail or text.

25 (B) If the operator notifies the occupant of the default
26 by electronic mail or text at the occupant's last known
27 address and does not receive a response, return receipt, or a
28 confirmation of delivery, the operator shall send the notice
29 of default to the occupant by hand delivery or by verified
30 mail to the occupant's last known postal address.

31 (C) Additional requirements for members of the military
32 apply under the Soldiers and Sailors Relief Act, 50 U.S.C.
33 §§3901-4043.

34 (3) The notice shall include:

35 (A) A statement that the contents of the occupant's
36 leased space are subject to the operator's lien;

37 (B) A statement of the operator's claim, indicating the
38 charges due on the date of the notice, the amount of any
39 additional charges which will become due before the date of
40 sale, and the date those additional charges will become due;

41 (C) A demand for payment of the charges due within a
42 specified time, not less than 14 days after the date that the
43 notice was mailed;

44 (D) A statement that unless the claim is paid within the
45 time stated, the contents of the occupant's space will be sold
46 at a specified time and place; and

47 (E) The name, street address, and telephone number of
48 the operator, or his or her designated agent, whom the
49 occupant may contact to respond to the notice.

50 (4) (A) Subject to paragraph (B) of this subdivision, at
51 least three days before conducting a sale under this section,
52 the operator shall advertise the time, place, and terms of the
53 sale:

54 (i) In a newspaper of general circulation in the
55 jurisdiction where the sale is to be held;

56 (ii) By electronic mail; or

57 (iii) On an online website.

58 (B) The operator may not advertise the sale in the
59 manner provided under subparagraph (ii) or (iii) of this
60 paragraph unless the occupant provides the occupant's
61 initials next to the statement in the rental agreement required
62 under this article.

63 (c) The operator may dispose of the personal property if
64 the operator has complied with subsection (b) of this section
65 and the property has not been purchased.

66 (d) At any time before a sale under this section, the
67 occupant may pay the amount necessary to satisfy the lien
68 and redeem the occupant's personal property.

69 (e) A sale under this section shall be held at the self-
70 service storage facility where the personal property is
71 stored, on an online auction website, or at any other location
72 reasonably determined by the operator.

73 (f)(1) If a sale is held under this section, the operator
74 shall:

75 (A) Satisfy the lien from the proceeds of the sale; and

76 (B) Mail the balance, if any, by certified mail to the
77 occupant at the occupant's last known address of the occupant.

78 (2) (A) If the balance is returned to the operator after the
79 operator mailed the balance in the manner required under
80 paragraph (B), subdivision (1) of this subsection, the
81 operator shall hold the balance for one year after the date of
82 sale for delivery on demand to the operator.

83 (B) After expiration of the one-year period, the balance
84 is presumed abandoned.

85 (g) A purchaser in good faith of any personal property
86 sold under this article takes the property free and clear of
87 any rights of persons against whom the lien was valid.

88 (h) If the operator complies with the provisions of this
89 article, the operator's liability to the occupant is limited to
90 the net proceeds received from the sale of the personal
91 property less the amount of the operator's lien.

92 (i) If an occupant is in default, the operator may deny
93 the occupant access to the leased space.

94 (j)(1)(A) Notices sent to the operator shall be sent to the
95 self-service storage facility where the occupant's personal
96 property is stored by hand delivery or verified mail.

97 (B) Notices to the occupant shall be sent to the occupant
98 at the occupant's last known address.

99 (2) Notices shall be considered delivered when:

100 (A) Deposited with the United States Postal Service or
101 a private delivery service, properly addressed as provided in
102 subsection (b) of this section, with postage prepaid; or

103 (B) Sent by electronic mail to the occupant's last known
104 address.

105 (k)(1) If the occupant is in default for more than 60 days
106 and the personal property stored in the leased space is a
107 motor vehicle, trailer, or watercraft, the operator may have
108 the personal property towed or removed from the self-
109 service storage facility in lieu of a sale authorized under
110 subsection (a) of this section.

111 (2) The operator is immune from civil liability for any
112 damage to the personal property towed or removed from the
113 self-service storage facility under subdivision (1) of this
114 subsection that occurs after the person that undertakes the
115 towing or removal of the personal property takes possession
116 of the personal property.

117 (l) If a rental agreement specifies a limit on the value of
118 personal property that may be stored in the occupant's
119 leased space, the limit is the maximum value of the stored
120 personal property.

121 (m) Nothing in this article impairs or affects the rights
122 of the parties to create additional rights, duties, and
123 obligations in and by virtue of the rental agreement.

§38-14-7. Duties; care, custody, and control of property.

1 (a) The operator shall use reasonable care in
2 maintaining the self-service storage facility for the purposes
3 of storage of personal property.

4 (b) Unless the rental agreement specifically provides
5 otherwise, the exclusive care, custody, and control of all
6 personal property stored in the leased space remains vested
7 in the occupant.

8 (c) An occupant may not use a self-service storage
9 facility for residential purposes.

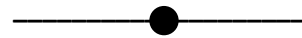
10 (d) An occupant may not store hazardous waste or
11 contraband in the leased space.

§38-14-8. Savings clause.

1 All rental agreements entered into prior to July 1, 2019,
2 which have not been extended or renewed after that date
3 remain valid and may be enforced or terminated in
4 accordance with their terms or as permitted by any other
5 statute or law of this state.

§38-14-9. Effective date and application of article.

1 The provisions of this article apply to all rental
2 agreements entered into or extended or renewed after July
3 1, 2019.



CHAPTER 170

(S. B. 635 - By Senator Smith)

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §5B-2A-5, §5B-2A-6, §5B-2A-8,
and §5B-2A-9 of the Code of West Virginia, 1931, as
amended; to amend said code by adding thereto three new
sections, designated §11-28-1, §11-28-2, and §11-28-3; to
amend and reenact §22-3-14 of said code; to amend and

reenact §22-11-10 of said code; to amend and reenact §22-30-3 and §22-30-24 of said code; to amend and reenact §22A-1-21 and §22A-1-35 of said code; to amend said code by adding thereto a new section, designated §22A-1-43; to amend and reenact §22A-1A-1 and §22A-1A-2 of said code; to amend and reenact §22A-2-2, §22A-2-12, and §22A-2-13 of said code; to amend said code by adding thereto a new section, designated §22A-2-80; to amend and reenact §22A-8-5 of said code; to amend said code by adding thereto a new section, designated §22A-8-10; to amend and reenact §61-3-12 of said code; and to amend said code by adding thereto a new section, designated §61-3B-6, all relating generally to coal mining activities; eliminating the requirement for submission of the community impact statement; requiring review of new mining activity for submission to the Office of Coalfield Community Development; eliminating requirements for submission of certain additional information; requiring the submission of certain information related to land and infrastructure needs upon request of the Office of Coalfield Community Development; requiring and authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to mine subsidence protection for dwelling owners; creating a tax credit for post coal mine site development; adding definitions; delineating eligibility for tax credit for post coal mine site development; specifying application of the tax credit for post coal mine site development; authorizing the Secretary of the Department of Environmental Protection to promulgate rules for permit modification and renewal fees for surface mining operations pursuant to the Water Pollution Control Act; authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to exemptions pursuant to the Aboveground Storage Tank Act; requiring a miner who was issued an assessment to either pay the fine or appeal a violation within 30 days; requiring the Office of Miners' Health, Safety, and Training Mine Rescue Team be provided to a coal operation where the operation has no mine rescue team available within one hour's drive; permitting employers to drug test an employee involved in an accident that results in physical injuries or damage to

equipment or property; requiring miners testing positive for drug use to undergo a mandatory minimum six-month suspension; eliminating timing requirements for submission of a detailed mine ventilation plan to the Director of the Office of Miners' Health, Safety, and Training; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate emergency rules for establishing a course of instruction for apprentice miners; requiring apprentice miners to work at least 90 days in a mine within sight and sound of a mine foreman or assistant foreman; permitting the Director of the Office of Miners' Health, Safety, and Training to decertify miners who fail to perform daily examinations; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate rules generally; holding mine owners, the state, and person or entities engaged in rescue operations harmless for injury or death resulting from mine trespass; authorizing a temporary exemption from environmental regulations during rescue operations; revoking certifications of persons convicted of mine trespass; removing underground coal mines from those places subject to the crime of unlawful entry of building other than a dwelling; creating the new criminal misdemeanor and felony offenses of mine trespass; establishing penalties for mine trespass including enhanced penalties for bodily injury or death during rescue operations; authorizing increased liability for damages caused during a mine trespass; and exempting lawful activities under the West Virginia and United States Constitutions, and state and federal law from the operation of the mine trespass criminal statute.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-5. Powers and duties.

- 1 The office has and may exercise the following duties,
- 2 powers, and responsibilities:

3 (1) To establish a procedure for determining the assets
4 that could be developed in and maintained by the
5 community to foster its long-term viability as provided in
6 §5B-2A-8 of this code and to administer the procedure so
7 established;

8 (2) To establish a procedure for determining the land
9 and infrastructure needs in the general area of the surface
10 mining operations as provided in §5B-2A-9 of this code and
11 to administer the procedure so established;

12 (3) To establish a procedure to develop action reports
13 and annual updates as provided in §5B-2A-10 of this code
14 and to administer the procedure so established;

15 (4) To determine the need for meetings to be held
16 among the various interested parties in the communities
17 impacted by surface mining operations and, when
18 appropriate, to facilitate the meetings;

19 (5) To establish a procedure to assist property owners in
20 the sale of their property as provided in §5B-2A-11 of this
21 code and to administer the procedure so established;

22 (6) In conjunction with the department, to maintain and
23 operate a system to receive and address questions, concerns,
24 and complaints relating to surface mining; and

25 (7) On its own initiative or at the request of a community
26 in close proximity to a mining operation, or a mining
27 operation, offer assistance to facilitate the development of
28 economic or community assets. Such assistance shall
29 include the preparation of a master land use plan pursuant
30 to the provisions of §5B-2A-9 of this code.

§5B-2A-6. Community impact review.

1 (a) The office shall, no less frequently than quarterly,
2 either consult with representatives of the department's
3 Office of Mining and Reclamation or review the
4 department's permit application database(s) to determine

5 whether newly proposed surface mines or significant
6 modifications to existing surface mining operations may
7 present opportunities for mine operators to cooperate with
8 local landowners and local governmental officials to mine
9 and reclaim properties so as to develop community assets or
10 secure developable land and infrastructure pursuant to this
11 article.

12 (b) The provisions of this section shall apply to all
13 surface mining permit applications granted after July 1,
14 2018.

§5B-2A-8. Determining and developing needed community assets.

1 (a) The office shall determine the community assets that
2 may be developed by the community, county, or region to
3 foster its viability when surface mining operations are
4 completed.

5 (b) Community assets to be identified pursuant to
6 subsection (a) of this section may include the following:

7 (1) Water and wastewater services;

8 (2) Developable land for housing, commercial
9 development, or other community purposes;

10 (3) Recreation facilities and opportunities; and

11 (4) Education facilities and opportunities.

12 (c) In determining the nature and extent of the needed
13 community assets, the office shall consider at least the
14 following:

15 (1) An evaluation of the future of the community once
16 mining operations are completed;

17 (2) The prospects for the long-term viability of any asset
18 developed under this section;

19 (3) The desirability of foregoing some or all of the asset
20 development required by this section in lieu of the
21 requirements of §5B-2A-9 of this code; and

22 (4) The extent to which the community, local, state, or
23 the federal government may participate in the development
24 of assets the community needs to assure its viability.

§5B-2A-9. Securing developable land and infrastructure.

1 (a) The office shall determine the land and infrastructure
2 needs in the general area of the surface mining operations
3 for which it makes the determination authorized in §5B-2A-
4 6 of this code.

5 (b) For the purposes of this section, the term “general
6 area” shall mean the county or counties in which the mining
7 operations are being conducted or any adjacent county.

8 (c) To assist the office, the operator, upon request by the
9 office, shall be required to prepare and submit to the office
10 the information set forth in this subsection as follows:

11 (1) A map of the area for which a permit under §22-3-1
12 *et seq.* of this code is being sought or has been obtained;

13 (2) The names of the surface and mineral owners of the
14 property to be mined pursuant to the permit; and

15 (3) A statement of the post-mining land use for all land
16 which may be affected by the mining operations.

17 (d) In making a determination of the land and
18 infrastructure needs in the general area of the mining
19 operations, the office shall consider at least the following:

20 (1) The availability of developable land in the general
21 area;

22 (2) The needs of the general area for developable land;

23 (3) The availability of infrastructure, including, but not
24 limited to, access roads, water service, wastewater service,
25 and other utilities;

26 (4) The amount of land to be mined and the amount of
27 valley to be filled;

28 (5) The amount, nature, and cost to develop and
29 maintain the community assets identified in §5B-2A-8 of
30 this code; and

31 (6) The availability of federal, state, and local grants and
32 low-interest loans to finance all or a portion of the
33 acquisition and construction of the identified land and
34 infrastructure needs of the general area.

35 (e) In making a determination of the land and
36 infrastructure needs in the general area of the surface mining
37 operations, the office shall give significant weight to
38 developable land on or near existing or planned multilane
39 highways.

40 (f) The office may secure developable land and
41 infrastructure for a Development Office or county through
42 the preparation of a master land use plan for inclusion into
43 a reclamation plan prepared pursuant to the provisions of
44 §22-3-10 of this code. No provision of this section may be
45 construed to modify requirements of §22-3-1 *et seq.* of this
46 code.

47 (1) The county commission or other governing body for
48 each county in which there are surface mining operations
49 that are subject to this article shall determine land and
50 infrastructure needs within their jurisdictions through the
51 development of a master land use plan which incorporates
52 post-mining land use needs, including, but not limited to,
53 renewable and alternative energy uses, residential uses,
54 highway uses, industrial uses, commercial uses, agricultural
55 uses, public facility uses, or recreational facility uses. A
56 county commission or other governing body of a county

57 may designate a local, county, or regional development or
58 redevelopment authority to assist in the preparation of a
59 master land use plan. A county commission or other
60 governing body of a county may adopt a master land use
61 plan developed after July 1, 2009, only after a reasonable
62 public comment period.

63 (2) Upon the request of a county or designated
64 development or redevelopment authority, the office shall
65 assist the county or development or redevelopment
66 authority with the development of a master land use plan.

67 (3)(A) The Department of Environmental Protection
68 and the Office of Coalfield Community Development shall
69 review master land use plans existing as of July 1, 2009. If
70 the office determines that a master land use plan complies
71 with the requirements of this article and the rules
72 promulgated pursuant to this article, the office shall approve
73 the plan on or before July 1, 2010.

74 (B) Master land use plans developed after July 1, 2009,
75 shall be submitted to the department and the office for
76 review. The office shall determine whether to approve a
77 master land use plan submitted pursuant to this subdivision
78 within three months of submission. The office shall approve
79 the plan if it complies with the requirements of this article
80 and the rules promulgated pursuant to this article.

81 (C) The office shall review a master land use plan
82 approved under this section every three years. No later than
83 six months before the review of a master land use plan, the
84 county or designated development or redevelopment
85 authority shall submit an updated master land use plan to the
86 department and the office for review. The county may
87 submit its updated master land use plan only after a
88 reasonable public comment period. The office shall approve
89 the master land use plan if the updated plan complies with
90 the requirements of this article and the rules promulgated
91 pursuant to this article.

92 (D) If the office does not approve a master land use plan,
93 the county or designated development or redevelopment
94 authority shall submit a supplemental master land use plan
95 to the office for approval.

96 (4) The required infrastructure component standards
97 needed to accomplish the designated post-mining land uses
98 identified in a master land use plan shall be developed by
99 the county or its designated development or redevelopment
100 authority. These standards must be in place before the
101 respective county or development or redevelopment
102 authority can accept ownership of property donated
103 pursuant to a master land use plan. Acceptance of ownership
104 of such property by a county or development or
105 redevelopment authority may not occur unless it is
106 determined that:

107 (A) The property use is compatible with adjacent land
108 uses;

109 (B) The use satisfies the relevant county or development
110 or redevelopment authority's anticipated need and market
111 use;

112 (C) The property has in place necessary infrastructure
113 components needed to achieve the anticipated use;

114 (D) The use is supported by all other appropriate public
115 agencies;

116 (E) The property is eligible for bond release in
117 accordance with §22-3-23 of this code; and

118 (F) The use is feasible.

119 Required infrastructure component standards require
120 approval of the relevant county commission, commissions,
121 or other county governing body before such standards are
122 accepted. County commission or other county governing
123 body approval may be rendered only after a reasonable
124 public comment period.

125 (5) The provisions of this subsection shall not take effect
126 until legislative rules are promulgated pursuant to this code
127 governing bond releases which assure sound future
128 maintenance by the local or regional economic
129 development, redevelopment, or planning agencies.

CHAPTER 11. TAXATION.

ARTICLE 28. POST-COAL MINE SITE BUSINESS CREDIT.

§11-28-1. Definitions.

1 For purposes of this article:

2 “Business entity” or “person” means an individual,
3 firm, sole proprietorship, partnership, corporation,
4 association, or other entity entitled to a post-coal mine site
5 business credit.

6 “Coal mining operation” means the business of
7 developing, producing, preparing, or loading bituminous
8 coal, subbituminous coal, anthracite, or lignite.

9 “Post-coal mine site” means property that has remained
10 undeveloped for business purposes, subsequent to coal
11 mining operations on the property within the bonded area of
12 the last issued coal mine permit.

13 “Principal place of business” means the physical
14 location from which the entity’s direction, control, and
15 coordination of the operations of the business are primarily
16 exercised, with consideration given, but not limited to:

17 (1) The physical location at which the primary executive
18 and administrative headquarters of the entity is located; and

19 (2) From which the management of overall operations
20 of the entity is directed.

21 “Undeveloped for business purposes” means land has
22 been previously used for coal mining operations and has not

23 been built or developed for use for other activities in the
24 commercial or manufacturing sectors of the economy.

§11-28-2. Eligibility for credit.

1 For those tax years beginning on or after January 1,
2 2020, a business entity will be allowed a credit against
3 certain taxes imposed by this chapter, as described in §11-
4 28-3 of this code, if the business entity meets the following
5 requirements:

6 (1) The entity is a corporation, small business
7 corporation, limited liability company, partnership, or
8 unincorporated business entity as defined in this code that
9 also has a principal place of business in the state;

10 (2) The entity employs at the post-coal mine site a
11 minimum of 10 full-time (32 hours a week or more)
12 employees; and

13 (3) The entity's principal place of business is located on
14 a post-coal mine site within this state.

§11-28-3. Application of credit.

1 (a) *Amount of credit.* — For those tax years beginning
2 on or after January 1, 2020, an eligible business entity will
3 be allowed a tax credit in the amount of 50 percent of that
4 entity's capital expenditures (as defined in Section 263 of
5 the United States Internal Revenue Code of 1986, as
6 amended) at the post-coal mine site for the first five taxable
7 years during which the entity's principal place of business
8 is located on the post-coal mine site within this state. The
9 dollar amount of the credit claimed by an eligible business
10 entity may not exceed the amount of 50 percent of the
11 entity's state income tax for a single year.

12 (b) *Application of annual credit allowance.* — The
13 credit created by this article is allowed as a credit against
14 the taxpayer's state tax liability applied as provided in
15 subdivisions (1) and (2) of this subsection, and in that order.

16 (1) *Corporation net income taxes.* — Any credit is first
17 applied to reduce the taxes imposed by §11-24-1 *et seq.* of
18 this code for the taxable year.

19 (2) *Personal income taxes.* — After application of §11-
20 28-3(b)(1) of this code, any unused credit is next applied as
21 follows:

22 (A) If the person making the qualified investment is an
23 electing small business corporation (as defined in Section
24 1361 of the United States Internal Revenue Code of 1986,
25 as amended), a partnership or a limited liability company
26 that is treated as a partnership for federal income tax
27 purposes, then any unused credit (after application of §11-
28 28-3(b)(1) of this code) is allowed as a credit against the
29 taxes imposed by §11-21-1 *et seq.* of this code on the
30 income from business or other activity subject to tax under
31 §11-23-1 *et seq.* of this code.

32 (B) Electing small business corporations, limited
33 liability companies, partnerships, and other unincorporated
34 organizations shall allocate the credit allowed by this article
35 among its members in the same manner as profits and losses
36 are allocated for the taxable year.

37 (3) A credit is not allowed under this section against any
38 employer withholding taxes imposed by §11-21-1 *et seq.* of
39 this code.

40 (c) *Unused credit.* — A carryback to a prior taxable year
41 is not allowed for the amount of any unused portion of any
42 annual credit allowance. If the amount of the allowable
43 credit exceeds the taxpayer's tax liability for the taxable
44 year, the amount which exceeds the tax liability may be
45 carried over and applied as a credit against the tax liability
46 of the taxpayer pursuant to §11-21-1 *et seq.* or §11-24-1
47 *seq.* of this code for each of the next 10 taxable years
48 following the year of creation of the tax credit unless sooner
49 used.

50 (d) *Eligibility requirements.* — Those businesses that
51 benefit from other state economic development programs or
52 incentives that result in a reduction of their income tax
53 liability due shall not be eligible for this tax credit.

54 (e) *Rule-making authority.* — The State Tax Division
55 shall promulgate emergency rules pursuant to the provisions
56 of §29A-3-15 of this code. These rules shall include, at a
57 minimum, forms for use in claiming the credit authorized in
58 this article, administration of the credit authorized in this
59 article, and any other matter seen necessary by the State Tax
60 Division for the administration of this article.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE AND COAL MINING RECLAMATION ACT.

§22-3-14. **General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.**

1 (a) The director shall promulgate separate rules directed
2 toward the surface effects of underground coal mining
3 operations, embodying the requirements in subsection (b) of
4 this section: *Provided,* That in adopting such rules, the
5 director shall consider the distinct difference between
6 surface coal mines and underground coal mines in West
7 Virginia. Such rules may not conflict with or supersede any
8 provision of the federal or state coal mine health and safety
9 laws or any rule issued pursuant thereto.

10 (b) Each permit issued by the director pursuant to this
11 article and relating to underground coal mining shall require
12 the operation at a minimum to:

13 (1) Adopt measures consistent with known technology
14 in order to prevent subsidence causing material damage to
15 the extent technologically and economically feasible,
16 maximize mine stability and maintain the value and

17 reasonably foreseeable use of overlying surface lands,
18 except in those instances where the mining technology used
19 requires planned subsidence in a predictable and controlled
20 manner: *Provided*, That this subsection does not prohibit the
21 standard method of room and pillar mining;

22 (2) Seal all portals, entryways, drifts, shafts, or other
23 openings that connect the earth's surface to the underground
24 mine workings when no longer needed for the conduct of
25 the mining operations in accordance with the requirements
26 of all applicable federal and state law and rules promulgated
27 pursuant thereto;

28 (3) Fill or seal exploratory holes no longer necessary for
29 mining and maximize to the extent technologically and
30 economically feasible, if environmentally acceptable, return
31 of mine and processing waste, tailings, and any other waste
32 incident to the mining operation to the mine workings or
33 excavations;

34 (4) With respect to surface disposal of mine wastes,
35 tailings, coal processing wastes, and other wastes in areas
36 other than the mine workings or excavations, stabilize all
37 waste piles created by the operator from current operations
38 through construction in compacted layers, including the use
39 of incombustible and impervious materials, if necessary,
40 and assure that any leachate therefrom will not degrade
41 surface or groundwaters below water quality standards
42 established pursuant to applicable federal and state law and
43 that the final contour of the waste accumulation will be
44 compatible with natural surroundings and that the site is
45 stabilized and revegetated according to the provisions of
46 this section;

47 (5) Design, locate, construct, operate, maintain, enlarge,
48 modify, and remove or abandon, in accordance with the
49 standards and criteria developed pursuant to §22-3-13 of
50 this code, all existing and new coal mine waste piles
51 consisting of mine wastes, tailings, coal processing wastes,

52 and solid wastes and used either temporarily or permanently
53 as dams or embankments;

54 (6) Establish on regraded areas and all other disturbed
55 areas a diverse and permanent vegetative cover capable of
56 self-regeneration and plant succession and at least equal in
57 extent of cover to the natural vegetation of the area within
58 the time period prescribed in §22-3-13(b)(20) of this code;

59 (7) Protect off-site areas from damages which may
60 result from such mining operations;

61 (8) Eliminate fire hazards and otherwise eliminate
62 conditions which constitute a hazard to health and safety of
63 the public;

64 (9) Minimize the disturbance of the prevailing
65 hydrologic balance at the mine site and in associated off-site
66 areas and to the quantity and the quality of water in surface
67 and groundwater systems both during and after mining
68 operations and during reclamation by: (A) Avoiding acid or
69 other toxic mine drainage by such measures as, but not
70 limited to: (i) Preventing or removing water from contact
71 with toxic producing deposits; (ii) treating drainage to
72 reduce toxic content which adversely affects downstream
73 water before being released to water courses; and (iii)
74 casing, sealing, or otherwise managing boreholes, shafts,
75 and wells to keep acid or other toxic drainage from entering
76 ground and surface waters; and (B) conducting mining
77 operations so as to prevent, to the extent possible using the
78 best technology currently available, additional contributions
79 of suspended solids to streamflow or runoff outside the
80 permit area, but in no event shall the contributions be in
81 excess of requirements set by applicable state or federal law,
82 and avoiding channel deepening or enlargement in
83 operations requiring the discharge of water from mines:
84 *Provided*, That in recognition of the distinct differences
85 between surface and underground mining the monitoring of
86 water from underground coal mine workings shall be in

87 accordance with the provisions of the Clean Water Act of
88 1977;

89 (10) With respect to other surface impacts of
90 underground mining not specified in this subsection,
91 including the construction of new roads or the improvement
92 or use of existing roads to gain access to the site of such
93 activities and for haulage, repair areas, storage areas,
94 processing areas, shipping areas, and other areas upon
95 which are sited structures, facilities, or other property or
96 materials on the surface, resulting from or incident to such
97 activities, operate in accordance with the standards
98 established under §22-3-13 of this code for such effects
99 which result from surface-mining operations: *Provided*,
100 That the director shall make such modifications in the
101 requirements imposed by this subdivision as are necessary
102 to accommodate the distinct difference between surface and
103 underground mining in West Virginia;

104 (11) To the extent possible using the best technology
105 currently available, minimize disturbances and adverse
106 impacts of the operation on fish, aquatic life, wildlife, and
107 related environmental values, and achieve enhancement of
108 such resources where practicable; and

109 (12) Unless otherwise permitted by the director and in
110 consideration of the relevant safety and environmental
111 factors, locate openings for all new drift mines working in
112 acid producing or iron producing coal seams in a manner as
113 to prevent a gravity discharge of water from the mine.

114 (c) In order to protect the stability of the land, the
115 director shall suspend underground mining under urbanized
116 areas, cities, towns, and communities and adjacent to
117 industrial or commercial buildings, major impoundments,
118 or permanent streams if he or she finds imminent danger to
119 inhabitants of the urbanized areas, cities, towns, or
120 communities.

121 (d) The provisions of this article relating to permits,
122 bonds, insurance, inspections, reclamation and
123 enforcement, public review, and administrative and judicial
124 review are also applicable to surface operations and surface
125 impacts incident to an underground mine with such
126 modifications by rule to the permit application
127 requirements, permit approval, or denial procedures and
128 bond requirements as are necessary to accommodate the
129 distinct difference between surface mines and underground
130 mines in West Virginia.

131 (e) The secretary shall promulgate for review and
132 consideration by the West Virginia Legislature during the
133 regular session of the Legislature, 2020, revisions to
134 legislative rules (38 CSR 2) pertaining to surface owner
135 protection from material damage due to subsidence under
136 this article. The secretary shall specifically consider
137 adoption of the federal standards codified at 30 C.F.R. §
138 817.121.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-10. Water Quality Management Fund established; permit application fees; annual permit fees; dedication of proceeds; rules.

1 (a) The special revenue fund designated the Water
2 Quality Management Fund established in the State Treasury
3 on July 1, 1989, is hereby continued.

4 (b) The permit application fees and annual permit fees
5 established and collected pursuant to this section; any
6 interest or surcharge assessed and collected by the secretary;
7 interest accruing on investments and deposits of the fund;
8 and any other moneys designated by the secretary shall be
9 deposited into the Water Quality Management Fund. The
10 secretary shall expend the proceeds of the Water Quality
11 Management Fund for the review of initial permit
12 applications, renewal permit applications, and permit
13 issuance activities.

14 (c) The secretary shall propose for promulgation,
15 legislative rules in accordance with the provisions of §29A-
16 1-1 *et seq.* of this code, to establish a schedule of application
17 fees for all applications except for surface coal mining
18 operations as defined in §22-3-13 of this code. The
19 appropriate fee shall be submitted by the applicant to the
20 department with the application filed pursuant to this article
21 for any state water pollution control permit or national
22 pollutant discharge elimination system permit. The schedule
23 of application fees shall be designed to establish reasonable
24 categories of permit application fees based upon the
25 complexity of the permit application review process
26 required by the department pursuant to the provisions of this
27 article and the rules promulgated under this article:
28 *Provided*, That no initial application fee may exceed
29 \$15,000 for any facility nor may any permit renewal
30 application fee exceed \$5,000. The department may not
31 process any permit application pursuant to this article until
32 the required permit application fee has been received.

33 (d) The secretary shall propose for promulgation
34 legislative rules in accordance with the provisions of §29A-
35 1-1 *et seq.* of this code to establish a schedule of permit fees
36 to be assessed annually upon each person holding a state
37 water pollution control permit or national pollutant
38 discharge elimination system permit issued pursuant to this
39 article except for permits held by surface coal mining
40 operations as defined in §22-3-1 *et seq.* of this code. Each
41 person holding a permit shall pay the prescribed annual
42 permit fee to the department pursuant to the rules
43 promulgated under this section: *Provided*, That no person
44 holding a permit for a home aerator of 600 gallons and under
45 shall be required to pay an annual permit fee. The schedule
46 of annual permit fees shall be designed to establish
47 reasonable categories of annual permit fees based upon the
48 relative potential of categories or permits to degrade the
49 waters of the state: *Provided, however*, That no annual
50 permit fee may exceed \$5,000. The secretary may declare
51 any permit issued pursuant to this article void when the

52 annual permit fee is more than 90 days past due pursuant to
53 the rules promulgated under this section. Voiding of the
54 permit will only become effective upon the date the
55 secretary mails, by certified mail, written notice to the
56 permittee's last known address notifying the permittee that
57 the permit has been voided.

58 (e) The secretary shall file a quarterly report with the
59 Joint Committee on Government and Finance setting forth
60 the fees established and collected pursuant to this section.

61 (f) On July 1, 2002, and each year thereafter, a \$1,000
62 fee shall be assessed for permit applications and renewals
63 submitted pursuant to this article for surface coal mining
64 operations, as defined in §22-3-1 *et seq.* of this code. On
65 July 1, 2002, and each year thereafter, a \$500 fee shall be
66 assessed for application for permit modifications submitted
67 pursuant to this article for surface coal mining operations,
68 as defined in §22-3-1 *et seq.* of this code. Beginning July 1,
69 2002 and every year thereafter, an annual permit fee shall
70 be assessed on the issuance anniversary dates of all permits
71 issued pursuant to this article for surface coal mining
72 operations as defined in §22-3-1 *et seq.* of this code. The
73 annual permit fee shall be collected as follows: \$500 for the
74 fiscal year beginning on July 1, 2002, and \$1,000 for each
75 fiscal year thereafter. For all other categories of permitting
76 actions pursuant to this article related to surface coal mining
77 operations, the secretary shall propose for promulgation
78 legislative rules in accordance with the provisions of §29A-
79 1-1 *et seq.* of this code to establish a schedule of permitting
80 fees.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-3. Definitions.

1 For purposes of this article:

2 (1) "Aboveground storage tank" or "tank" or "AST"
3 means a device made to contain an accumulation of more
4 than 1,320 gallons of fluids that are liquid at standard

5 temperature and pressure, which is constructed primarily of
6 nonearthen materials, including concrete, steel, plastic, or
7 fiberglass reinforced plastic, which provide structural
8 support, more than 90 percent of the capacity of which is
9 above the surface of the ground, and includes all ancillary
10 pipes and dispensing systems up to the first point of
11 isolation. The term includes stationary devices which are
12 permanently affixed, and mobile devices which remain in
13 one location on a continuous basis for 365 or more days. A
14 device meeting this definition containing hazardous waste
15 subject to regulation under 40 C. F. R. Parts 264 and 265,
16 exclusive of tanks subject to regulation under 40 C. F. R. §
17 265.201 is included in this definition but is not a regulated
18 tank. Notwithstanding any other provision of this code to
19 the contrary, the following categories of devices are not
20 subject to the provisions of this article:

21 (A) Shipping containers that are subject to state or
22 federal laws or regulations governing the transportation of
23 hazardous materials, including, but not limited to, railroad
24 freight cars subject to federal regulation under the Federal
25 Railroad Safety Act, 49 U. S. C. §20101-2015, as amended,
26 including, but not limited to, federal regulations
27 promulgated thereunder at 49 C. F. R. §§172, 173, or 174;

28 (B) Barges or boats subject to federal regulation under
29 the United States Coast Guard, United States Department of
30 Homeland Security, including, but not limited to, federal
31 regulations promulgated at 33 C. F. R. 1 *et seq.* or subject to
32 other federal law governing the transportation of hazardous
33 materials;

34 (C) Swimming pools;

35 (D) Process vessels;

36 (E) Devices containing drinking water for human or
37 animal consumption, surface water or groundwater,
38 demineralized water, noncontact cooling water, or water
39 stored for fire or emergency purposes;

40 (F) Devices containing food or food-grade materials
41 used for human or animal consumption and regulated under
42 the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-
43 392);

44 (G) Except when located in a zone of critical concern, a
45 device located on a farm, the contents of which are used
46 exclusively for farm purposes and not for commercial
47 distribution;

48 (H) Devices holding wastewater that is being actively
49 treated or processed (e.g., clarifier, chlorine contact
50 chamber, batch reactor, etc.);

51 (I) Empty tanks held in inventory or offered for sale;

52 (J) Pipeline facilities, including gathering lines,
53 regulated under the Natural Gas Pipeline Safety Act of 1968
54 or the Hazardous Liquid Pipeline Safety Act of 1979, or an
55 intrastate pipeline facility regulated by the West Virginia
56 Public Service Commission or otherwise regulated under
57 any state law comparable to the provisions of either the
58 Natural Gas Pipeline Safety Act of 1968 or the Hazardous
59 Liquid Pipeline Safety Act of 1979;

60 (K) Liquid traps, atmospheric and pressure vessels, or
61 associated gathering lines related to oil or gas production
62 and gathering operations;

63 (L) Electrical equipment such as transformers, circuit
64 breakers, and voltage regulator transformers;

65 (M) Devices having a capacity of 210 barrels or less,
66 containing brine water or other fluids produced in
67 connection with hydrocarbon production activities, that are
68 not located in a zone of critical concern; and

69 (N) Devices having a capacity of 10,000 gallons or less,
70 containing sodium chloride or calcium chloride water for
71 roadway snow and ice pretreatment, that are not located in
72 a zone of critical concern: *Provided*, That all such devices

73 exempted under subdivisions (M) and (N) of this
74 subdivision must still meet the registration requirements
75 contained in §22-30-4 of this code, the notice requirements
76 contained in §22-30-10 of this code, and the signage
77 requirements contained in §22-30-11 of this code.

78 (2) “Department” means the West Virginia Department
79 of Environmental Protection.

80 (3) “First point of isolation” means the valve, pump,
81 dispenser, or other device or equipment on or nearest to the
82 tank where the flow of fluids into or out of the tank may be
83 shut off manually or where it automatically shuts off in the
84 event of a pipe or tank failure.

85 (4) “Nonoperational storage tank” means an empty
86 aboveground storage tank in which fluids will not be
87 deposited or from which fluids will not be dispensed on or
88 after the effective date of this article.

89 (5) “Operator” means any person in control of, or
90 having responsibility for, the daily operation of an
91 aboveground storage tank.

92 (6) “Owner” means a person who holds title to, controls,
93 or owns an interest in an aboveground storage tank,
94 including the owner immediately preceding the
95 discontinuation of its use. “Owner” does not mean a person
96 who holds an interest in a tank for financial security unless
97 the holder has taken possession of and operated the tank.

98 (7) “Person”, “persons”, or “people” means any
99 individual, trust, firm, owner, operator, corporation, or other
100 legal entity, including the United States government, an
101 interstate commission or other body, the state or any agency,
102 board, bureau, office, department, or political subdivision of
103 the state, but does not include the Department of
104 Environmental Protection.

105 (8) “Process vessel” means a tank that forms an integral
106 part of a production process through which there is a steady,

107 variable, recurring, or intermittent flow of materials during
108 the operation of the process or in which a biological,
109 chemical, or physical change in the material occurs. This
110 does not include tanks used for storage of materials prior to
111 their introduction into the production process or for the
112 storage of finished products or by-products of the
113 production process.

114 (9) “Public groundwater supply source” means a
115 primary source of water supply for a public water system
116 which is directly drawn from a well, underground stream,
117 underground reservoir, underground mine, or other primary
118 sources of water supplies which are found underneath the
119 surface of the state.

120 (10) “Public surface water supply source” means a
121 primary source of water supply for a public water system
122 which is directly drawn from rivers, streams, lakes, ponds,
123 impoundments, or other primary sources of water supplies
124 which are found on the surface of the state.

125 (11) “Public surface water influenced groundwater
126 supply source” means a source of water supply for a public
127 water system which is directly drawn from an underground
128 well, underground river or stream, underground reservoir,
129 or underground mine, and the quantity and quality of the
130 water in that underground supply source is heavily
131 influenced, directly or indirectly, by the quantity and quality
132 of surface water in the immediate area.

133 (12) “Public water system” means:

134 (A) Any water supply or system which regularly
135 supplies or offers to supply water for human consumption
136 through pipes or other constructed conveyances, if serving
137 at least an average of 25 individuals per day for at least 60
138 days per year, or which has at least 15 service connections,
139 and shall include:

140 (i) Any collection, treatment, storage, and distribution
141 facilities under the control of the owner or operator of the
142 system and used primarily in connection with the system;
143 and

144 (ii) Any collection or pretreatment storage facilities not
145 under such control which are used primarily in connection
146 with the system.

147 (B) A public water system does not include a bathhouse
148 located on coal company property solely for the use of its
149 employees or a system which meets all of the following
150 conditions:

151 (i) Consists only of distribution and storage facilities
152 (and does not have any collection and treatment facilities);

153 (ii) Obtains all of its water from, but is not owned or
154 operated by, a public water system which otherwise meets
155 the definition;

156 (iii) Does not sell water to any person; and

157 (iv) Is not a carrier conveying passengers in interstate
158 commerce.

159 (13) “Regulated level 1 aboveground storage tank” or
160 “level 1 regulated tank” means:

161 (A) An AST located within a zone of critical concern,
162 source water protection area, public surface water
163 influenced groundwater supply source area, or any AST
164 system designated by the secretary as a level 1 regulated
165 tank; or

166 (B) An AST that contains substances defined in section
167 101(14) of the Comprehensive Environmental Response,
168 Compensation and Liability Act (CERCLA) as a
169 “hazardous substance” (42 U. S. C. § 9601(14)); or is on
170 EPA’s Consolidated List of Chemicals Subject to the
171 Emergency Planning and Community Right to Know Act

172 (EPCRA), CERCLA, and §112(r) of the Clean Air Act
173 (CAA) (known as the List of Lists) as provided by 40 C. F.
174 R. §§ 355, 372, 302, and 68 in a concentration of one percent
175 or greater, regardless of the AST's location, except ASTs
176 containing petroleum are not level 1 regulated tanks based
177 solely upon containing constituents recorded on the
178 CERCLA lists; or

179 (C) An AST with a capacity of 50,000 gallons or more,
180 regardless of its contents or location.

181 (14) "Regulated level 2 aboveground storage tank" or
182 "level 2 regulated tank" means an AST that is located within
183 a zone of peripheral concern that is not a level 1 regulated
184 tank.

185 (15) "Regulated aboveground storage tank" or
186 "regulated tank" means an AST that meets the definition of
187 a level 1 or level 2 regulated tank.

188 (16) "Release" means any spilling, leaking, emitting,
189 discharging, escaping, or leaching of fluids from an
190 aboveground storage tank into the waters of the state or
191 escaping from secondary containment.

192 (17) "Secondary containment" means a safeguard
193 applied to one or more aboveground storage tanks that
194 prevents the discharge into the waters of the state of the
195 entire capacity of the largest single tank and sufficient
196 freeboard to contain precipitation. In order to qualify as
197 secondary containment, the barrier and containment field
198 must be sufficiently impervious to contain fluids in the
199 event of a release, and may include double-walled tanks,
200 dikes, containment curbs, pits, or drainage trench enclosures
201 that safely confine the release from a tank in a facility
202 catchment basin or holding pond. Earthen dikes and similar
203 containment structures must be designed and constructed to
204 contain, for a minimum of 72 hours, fluid that escapes from
205 a tank.

206 (18) “Secretary” means the Secretary of the Department
207 of Environmental Protection, or his or her designee.

208 (19) “Source water protection area” for a public
209 groundwater supply source is the area within an aquifer that
210 supplies water to a public water supply well within a five-
211 year time of travel and is determined by the mathematical
212 calculation of the locations from which a drop of water
213 placed at the edge of the protection area would theoretically
214 take five years to reach the well.

215 (20) “Zone of critical concern” for a public surface
216 water supply source and for a public surface water
217 influenced groundwater supply source is a corridor along
218 streams within a watershed that warrants detailed scrutiny
219 due to its proximity to the surface water intake and the
220 intake’s susceptibility to potential contaminants within that
221 corridor. The zone of critical concern is determined using a
222 mathematical model that accounts for stream flows,
223 gradient and area topography. The length of the zone of
224 critical concern is based on a five-hour time of travel of
225 water in the streams to the intake. The width of the zone of
226 critical concern is 1,000 feet measured horizontally from
227 each bank of the principal stream and 500 feet measured
228 horizontally from each bank of the tributaries draining into
229 the principal stream.

230 (21) “Zone of peripheral concern” for a public surface
231 water supply source and for a public surface water
232 influenced groundwater supply source is a corridor along
233 streams within a watershed that warrants scrutiny due to its
234 proximity to the surface water intake and the intake’s
235 susceptibility to potential contaminants within that corridor.
236 The zone of peripheral concern is determined using a
237 mathematical model that accounts for stream flows,
238 gradient, and area topography. The length of the zone of
239 peripheral concern is based on an additional five-hour time
240 of travel of water in the streams beyond the perimeter of the
241 zone of critical concern, which creates a protection zone of
242 10 hours above the water intake. The width of the zone of

243 peripheral concern is 1,000 feet measured horizontally from
244 each bank of the principal stream and 500 feet measured
245 horizontally from each bank of the tributaries draining into
246 the principal stream.

§22-30-24. Powers and duties of secretary.

1 (a) In addition to the powers and duties prescribed in
2 this chapter or otherwise provided by law, the secretary has
3 the exclusive authority to perform all acts necessary to
4 implement this article.

5 (b) The secretary may receive and expend money from
6 the federal government or any other sources to implement
7 this article.

8 (c) The secretary may revoke any registration or
9 certificate to operate for a significant violation of this article
10 or the rules promulgated hereunder.

11 (d) The secretary may issue orders, assess civil
12 penalties, institute enforcement proceedings, and prosecute
13 violations of this article as necessary.

14 (e) The secretary, in accordance with this article, may
15 order corrective action to be undertaken, take corrective
16 action, or authorize a third party to take corrective action.

17 (f) The secretary may recover the costs of taking
18 corrective action, including costs associated with
19 authorizing third parties to perform corrective action. Costs
20 may not include routine inspection and administrative
21 activities not associated with a release.

22 (g) The secretary shall promulgate for review and
23 consideration by the West Virginia Legislature in the
24 regular session of the Legislature, 2020, legislative rules to
25 incorporate the relevant provisions of this article in the
26 Groundwater Protection Rules for Coal Mining, 38 CSR 2F,
27 for tanks and devices located at coal mining operations.

**CHAPTER 22A. MINERS' HEALTH, SAFETY, AND
TRAINING.**

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY, AND
TRAINING; ADMINISTRATION; ENFORCEMENT.**

§22A-1-21. Penalties.

1 (a) (1) Any operator of a coal mine in which a violation
2 of any health or safety rule occurs or who violates any other
3 provisions of this chapter shall be assessed a civil penalty
4 by the director under subdivision (3) of this subsection,
5 which shall be not more than \$5,000, for each violation,
6 unless the director determines that it is appropriate to
7 impose a special assessment for the violation, pursuant to
8 the provisions of subdivision (2), subsection (b) of this
9 section. Each violation constitutes a separate offense. In
10 determining the amount of the penalty, the director shall
11 consider the operator's history of previous violations,
12 whether the operator was negligent, the appropriateness of
13 the penalty to the size of the business of the operator
14 charged, the gravity of the violation, and the demonstrated
15 good faith of the operator charged in attempting to achieve
16 rapid compliance after notification of a violation.

17 (2) Revisions to the assessment of civil penalties shall
18 be proposed as legislative rules in accordance with the
19 provisions of §29A-3-1 *et seq.* of this code.

20 (3) Any miner who knowingly violates any health or
21 safety provision of this chapter or health or safety rule
22 promulgated pursuant to this chapter is subject to a civil
23 penalty assessed by the director under subdivision (4) of this
24 subsection which shall not be more than \$250 for each
25 occurrence of the violation. Any miner issued a violation
26 under this subsection shall either appeal the violation or pay
27 the civil penalty within 30 days after receipt of the violation.
28 Any violation not appealed or paid within 30 days shall
29 become delinquent.

30 Any civil penalty that becomes delinquent on or after
31 July 1, 2019, and has not been paid shall be deemed a failure
32 by the miner to perform a duty mandated pursuant to this
33 article for purposes of §22A-1-31 of this code.

34 (4) A civil penalty under subdivision (1) or (2)
35 ,subsection (a) of this section or subdivision (1) or (2),
36 subsection (b) of this section shall be assessed by the
37 director only after the person charged with a violation under
38 this chapter or rule promulgated pursuant to this chapter has
39 been given an opportunity for a public hearing and the
40 director has determined, by a decision incorporating the
41 director's findings of fact in the decision, that a violation did
42 occur and the amount of the penalty which is warranted and
43 incorporating, when appropriate, an order in the decision
44 requiring that the penalty be paid. Any hearing under this
45 section shall be of record.

46 (5) If the person against whom a civil penalty is assessed
47 fails to pay the penalty within the time prescribed in the
48 order, the director may file a petition for enforcement of the
49 order in any appropriate circuit court. The petition shall
50 designate the person against whom the order is sought to be
51 enforced as the respondent. A copy of the petition shall
52 immediately be sent by certified mail, return receipt
53 requested, to the respondent and to the representative of the
54 miners at the affected mine or the operator, as the case may
55 be. The director shall certify and file in the court the record
56 upon which the order sought to be enforced was issued. The
57 court has jurisdiction to enter a judgment enforcing,
58 modifying and enforcing as modified, or setting aside, in
59 whole or in part, the order and decision of the director or it
60 may remand the proceedings to the director for any further
61 action it may direct. The court shall consider and determine
62 de novo all relevant issues, except issues of fact which were
63 or could have been litigated in review proceedings before a
64 circuit court under §22A-1-20 of this code and, upon the
65 request of the respondent, those issues of fact which are in
66 dispute shall be submitted to a jury. On the basis of the

67 jury's findings the court shall determine the amount of the
68 penalty to be imposed. Subject to the direction and control
69 of the Attorney General, attorneys appointed for the director
70 may appear for and represent the director in any action to
71 enforce an order assessing civil penalties under this
72 subdivision.

73 (b) (1) Any operator who knowingly violates a health or
74 safety provision of this chapter or health or safety rule
75 promulgated pursuant to this chapter, or knowingly violates
76 or fails or refuses to comply with any order issued under
77 §22A-1-15 of this code, or any order incorporated in a final
78 decision issued under this article, except an order
79 incorporated in a decision under §22A-1-22(a) or §22A-1-
80 22(b) of this code, shall be assessed a civil penalty by the
81 director under subdivision (5), subsection (a) of this section
82 of not more than \$5,000 and for a second or subsequent
83 violation assessed a civil penalty of not more than \$10,000,
84 unless the director determines that it is appropriate to
85 impose a special assessment for the violation, pursuant to
86 the provisions of subdivision (2) of this subsection.

87 (2) In lieu of imposing a civil penalty pursuant to the
88 provisions of subsection (a) of this section or subdivision
89 (1) of this subsection, the director may impose a special
90 assessment if an operator violates a health or safety
91 provision of this chapter or health or safety rule
92 promulgated pursuant to this chapter and the violation is of
93 serious nature and involves one or more of the following by
94 the operator:

95 (A) Violations involving fatalities and serious injuries;

96 (B) Failure or refusal to comply with any order issued
97 under §22A-1-15 of this code;

98 (C) Operation of a mine in the face of a closure order;

99 (D) Violations involving an imminent danger;

100 (E) Violations involving an extraordinarily high degree
101 of negligence or gravity or other unique aggravating
102 circumstances; or

103 (F) A discrimination violation under §22A-1-22 of this
104 code.

105 In situations in which the director determines that there
106 are factors present which would make it appropriate to
107 impose a special assessment, the director shall assess a civil
108 penalty of at least \$5,000 and not more than \$10,000.

109 (c) Whenever a corporate operator knowingly violates a
110 health or safety provision of this chapter or health or safety
111 rules promulgated pursuant to this chapter, or knowingly
112 violates or fails or refuses to comply with any order issued
113 under this law or any order incorporated in a final decision
114 issued under this law, except an order incorporated in a
115 decision issued under §22A-1-22(a) or §22A-1-22(b) of this
116 code, any director, officer, or agent of the corporation who
117 knowingly authorized, ordered or carried out the violation,
118 failure or refusal is subject to the same civil penalties that
119 may be imposed upon a person under subsections (a) and
120 (b) of this section.

121 (d) Whoever knowingly makes any false statement,
122 representation, or certification in any application, record,
123 report, plan, or other document filed or required to be
124 maintained pursuant to this law or any order or decision
125 issued under this law is guilty of a misdemeanor and, upon
126 conviction thereof, shall be fined not more than \$10,000 or
127 confined in jail not more than one year, or both fined and
128 confined. The conviction of any person under this
129 subsection shall result in the revocation of any certifications
130 held by the person under this chapter which certified or
131 authorized the person to direct other persons in coal mining
132 by operation of law and bars that person from being issued
133 any license under this chapter, except a miner's
134 certification, for a period of not less than one year or for a
135 longer period as may be determined by the director.

136 (e) Whoever willfully distributes, sells, offers for sale,
137 introduces, or delivers in commerce any equipment for use
138 in a coal mine, including, but not limited to, components and
139 accessories of the equipment, who willfully misrepresents
140 the equipment as complying with the provisions of this law,
141 or with any specification or rule of the director applicable to
142 the equipment, and which does not comply with the law,
143 specification or rule, is guilty of a misdemeanor and, upon
144 conviction thereof, is subject to the same fine and
145 confinement that may be imposed upon a person under
146 subsection (d) of this section.

147 (f) Any person who willfully violates any safety
148 standard pursuant to this chapter or a rule promulgated
149 thereunder that causes a fatality or who willfully orders or
150 carries out such violation that causes a fatality is guilty of a
151 felony and, upon conviction thereof, shall be fined not more
152 than \$10,000 or confined in a state correctional facility not
153 less than one year and not more than five years, or both fined
154 and confined.

155 (g) There is continued in the Treasury of the State of
156 West Virginia a Special Health, Safety and Training Fund.
157 All civil penalty assessments collected under this section
158 shall be collected by the director and deposited with the
159 Treasurer of the State of West Virginia to the credit of the
160 Special Health, Safety and Training Fund. The fund shall be
161 used by the director who is authorized to expend the moneys
162 in the fund for the administration of this chapter.

§22A-1-35. Mine rescue teams.

1 (a) The operator shall provide mine rescue coverage at
2 each active underground mine.

3 (b) Mine rescue coverage may be provided by:

4 (1) Establishing at least two mine rescue teams which
5 are available at all times when miners are underground; or

6 (2) Entering into an arrangement for mine rescue
7 services which assures that at least two mine rescue teams
8 are available at all times when miners are underground.

9 (3) A West Virginia Office of Miners' Health, Safety,
10 and Training Mine Rescue Team shall serve as a second or
11 backup team for mines within the state and qualify as one of
12 the two teams required under subdivision (1) of this
13 subsection and in accordance with 30 CFR, Part 49.20(4)
14 for all mines with no backup team available within a one-
15 hour drive to the mine. The operator shall contact the office
16 and notify them of the need for mine rescue services
17 beginning July 1, 2019. The director shall utilize surplus
18 funds from the West Virginia Office of Miners' Health,
19 Safety, and Training's special revenue fund to provide
20 backup mine rescue services.

21 (c) As used in this section, mine rescue teams shall be
22 considered available where teams are capable of presenting
23 themselves at the mine site(s) within a reasonable time after
24 notification of an occurrence which might require their
25 services. Rescue team members will be considered available
26 even though performing regular work duties or while in an
27 off-duty capacity. The requirement that mine rescue teams
28 be available does not apply when teams are participating in
29 mine rescue contests or providing rescue services to another
30 mine.

31 (d) In the event of a fire, explosion, or recovery
32 operations in or about any mine, the director is hereby
33 authorized to assign any mine rescue team to said mine to
34 protect and preserve life and property. The director may also
35 assign mine rescue and recovery work to inspectors,
36 instructors, or other qualified employees of the office as he
37 or she deems necessary.

38 (e) The ground travel time between any mine rescue
39 station and any mine served by that station shall not exceed
40 two hours. To ensure adequate rescue coverage for all
41 underground mines, no mine rescue station may provide

42 coverage for more than 70 mines within the two-hour
43 ground travel limit as defined in this subsection.

44 (f) Each mine rescue team shall consist of five members
45 and one alternate, who are fully qualified, trained, and
46 equipped for providing emergency mine rescue service.
47 Each mine rescue team shall be trained by a state certified
48 mine rescue instructor.

49 (g) Each member of a mine rescue team must have been
50 employed in an underground mine for a minimum of one
51 year. For the purpose of mine rescue work only, miners who
52 are employed on the surface but work regularly
53 underground meet the experience requirement. The
54 underground experience requirement is waived for those
55 members of a mine rescue team on the effective date of this
56 statute.

57 (h) An applicant for initial mine rescue training shall
58 pass, on at least an annual basis, a physical examination by
59 a licensed physician certifying his or her fitness to perform
60 mine rescue work. A record that such examination was
61 taken, together with pertinent data relating thereto, shall be
62 kept on file by the operator and a copy shall be furnished to
63 the director.

64 (i) Upon completion of the initial training, all mine
65 rescue team members shall receive at least 40 hours of
66 refresher training annually. This training shall be given at
67 least four hours each month, or for a period of eight hours
68 every two months, and shall include:

69 (1) Sessions underground at least once every six
70 months;

71 (2) The wearing and use of a breathing apparatus by
72 team members for a period of at least two hours, while under
73 oxygen, once every two months;

74 (3) Where applicable, the use, care, capabilities, and
75 limitations of auxiliary mine rescue equipment, or a
76 different breathing apparatus; and

77 (4) Mine map training and ventilation procedures.

78 (j) When engaged in rescue work required by an
79 explosion, fire, or other emergency at a mine, all members
80 of mine rescue teams assigned to rescue operations shall,
81 during the period of their rescue work, be employees of the
82 operator of the mine where the emergency exists, and shall
83 be compensated by the operator at the rate established in the
84 area for such work. In no case shall this rate be less than the
85 prevailing wage rate in the industry for the most skilled class
86 of inside mine labor. During the period of their emergency
87 employment, members of mine rescue teams shall be
88 protected by the workers' compensation subscription of the
89 mine operator.

90 (k) During the recovery work and prior to entering any
91 mine at the start of each shift, all rescue or recovery teams
92 shall be properly informed of existing conditions and work
93 to be performed by the designated company official in
94 charge.

95 (1) For every two teams performing rescue or recovery
96 work underground, one six-member team shall be stationed
97 at the mine portal.

98 (2) Each rescue or recovery team performing work with
99 a breathing apparatus shall be provided with a backup team
100 of equal number, stationed at each fresh air base.

101 (3) The mine operator shall provide two-way
102 communication and a lifeline or its equivalent at each fresh
103 air base for all mine rescue or recovery teams and no mine
104 rescue team member shall advance more than 1,000 feet
105 inby the fresh air base: *Provided*, That if a life may possibly
106 be saved and existing conditions do not create an
107 unreasonable hazard to mine rescue team members, the

108 rescue team may advance a distance agreed upon by those
109 persons directing the mine rescue or recovery operations:
110 *Provided, however,* That the mine operator shall provide a
111 lifeline or its equivalent in each fresh air base for all mine
112 rescue or recovery teams.

113 (4) A rescue or recovery team shall immediately return
114 to the fresh air base when the atmospheric pressure of any
115 member's breathing apparatus depletes to 60 atmospheres,
116 or its equivalent.

117 (1) Mine rescue stations shall provide a centralized
118 storage location for rescue equipment. This storage location
119 may be either at the mine site, affiliated mines, or a separate
120 mine rescue structure. All mine rescue teams shall be guided
121 by the mine rescue apparatus and auxiliary equipment
122 manual. Each mine rescue station shall be provided with at
123 least the following equipment:

124 (1) Twelve self-contained oxygen breathing
125 apparatuses, each with a minimum of two hours capacity,
126 and any necessary equipment for testing such breathing
127 apparatuses;

128 (2) A portable supply of liquid air, liquid oxygen,
129 pressurized oxygen, oxygen generating or carbon dioxide
130 absorbent chemicals, as applicable to the supplied breathing
131 apparatuses and sufficient to sustain each team for six hours
132 while using the breathing apparatuses during rescue
133 operations;

134 (3) One extra, fully charged, oxygen bottle for each self-
135 contained compressed oxygen breathing apparatus, as
136 required under subdivision (1) of this subsection;

137 (4) One oxygen pump or a cascading system,
138 compatible with the supplied breathing apparatuses;

139 (5) Twelve permissible cap lamps and a charging rack;

140 (6) Two gas detectors appropriate for each type of gas
141 which may be encountered at the mines served;

142 (7) Two oxygen indicators;

143 (8) One portable mine rescue communication system or
144 a sound-powered communication system. The wires or
145 cable to the communication system shall be of sufficient
146 tensile strength to be used as a manual communication
147 system. The communication system shall be at least 1,000
148 feet in length; and

149 (9) Necessary spare parts and tools for repairing the
150 breathing apparatuses and communication system, as
151 presently prescribed by the manufacturer.

152 (m) Mine rescue apparatuses and equipment shall be
153 maintained in a manner that will ensure readiness for
154 immediate use. A person trained in the use and care of
155 breathing apparatuses shall inspect and test the apparatuses
156 at intervals not exceeding 30 days and shall certify by
157 signature and date that the inspections and tests were done.
158 When the inspection indicates that a corrective action is
159 necessary, the corrective action shall be made and recorded
160 by said person. The certification and corrective action
161 records shall be maintained at the mine rescue station for a
162 period of one year and made available on request to an
163 authorized representative of the director.

164 (n) Authorized representatives of the director have the
165 right of entry to inspect any designated mine rescue station.

166 (o) When an authorized representative finds a violation
167 of any of the mine rescue requirements, the representative
168 shall take appropriate corrective action in accordance with
169 §22A-1-15 of this code.

170 (p) Operators affiliated with a station issued an order by
171 an authorized representative will be notified of that order
172 and that their mine rescue program is invalid. The operators

173 shall have 24 hours to submit to the director a revised mine
174 rescue program.

175 (q) Every operator of an underground mine shall
176 develop and adopt a mine rescue program for submission to
177 the director within 30 days of the effective date of this
178 statute: *Provided*, That a new program need only be
179 submitted when conditions exist as defined in subsection (p)
180 of this section, or when information contained within the
181 program has changed.

182 (r) A copy of the mine rescue program shall be posted
183 at the mine and kept on file at the operator's mine rescue
184 station or rescue station affiliate and the state regional office
185 where the mine is located. A copy of the mine emergency
186 notification plan filed pursuant to 30 CFR §49.9(a) will
187 satisfy the requirements of subsection (q) of this section if
188 submitted to the director.

189 (s) The operator shall immediately notify the director of
190 any changed conditions materially affecting the information
191 submitted in the mine rescue program.

§22A-1-43. Hold harmless clause; decision to enter mine.

1 (a) If any injury or death shall occur to any person who
2 has entered any mine, whether active workings, inactive
3 workings, or abandoned workings, without permission,
4 neither:

5 (1) The owner of that mine or property; nor

6 (2) The State of West Virginia or any of its political
7 subdivisions, or any agency operating under color of law
8 thereunder; nor

9 (3) Any person, organization, or entity involved in any
10 rescue or attempted rescue of such person who has
11 committed an entry without permission, shall be held liable
12 in any court or other forum for such injury or death.

13 (b) The director is authorized to make the decision on
14 whether a mine is too dangerous, and this decision is not
15 subject to review by a court of this state.

16 (c) A company shall not be required or ordered to
17 conduct rescue operations.

§22A-1-44. Temporary exemption for environmental regulations.

1 In the event of an unauthorized entry by any person or
2 persons into any mine whether active workings, inactive
3 workings, or abandoned workings, neither the owner of that
4 mine or property, nor any other person, organization, or
5 entity involved in any rescue or attempted rescue of such
6 person, may be held liable for any violation of any
7 environmental regulation, if such violation occurred as part
8 of any rescue efforts.

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

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

1 (a) Every employer of certified persons, as defined in
2 §22A-1-2 of this code, shall implement a substance abuse
3 screening policy and program that shall, at a minimum,
4 include:

5 (1) A preemployment, 10-panel urine test for the
6 following and any other substances as set out in rules
7 adopted by the Office of Miners' Health, Safety, and
8 Training:

9 (A) Amphetamines;

10 (B) Cannabinoids/THC;

11 (C) Cocaine;

12 (D) Opiates;

- 13 (E) Phencyclidine (PCP);
- 14 (F) Benzodiazepines;
- 15 (G) Propoxyphene;
- 16 (H) Methadone;
- 17 (I) Barbiturates; and
- 18 (J) Synthetic narcotics.

19 Split samples shall be collected by providers who are
20 certified as complying with standards and procedures set out
21 in the United States Department of Transportation's rule, 49
22 C. F. R. Part 40, which may be amended, from time to time,
23 by legislative rule of the Office of Miners' Health, Safety,
24 and Training. Collected samples shall be tested by
25 laboratories certified by the United States Department of
26 Health and Human Services, Substance Abuse and Mental
27 Health Services Administration (SAMHSA) for collection
28 and testing. Notwithstanding the provisions of this
29 subdivision, the mine operator may implement a more
30 stringent substance abuse screening policy and program;

31 (2) A random substance abuse testing program covering
32 the substances referenced in subdivision (1) of this
33 subsection. "Random testing" means that each person
34 subject to testing has a statistically equal chance of being
35 selected for testing at random and at unscheduled times. The
36 selection of persons for random testing shall be made by a
37 scientifically valid method, such as a random number table
38 or a computer-based random number generator that is
39 matched with the persons' Social Security numbers, payroll
40 identification numbers, or other comparable identifying
41 numbers; and

42 (3) Review of the substance abuse screening program
43 with all persons required to be tested at the time of
44 employment, upon a change in the program and annually
45 thereafter.

46 (b) For purposes of this subsection, preemployment
47 testing shall be required upon hiring by a new employer,
48 rehiring by a former employer following a termination of
49 the employer/employee relationship or transferring to a
50 West Virginia mine from an employer's out-of-state mine
51 to the extent that any substance abuse test required by the
52 employer in the other jurisdiction does not comply with the
53 minimum standards for substance abuse testing required by
54 this article. Furthermore, the provisions of this section apply
55 to all employers that employ certified persons who work in
56 mines, regardless of whether that employer is an operator,
57 contractor, subcontractor or otherwise.

58 (c) Any employee involved in an accident that results in
59 physical injuries or damage to equipment or property may
60 be subject to a drug test by his or her employer.

61 (d) (1) Every employer shall notify the director, on a
62 form prescribed by the director, within seven days of any of
63 the following:

64 (A) Any positive drug or alcohol test of a certified
65 person. However, for purposes of determining whether a
66 drug test is positive the certified employee may not rely on
67 a prescription dated more than one year prior to the date of
68 the drug test result;

69 (B) The refusal of a certified person to submit a sample;

70 (C) A certified person possessing a substituted sample
71 or an adulterated sample; or

72 (D) A certified person submitting a substituted sample
73 or an adulterated sample.

74 (2) With respect to any certified person subject to a
75 collective bargaining agreement, the employer shall notify
76 the director, on a form prescribed by the director, within
77 seven days of any of the following:

78 (A) Any positive drug or alcohol test of a certified
79 person. However, for purposes of determining whether a
80 drug test is positive the certified employee may not rely on
81 a prescription dated more than one year prior to the date of
82 the drug test result;

83 (B) The refusal of a certified person to submit a sample;

84 (C) A certified person possessing a substituted sample
85 or an adulterated sample; or

86 (D) A certified person submitting a substituted sample
87 or an adulterated sample.

88 (3) When the employer submits the completed
89 notification form prescribed by the director, the employer
90 shall also submit a copy of the laboratory test results
91 showing the substances tested for and the results of the test.

92 (4) Notice shall result in the immediate temporary
93 suspension of all certificates held by the certified person
94 who failed the screening, pending a hearing before the board
95 of appeals pursuant to §22A-1-2 of this code.

96 (e) Suspension or revocation of a certified person's
97 certificate as a miner or other miner specialty in another
98 jurisdiction by the applicable regulatory or licensing
99 authority for substance abuse-related matters shall result in
100 the director's immediately and temporarily suspending the
101 certified person's West Virginia certificate until such time
102 as the certified person's certification is reinstated in the
103 other jurisdiction.

104 (f) The provisions of this article shall not be construed
105 to preclude an employer from developing or maintaining a
106 drug and alcohol abuse policy, testing program, or
107 substance abuse program that exceeds the minimum
108 requirements set forth in this section. The provisions of this
109 article shall also not be construed to require an employer to
110 alter, amend, revise or otherwise change, in any respect, a

111 previously established substance abuse screening policy and
112 program that meets or exceeds the minimum requirements
113 set forth in this section. The provisions of this article shall
114 require an employer to subject its employees who as part of
115 their employment are regularly present at a mine and who
116 are employed in a safety-sensitive position to
117 preemployment and random substance abuse tests:
118 *Provided*, That each employer shall retain the discretion to
119 establish the parameters of its substance abuse screening
120 policy and program so long as it meets the minimum
121 requirements of this article. For purposes of this section, a
122 “safety-sensitive position” means an employment position
123 where the employee’s job responsibilities include duties and
124 activities that involve the personal safety of the employee or
125 others working at a mine.

§22A-1A-2. Board of Appeals hearing procedures.

1 (a) Any hearing conducted after the temporary
2 suspension of a certified person’s certificate pursuant to this
3 article shall be conducted within 60 days of the temporary
4 suspension. The Board of Appeals shall make every effort
5 to hold the hearing within 40 days of the temporary
6 suspension.

7 (b) All hearings of the Board of Appeals pursuant to
8 this section shall be conducted in accordance with the
9 provisions of §22A-1-31 of this code. In addition to the
10 rules and procedures in §22A-1-31 of this code in
11 hearings under this section, the Board of Appeals may
12 accept as evidence a notarized affidavit of drug testing
13 procedures and results from a Medical Review Officer
14 (MRO) in lieu of live testimony by the MRO. If the Board
15 of Appeals desires testimony in lieu of a notarized
16 affidavit, the MRO may testify under oath telephonically
17 or by an Internet-based program in lieu of physically
18 attending the hearing. The Board of Appeals may suspend
19 the certificate or certificates of a certified person for

20 violation of this article or for any other violation of this
21 chapter pertaining to substance abuse. The Board of
22 Appeals may impose further disciplinary actions for
23 repeat violations. The director shall have the authority to
24 propose legislative rules for promulgation in accordance
25 with §29A-3-1 *et seq.* of this code to establish the
26 disciplinary actions referenced in this section following
27 the receipt of recommendations from the Board of Coal
28 Mine Health and Safety following completion of the
29 study required pursuant to §22A-6-14 of this code. The
30 legislative rules authorized by this subsection shall not,
31 however, include any provisions requiring an employer to
32 take or refrain from taking any specific personnel action
33 or mandating any employer to establish or maintain an
34 employer-funded substance abuse rehabilitation program.

35 (c) No person whose certification is suspended or
36 revoked under this section may perform any duties under
37 any other certification issued under this chapter during the
38 period of the suspension imposed by the Board of Appeals.
39 For all miners determined to have a positive drug or alcohol
40 test as determined pursuant to the provisions of this article,
41 the board shall suspend the miner's certification card(s) for
42 a minimum of six months from the date of the drug test. This
43 six-month minimum suspension shall also apply to miners
44 who enter into a treatment program after testing positive in
45 a drug test administered pursuant to the provisions of this
46 article and are placed under probationary treatment and
47 testing agreements by the board. The director shall
48 promulgate an emergency rule and legislative rule by July
49 1, 2019, requiring all miners who have a positive drug or
50 alcohol test shall have their miner certification card(s)
51 suspended for a minimum of six months.

52 (d) Any party adversely affected by a final order or
53 decision issued by the Board of Appeals hereunder is
54 entitled to judicial review thereof pursuant to §29A-5-4 of
55 this code.

ARTICLE 2. UNDERGROUND MINES.**§22A-2-2. Submittal of detailed ventilation plan to director.**

1 (a) A mine operator shall give the director a copy of the
2 United States Department of Labor's Mine Safety and
3 Health Administration (MSHA)-approved plan and any
4 addenda as soon as the operator receives the approval from
5 MSHA. The MSHA-approved plan shall serve as the state-
6 approved plan: *Provided*, That the MSHA-approved plan
7 shall comply with all provisions of state mining law as set
8 forth in this code or state rules.

9 (b) In the event of an unforeseen situation requiring
10 immediate action on a plan revision, the operator shall
11 submit the proposed revision to the director and the miners'
12 representative, if any, employed by the operator at the mine
13 when the proposed revision is submitted to MSHA. The
14 director shall work with the operator to review and comment
15 on the proposed plan revision to MSHA as quickly as
16 possible.

17 (c) Upon approval by MSHA, the plan is enforceable by
18 the director. The approved plan and all revisions and
19 addenda thereto shall be posted on the mine bulletin board
20 and made available for inspection by the miners at that mine
21 for the period of time that they are in effect.

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using approved methane-detecting devices; records of examination; maintenance of methane detectors, etc.

1 (a) The Office of Miners' Health, Safety, and Training
2 shall prescribe and establish a course of instruction in mine
3 safety and particularly in dangers incident to employment in
4 mines and in mining laws and rules, which course of
5 instruction shall be successfully completed within 12 weeks
6 after any person is first employed as a miner. It is further the
7 duty and responsibility of the Office of Miners' Health,
8 Safety, and Training to see that the course is given to all

9 persons as above provided after their first being employed
10 in any mine in this state. In addition to other enforcement
11 actions available to the director, upon a finding by the
12 director of the existence of a pattern of conduct creating a
13 hazardous condition at a mine, the director shall notify the
14 Board of Coal Mine Health and Safety, which shall cause
15 additional training to occur at the mine addressing such
16 safety issue or issues identified by the director, pursuant to
17 §22A-7-1 *et seq.* of this code. The Director of the Office of
18 Miners' Health, Safety, and Training is authorized to
19 promulgate emergency and legislative rules in consultation
20 with the Board of Coal Mine Health and Safety establishing
21 a course of instruction.

22 (b) It is the duty of the mine foreman or the assistant
23 mine foreman of every coal mine in this state to see that
24 every person employed to work in the mine is, before
25 beginning work therein, instructed in the particular danger
26 incident to his or her work in the mine, and furnished a copy
27 of the mining laws and rules of the mine. It is the duty of
28 every mine operator who employs apprentices, as that term
29 is used in §22A-8-3 and §22A-8-4 of this code to ensure that
30 the apprentices are effectively supervised with regard to
31 safety practices and to instruct apprentices in safe mining
32 practices. Every apprentice shall work under the direction
33 of the mine foreman or his or her assistant mine foreman
34 and they are responsible for his or her safety. The mine
35 foreman or assistant mine foreman may delegate the
36 supervision of an apprentice to an experienced miner, but
37 the foreman and his or her assistant mine foreman remain
38 responsible for the apprentice. During the first 120 days of
39 employment in a mine, the apprentice shall work within
40 sight and sound of the mine foreman, assistant mine
41 foreman, or an experienced miner, and in a location that the
42 mine foreman, assistant mine foreman, or experienced
43 miner can effectively respond to cries for help of the
44 apprentice: *Provided*, That if the apprentice has completed
45 an approved training program as approved by the Board of
46 Coal Mine Health and Safety, this period may be reduced

47 by an amount not to exceed 30 days. The location shall be
48 on the same side of any belt, conveyor, or mining
49 equipment.

50 (c) Persons whose duties require them to use an
51 approved methane-detecting device or other approved
52 methane detectors shall be examined at least annually as to
53 their competence by a qualified official from the Office of
54 Miners' Health, Safety, and Training and a record of the
55 examination shall be kept by the operator and the office.
56 Approved methane-detecting devices and other approved
57 methane detectors shall be given proper maintenance and
58 shall be tested before each working shift. Each operator
59 shall provide for the proper maintenance and care of the
60 permissible approved methane-detecting device or any
61 other approved device for detecting methane and oxygen
62 deficiency by a person trained in the maintenance, and,
63 before each shift, care shall be taken to ensure that the
64 approved methane-detecting device or other device is in a
65 permissible condition and maintained according to
66 manufacturer's specifications.

§22A-2-13. Daily inspection of working places; records.

1 Before the beginning of any shift upon which they shall
2 perform supervisory duties, the mine foreman or his or her
3 assistant shall review carefully and countersign all books
4 and records reflecting the conditions and the areas under
5 their supervision, exclusive of equipment logs, which the
6 operator is required to keep under this chapter. The mine
7 foreman, assistant mine foreman, or fire boss shall visit and
8 carefully examine each working place in which miners will
9 be working at the beginning of each shift before any face
10 equipment is energized and shall examine each working
11 place in the mine at least once every two hours each shift
12 while such miners are at work in such places, and shall
13 direct that each working place shall be secured by props,
14 timbers, roof bolts, or other approved methods of roof
15 support or both where necessary to the end that the working
16 places shall be made safe. The mine foreman or his or her
17 assistants upon observing a violation or potential violation

18 of §22A-2-1 *et seq.* of this code or any regulation or any
19 plan or agreement promulgated or entered into thereunder
20 shall arrange for the prompt correction thereof. The foreman,
21 shall not permit any miner other than a certified foreman,
22 fire boss, assistant mine foreman, assistant mine foreman-
23 fire boss or pumper to be on a working section by himself
24 or herself. Should the mine foreman or his or her assistants
25 find a place to be in a dangerous condition, they shall not
26 leave the place until it is made safe or shall remove the
27 persons working therein until the place is made safe by some
28 competent person designated for that purpose.

29 He or she shall place his or her initials, time and the date
30 at or near each place he or she examines. He or she shall
31 also record any dangerous conditions and practices found
32 during his or her examination in a book provided for that
33 purpose.

§22A-2-80. Existing regulations to be revised.

1 By August 31, 2019, all existing rules or regulations
2 under authority of this article shall be revised to reflect the
3 changes enacted during the 2019 Regular Session of the
4 Legislature.

ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22A-8-5. Supervision of apprentices.

1 Each holder of a permit of apprenticeship shall be
2 known as an apprentice. Any miner holding a certificate of
3 competency and qualification may have one person working
4 with him or her, and under his or her supervision and
5 direction, as an apprentice, for the purpose of learning and
6 being instructed in the duties and calling of mining. Any
7 mine foreman or fire boss, or assistant mine foreman or fire
8 boss, may have three persons working with him or her under
9 his or her supervision and direction, as apprentices, for the
10 purpose of learning and being instructed in the duties and
11 calling of mining: *Provided*, That a mine foreman, assistant
12 mine foreman, or fire boss supervising apprentices in an
13 area where no coal is being produced or which is outby the

14 working section may have as many as five apprentices under
15 his or her supervision and direction, as apprentices, for the
16 purpose of learning and being instructed in the duties and
17 calling of mining or where the operator is using a production
18 section under program for training of apprentice miners,
19 approved by the Board of Coal Mine Health and Safety.

20 Every apprentice working at a surface mine shall be at all
21 times under the supervision and control of at least one person
22 who holds a certificate of competency and qualification.

23 In all cases, it is the duty of every mine operator who
24 employs apprentices to ensure that such persons are
25 effectively supervised and to instruct such persons in safe
26 mining practices. Each apprentice shall wear a red hat which
27 identifies the apprentice as such while employed at or near
28 a mine. No person shall be employed as an apprentice for a
29 period in excess of eight months, except that in the event of
30 illness or injury, time extensions shall be permitted as
31 established by the Director of the Office of Miners' Health,
32 Safety, and Training.

§22A-8-10. Loss of certification for unlawful trespass.

1 Upon a conviction under the provisions of §61-3B-6 of
2 this code, the certification of any person certified under the
3 provision of §22A-8-1 *et seq.* of this code, including a safety
4 sensitive certification issued pursuant to 56 CSR 19, shall
5 be deemed revoked and person shall be permanently barred
6 from holding a certification under the provisions of §22A-
7 8-1 *et seq.* of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel; penalties; counts in indictment.

1 If any person shall, at any time, break and enter, or shall
2 enter without breaking, any office, shop, storehouse,
3 warehouse, banking house, or any house or building, other

4 than a dwelling house or outhouse adjoining thereto or
5 occupied therewith, any railroad or traction car, propelled by
6 steam, electricity or otherwise, any steamboat or other boat or
7 vessel, or any commercial, industrial or public utility property
8 enclosed by a fence, wall, or other structure erected with the
9 intent of the property owner of protecting or securing the area
10 within and its contents from unauthorized persons, within the
11 jurisdiction of any county in this state, with intent to commit a
12 felony or any larceny, he or she shall be deemed guilty of a
13 felony and, upon conviction, shall be confined in a state
14 correctional facility not less than one nor more than 10 years.
15 And if any person shall, at any time, break and enter, or shall
16 enter without breaking, any automobile, motorcar, or bus, with
17 like intent, within the jurisdiction of any county in this state,
18 he or she shall be guilty of a misdemeanor and, upon
19 conviction, shall be confined in jail not less than two nor more
20 than 12 months and be fined not exceeding \$100.

21 An indictment for burglary may contain one or more
22 counts for breaking and entering, or for entering without
23 breaking, the house or building mentioned in the count for
24 burglary under the provisions of this section and §61-3-11
25 of this code.

ARTICLE 3B. TRESPASS.

§61-3B-6. Mine trespass; penalties.

1 (a) A person who willfully enters an underground coal
2 mine, whether active workings, inactive workings, or
3 abandoned workings, without permission, is guilty of a felony
4 and, upon conviction thereof shall be imprisoned in a
5 correctional facility not less than one year and nor more than
6 10 years and shall be fined not less than \$5,000 nor more than
7 \$10,000: *Provided*, That for any conviction pursuant to this
8 subsection, any inactive or abandoned underground workings
9 must be either: (1) Sealed; or (2) clearly identified by signage
10 at some conspicuous place near the entrance of the mine that
11 includes a notice that the unauthorized entry into the mine is a
12 felony criminal offense.

13 (b) A person who willfully enters a surface coal mine,
14 whether active workings, inactive workings or abandoned
15 workings, without permission, and with the intent to commit
16 a felony or any larceny, is guilty of a misdemeanor and,
17 upon conviction thereof, shall be confined in jail not less
18 than one week and not more than one month and shall be
19 fined not less than \$1,000 nor more than \$5,000. For a
20 second conviction, pursuant to this subsection, the person
21 shall be guilty of a felony and shall be confined in a
22 correctional facility not less than one year and not more than
23 five years and shall be fined not less than \$5,000 nor more
24 than \$10,000. For a third or subsequent conviction, pursuant
25 to this subsection, the person shall be guilty of a felony and
26 shall be confined in a correctional facility not less than five
27 years and not more than 10 years and shall be fined not less
28 than \$10,000, nor more than \$25,000.

29 (c) If a person violates subsections (a) or (b) of this
30 section, and during any rescue efforts for any such person,
31 there occurs an injury that causes substantial physical pain,
32 illness, or any impairment of physical condition to any
33 person other than himself or herself, then that person is
34 guilty of a misdemeanor and, upon conviction thereof, shall
35 be confined in jail for not less than one week and not more
36 than one year and shall be fined not less than \$1,000 nor
37 more than \$5,000: *Provided*, That such jail term shall
38 include actual confinement of not less than seven days.

39 (d) If a person violates subsections (a) or (b) of this section,
40 and during any rescue efforts for any such person, there occurs
41 an injury that creates a substantial risk of death, causes serious
42 or prolonged disfigurement, prolonged impairment of health,
43 or prolonged loss or impairment of the function of any bodily
44 organ to any person other than himself or herself, then that
45 person is guilty of a felony and, upon conviction thereof, shall
46 be imprisoned in a correctional facility for not less than two
47 nor more than 10 years and shall be fined not less than \$5,000
48 nor more than \$10,000.

49 (e) If a person violates subsections (a) or (b) of this
50 section, and during any rescue efforts of such person, the
51 death of any other person occurs, then that person is guilty
52 of a felony and, upon conviction thereof, shall be
53 imprisoned in a correctional facility for not less than three
54 nor more than 15 years and shall be fined not less than
55 \$10,000 nor more than \$25,000.

56 (f) Notwithstanding and in addition to any other
57 penalties provided by law, any person who performs or
58 causes damage to property in the course of a willful trespass
59 in violation of this section is liable to the property owner in
60 the amount of twice the amount of such damage.

61 (g) The terms “mine”, “active workings”, “inactive
62 workings”, and “abandoned workings” have the same meaning
63 ascribed to such terms as set forth in §22A-1-2 of this code.

64 (h) Nothing in this section shall be construed to prevent
65 lawful assembly and petition for the lawful redress of
66 grievances, during any dispute, including, but not limited to,
67 activities protected by the West Virginia Constitution or the
68 United States Constitution or any statute of this state or the
69 United States.



CHAPTER 171

**(S. B. 596 - By Senators Weld, Stollings, Baldwin,
Boso, Cline, Sypolt, Tarr and Maroney)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §17A-2-12a of the Code of West Virginia, 1931, as amended, relating to the ability of applicants to make voluntary contributions of specified dollar

amounts to the West Virginia Department of Veterans Assistance on forms created by the Division of Motor Vehicles; and adding thereto a category for unspecified amounts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-12a. Commissioner of Motor Vehicles — commissioner shall prescribe forms providing for veteran contributions.

1 (a) Notwithstanding §17A-2-12 of this code, the
2 commissioner shall prescribe and provide suitable forms of
3 application which provide the following applicants the
4 ability to make a contribution of \$5, \$10, or other amount to
5 the West Virginia Department of Veterans Assistance:

6 (1) Applicants for original or renewal driver's licenses
7 or identification cards; and

8 (2) Applicants for a renewal of a vehicle registration.

9 (b) A contribution under §17A-2-12a(a) of this code
10 shall be added, as appropriate, to the regular fee for:

11 (1) An original or renewal driver's license or
12 identification card; and

13 (2) A renewal of a vehicle registration.

14 (c) Contributions under §17A-2-12a(a) of this code
15 shall be used exclusively for purposes set forth in §9A-1-1
16 *et seq.* of this code.

17 (d) The division shall determine on a monthly basis the
18 total amount collected under this section and report and
19 transfer said amount to the State Treasurer. The State
20 Treasurer shall transfer the amount collected under this
21 section to the West Virginia Department of Veterans
22 Assistance.

23 (e) The West Virginia Department of Veterans
24 Assistance shall reimburse the Motor Vehicle Fees Fund for
25 the actual costs incurred by the division in the
26 administration of this section.

CHAPTER 172

(S. B. 658 - By Senator Romano)

[Passed March 7, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §17A-6E-4 of the Code of West Virginia, 1931, as amended, relating to motor vehicle salesperson licenses; and modifying the felony disqualification.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6E. MOTOR VEHICLE SALESPERSON LICENSE.

§17A-6E-4. Eligibility and issuance of license.

1 (a) The division may not issue any person a motor
2 vehicle salesperson license unless the applicant:

3 (1) Is employed by a licensed West Virginia dealer who
4 verifies the employment;

5 (2) Completes the application for a license on the form
6 prescribed by the division, fully completed, signed and
7 attested to by the applicant, including, but not limited to, the
8 applicant's:

9 (A) Full name;

10 (B) Social Security number;

- 11 (C) Residence and mailing address;
- 12 (D) Name of employing dealership;
- 13 (E) Statement as to whether the applicant has ever had
14 any previous application for a dealer or salesperson license
15 refused in this or any other state or jurisdiction;
- 16 (F) Statement as to whether the applicant has been
17 previously licensed as a salesperson in this state or any other
18 state or jurisdiction;
- 19 (G) Statement as to whether the applicant has ever had
20 his or her salesperson license or a dealer license suspended
21 or revoked in this state or any other state or jurisdiction;
- 22 (H) Statement as to whether the applicant has ever held
23 a dealer license which has been suspended or revoked or has
24 been employed by a dealer which has had its license
25 suspended or revoked;
- 26 (I) Statement as to whether the applicant has ever been
27 convicted of a felony or whether the applicant individually
28 or as an owner, partner, officer, or director of a business
29 entity has been convicted of, or pleaded guilty or nolo
30 contendere to, a criminal action, and if so, a written
31 explanation of the conviction;
- 32 (J) Statement as to whether or not the applicant owes a
33 child support obligation, owes a child support obligation
34 that is more than six months in arrears, is the subject of a
35 child support related warrant, subpoena, or court order; and
- 36 (K) Statement that the applicant has not been found to
37 have done any of the acts which would justify suspension or
38 revocation of a salesperson's license under §17A-6E-9 of
39 this code;
- 40 (3) Submits verification of employment by the
41 employing dealer;

42 (4) Furnishes a full set of fingerprints to facilitate a
43 background check and other investigation considered
44 necessary by the commissioner;

45 (5) Pays an initial nonrefundable application fee of \$7
46 for each year the license is valid. Payment of the fee entitles
47 the applicant to one attempt at a written test prescribed by
48 the division. Successful completion of at least 70 percent of
49 the written test is a passing score;

50 (6) Pays a nonrefundable background investigation fee
51 of \$25; and

52 (7) Is not the subject of a background investigation
53 which reveals criminal convictions or other circumstances
54 for which the commissioner may deny licensure under the
55 provisions of this article.

56 (b) The division may, upon successful completion of all
57 the requirements contained in subsection (a) of this section,
58 with the exception of the background investigation, issue
59 the applicant a temporary motor vehicle salesperson license.
60 The temporary license is valid for a maximum of 90 days
61 pending issuance of the permanent license endorsement or
62 receipt of an unfavorable background investigation,
63 whichever occurs first.

64 (c) The division shall refuse to issue the license if the
65 applicant:

66 (1) Does not provide the necessary documents as
67 determined by the division to establish his or her identity or
68 legal presence in this country;

69 (2) Has made any false statements of material fact in the
70 application;

71 (3) Has had his or her privilege to sell vehicles denied,
72 suspended, or revoked by this state or any other state or
73 jurisdiction: *Provided*, That upon the applicant's appeal, the
74 commissioner may grant an exemption of this restriction if

75 the applicant can show that he or she is eligible for
76 reinstatement in his or her previous jurisdiction of licensure;

77 (4) Has committed a fraudulent act or omission or
78 repeatedly defaulted in financial obligations in connection
79 with the buying, selling, leasing, rental, or otherwise dealing
80 in motor vehicles, recreational vehicles, or trailers;

81 (5) Has been convicted of a felony: *Provided*, That upon
82 the applicant's appeal the commissioner may grant an
83 exemption to this restriction if the felony did not involve a
84 financial transaction involving the sale or purchase of a
85 motor vehicle or the motor vehicle industry;

86 (6) Is not employed as a salesperson for a motor vehicle
87 dealer licensed in accordance with §17A-6-1 *et seq.* or
88 §17A-6C-1 *et seq.* of this code;

89 (7) Is acting as a salesperson for more than one motor
90 vehicle dealer at the same time without a waiver issued by
91 the commissioner; or

92 (8) Has a background investigation which reveals
93 criminal convictions or other circumstances for which the
94 commissioner may deny licensure under the provisions of
95 this article.

96 (d) Willful misrepresentation of any fact in any
97 application or any document in support of the application is
98 a violation of this article.

●

CHAPTER 173

**(Com. Sub. for H. B. 2359 - By Delegates Howell,
Hanna, Hott, Steele, Linville, Pack, Phillips, Cadle,
Worrell, Hill and Wilson)**

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17E-1-8a, relating to providing for a restricted commercial driver's license for employees of designated farm-related service industries; and authorizing the Commissioner of Motor Vehicles to define seasonal periods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-8a. Restricted commercial driver's license for certain drivers in farm-related service industries.

- 1 (a) A restricted commercial driver's license may be
2 issued to persons without meeting the required knowledge
3 and skill tests for driving a commercial motor vehicle
4 prescribed in §17E-1-9 of this code who are employees of
5 the following designated farm-related service industries:
- 6 (1) Agrichemical businesses;
- 7 (2) Custom harvesters;
- 8 (3) Farm retail outlets and suppliers; and
- 9 (4) Livestock feeders.

- 10 (b) A restricted commercial driver's license issued
11 pursuant to this section shall meet all of the requirements
12 and restrictions set forth in 49 C.F.R. § 383.3(f), including
13 any seasonal periods defined by the commissioner.

●

CHAPTER 174

**(H. B. 2846 - By Delegates Miller, D. Kelly,
Swartzmiller, Robinson, Queen, Hornbuckle, Pack,
Malcolm and Pyles)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to special vehicle registration plates; designating a “Back the Blue” plate in support of law-enforcement personnel; designating a special beekeeper pollinator plate; establishing fees related to plates; and permitting extension of registration fee exemption to military-related special registration plates.

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, the
34 judges of the West Virginia circuit courts, active and retired
35 on senior status, the judges of the United States district
36 courts for the State of West Virginia and the judges of the
37 United States Court of Appeals for the fourth circuit, if any

38 of the judges are residents of West Virginia, a special
39 registration plate for a Class A motor vehicle and a special
40 registration plate for a Class G motorcycle owned by the
41 official or his or her spouse: *Provided*, That the division
42 may issue a Class A special registration plate for each
43 vehicle titled to the official and a Class G special
44 registration plate for each motorcycle titled to the official.

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

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

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

57 (A) Upon receipt of an application on a form prescribed
58 by the division and receipt of written evidence from the
59 chief executive officer of the Army National Guard or Air
60 National Guard, as appropriate, or the commanding officer
61 of any United States armed forces reserve unit that the
62 applicant is a member thereof, the division shall issue to any
63 member of the National Guard of this state or a member of
64 any reserve unit of the United States armed forces a special
65 registration plate designed by the commissioner for any
66 number of Class A motor vehicles owned by the member.
67 Upon presentation of written evidence of retirement status,
68 retired members of this state's Army or Air National Guard,
69 or retired members of any reserve unit of the United States
70 armed forces, are eligible to purchase the special
71 registration plate issued pursuant to this subdivision.

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

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

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

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

94 (B) The commissioner shall propose rules for legislative
95 approval in accordance with the provisions of §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 2,000.

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 organization's 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 subdivision.

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, and the division may
747 issue special beekeeper pollinator registration plates as
748 follows:

749 (A) Upon appropriate application, the division shall
750 issue a special registration plate depicting a farming scene
751 or other apt reference to farming, whether in pictures or
752 words, at the discretion of the commissioner. Upon
753 appropriate application, the division shall issue a special
754 registration plate displaying a pollinator species or
755 advocating its protection as prescribed and designated by
756 the commissioner.

757 (B) The division shall charge a special initial application
758 fee of \$10 for each plate in addition to all other fees required
759 by law. This special fee shall be collected by the division
760 and deposited in the State Road Fund.

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

763 (39) The division shall issue special registration plates
764 promoting education as follows:

765 (A) Upon appropriate application, the division shall
766 issue a special registration plate displaying a children's
767 education-related theme as prescribed and designated by the
768 commissioner and the State Superintendent of Schools.

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

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

775 (40) The division may issue members of the 82nd
776 Airborne Division Association special registration plates as
777 follows:

778 (A) The division may issue a special registration plate
779 for members of the 82nd Airborne Division Association
780 upon receipt of a guarantee from the organization of a
781 minimum of 100 applicants. The insignia on the plate shall
782 be designed by the commissioner.

783 (B) Upon appropriate application, the division may
784 issue members of the 82nd Airborne Division Association
785 in good standing, as determined by the governing body of
786 the organization, a special registration plate for any number
787 of vehicles titled in the name of the qualified applicant.

788 (C) The division shall charge a special one-time initial
789 application fee of \$10 for each special license plate in
790 addition to all other fees required by this chapter. All initial
791 application fees collected by the division shall be deposited
792 into the State Road Fund: *Provided*, That nothing in this
793 section may be construed to exempt the applicant from any
794 other provision of this chapter.

795 (D) A surviving spouse may continue to use his or her
796 deceased spouse's special 82nd Airborne Division
797 Association registration plate until the surviving spouse
798 dies, remarries, or does not renew the special registration
799 plate.

800 (41) The division may issue special registration plates
801 supporting law-enforcement officers, and the division may
802 issue special registration plates to survivors of wounds
803 received in the line of duty as a member with a West
804 Virginia law-enforcement agency as follows:

805 (A) Upon appropriate application, the division shall
806 issue a special registration plate designed by the

807 commissioner which recognizes, supports, and honors the
808 men and women of law-enforcement and includes the words
809 “Back the Blue”. Upon appropriate application, the division
810 shall issue to any member of a municipal police department,
811 sheriff’s department, the State Police, or the law-
812 enforcement division of the Division of Natural Resources
813 who has been wounded in the line of duty and awarded a
814 Purple Heart in recognition thereof by the West Virginia
815 Chiefs of Police Association, the West Virginia Sheriffs’
816 Association, the West Virginia Troopers Association, or the
817 Division of Natural Resources a special registration plate
818 for one vehicle titled in the name of the qualified applicant
819 with an insignia appropriately designed by the
820 commissioner.

821 (B) For special registration plates supporting law-
822 enforcement officers, the division shall charge a special
823 initial application fee of \$10 in addition to all other fees
824 required by law. This special fee shall be collected by the
825 division and deposited in the State Road Fund. An annual
826 fee of \$15 shall be charged for each plate supporting law-
827 enforcement officers in addition to all other fees required by
828 this chapter.

829 (C) Registration plates issued pursuant to this
830 subdivision to survivors of wounds received in the line of
831 duty as a member with a West Virginia law-enforcement
832 agency are exempt from the registration fees otherwise
833 required by the provisions of this chapter. A surviving
834 spouse may continue to use his or her deceased spouse’s
835 special registration plate until the surviving spouse dies,
836 remarries, or does not renew the plate. Survivors of wounds
837 received in the line of duty as a member with a West
838 Virginia law-enforcement agency may obtain a license plate
839 as described in this subdivision for use on a passenger
840 vehicle titled in the name of the qualified applicant. The
841 division shall charge a one-time fee of \$10 to be deposited
842 into the State Road Fund, in addition to all other fees
843 required by this chapter, for the second plate.

844 (42) The division may issue a special registration plate
845 for persons who are Native-Americans and residents of this
846 state:

847 (A) Upon appropriate application, the division shall
848 issue to an applicant who is a Native-American resident of
849 West Virginia a registration plate for a vehicle titled in the
850 name of the applicant with an insignia designed by the
851 Commissioner of the Division of Motor Vehicles to
852 designate the recipient as a Native-American.

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

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

859 (43) The division may issue special registration plates
860 commemorating the centennial anniversary of the creation
861 of Davis and Elkins College as follows:

862 (A) Upon appropriate application, the division may
863 issue a special registration plate designed by the
864 commissioner to commemorate the centennial anniversary
865 of Davis and Elkins College for any number of vehicles
866 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 collected by the division
869 and deposited in the State 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 (44) The division may issue special registration plates
873 recognizing and honoring breast cancer survivors. The
874 division may also issue special registration plates to support
875 a cure for childhood cancer:

876 (A) Upon appropriate application, the division may
877 issue a special registration plate designed by the
878 commissioner to recognize and honor breast cancer
879 survivors, such plate to incorporate somewhere in the design
880 the “pink ribbon emblem”, for any number of vehicles titled
881 in the name of the applicant. Upon appropriate application,
882 the division may also issue a special registration plate
883 designed by the commissioner to support a cure for
884 childhood cancer, such plate to incorporate somewhere in
885 the design the gold ribbon emblem with “WV Kids Cancer
886 Crusaders” below or next to the emblem and “Cure
887 Childhood Cancer” at the bottom of the plate, for any
888 number of vehicles titled in the name of the applicant.

889 (B) The division shall charge a special initial application
890 fee of \$10. This special fee shall be deposited in the State
891 Road Fund.

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

894 (45) The division may issue special registration plates
895 to members of the Knights of Pythias or Pythian Sisters as
896 follows:

897 (A) Upon appropriate application, the division may
898 issue a special registration plate designed by the
899 commissioner for any number of vehicles titled in the name
900 of the qualified applicant. Persons desiring the special
901 registration plate shall offer sufficient proof of membership
902 in the Knights of Pythias or Pythian Sisters.

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

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

909 (46) The commissioner may issue special registration
910 plates for whitewater rafting enthusiasts as follows:

911 (A) Upon appropriate application, the division may
912 issue a special registration plate designed by the
913 commissioner for any number of vehicles titled in the name
914 of the qualified applicant.

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

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

922 (47) The division may issue special registration plates
923 to members of Lions International as follows:

924 (A) Upon appropriate application, the division may
925 issue a special registration plate designed by the
926 commissioner in consultation with Lions International for
927 any number of vehicles titled in the name of the qualified
928 applicant. Persons desiring the special registration plate
929 shall offer sufficient proof of membership in Lions
930 International.

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

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

937 (48) The division may issue special registration plates
938 supporting organ donation as follows:

939 (A) Upon appropriate application, the division may
940 issue a special registration plate designed by the

941 commissioner which recognizes, supports, and honors
942 organ and tissue donors and includes the words “Donate
943 Life”.

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

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

950 (49) The division may issue special registration plates
951 to members of the West Virginia Bar Association as
952 follows:

953 (A) Upon appropriate application, the division may
954 issue a special registration plate designed by the
955 commissioner in consultation with the West Virginia Bar
956 Association for any number of vehicles titled in the name of
957 the qualified applicant. Persons desiring the special
958 registration plate shall offer sufficient proof of membership
959 in the West Virginia Bar Association.

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

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

966 (50) The division may issue special registration plates
967 bearing an appropriate logo, symbol, or insignia combined
968 with the words “SHARE THE ROAD” designed to promote
969 bicycling in the state as follows:

970 (A) Upon appropriate application, the division may
971 issue a special registration plate designed by the
972 commissioner for any number of vehicles titled in the name
973 of the applicant.

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

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

980 (51) The division may issue special registration plates
981 honoring coal miners and the coal industry as follows:

982 (A) Upon appropriate application, the division shall
983 issue a special registration plate depicting and displaying
984 coal miners in mining activities as prescribed and
985 designated by the commissioner and the board of the
986 National Coal Heritage Area Authority. The division may
987 also issue registration plates with the words "Friends of
988 Coal".

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

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

995 (D) The provisions of §17A-3-14(d) of this code are not
996 applicable for the issuance of license plates designated by
997 this subdivision.

998 (52) The division may issue special registration plates
999 to present and former Boy Scouts as follows:

1000 (A) Upon appropriate application, the division may
1001 issue a special registration plate designed by the
1002 commissioner for any number of vehicles titled in the name
1003 of the qualified applicant. Persons desiring the special
1004 registration plate shall offer sufficient proof of present or
1005 past membership in the Boy Scouts as either a member or a
1006 leader.

1007 (B) The division shall charge a special initial application
1008 fee of \$10 in addition to all other fees required by law. This
1009 special fee shall be collected by the division and deposited
1010 in the State Road Fund.

1011 (C) An annual fee of \$15 shall be charged for each plate
1012 in addition to all other fees required by this chapter.

1013 (53) The division may issue special registration plates
1014 to present and former Boy Scouts who have achieved Eagle
1015 Scout status as follows:

1016 (A) Upon appropriate application, the division may
1017 issue a special registration plate designed by the
1018 commissioner for any number of vehicles titled in the name
1019 of the qualified applicant. Persons desiring the special
1020 registration plate shall offer sufficient proof of achievement
1021 of Eagle Scout status.

1022 (B) The division shall charge a special initial application
1023 fee of \$10 in addition to all other fees required by law. This
1024 special fee shall be deposited in the State Road Fund.

1025 (C) An annual fee of \$15 shall be charged for each plate
1026 in addition to all other fees required by this chapter.

1027 (54) The division may issue special registration plates
1028 recognizing and memorializing victims of domestic
1029 violence:

1030 (A) Upon appropriate application, the division may
1031 issue a special registration plate designed by the
1032 commissioner to recognize and memorialize victims of
1033 domestic violence, such plate to incorporate somewhere in
1034 the design the “purple ribbon emblem”, for any number of
1035 vehicles titled in the name of the applicant.

1036 (B) The division shall charge a special initial application
1037 fee of \$10. This special fee shall be deposited in the State
1038 Road Fund.

1039 (C) An annual fee of \$15 shall be charged for each plate
1040 in addition to all other fees required by this chapter.

1041 (55) The division may issue special registration plates
1042 bearing the logo, symbol, insignia, letters, or words
1043 demonstrating association with or support for the University
1044 of Charleston as follows:

1045 (A) Upon appropriate application, the division may
1046 issue a special registration plate designed by the
1047 commissioner for any number of vehicles titled in the name
1048 of the qualified applicant.

1049 (B) The division shall charge a special initial application
1050 fee of \$10 in addition to all other fees required by law. This
1051 special fee shall be collected by the division and deposited
1052 in the State Road Fund.

1053 (C) An annual fee of \$15 shall be charged for each plate
1054 in addition to all other fees required by this chapter.

1055 (56) The division may issue special registration plates
1056 to members of the Sons of the American Revolution as
1057 follows:

1058 (A) Upon appropriate application, the division may
1059 issue a special registration plate designed by the
1060 commissioner in consultation with the Sons of the American
1061 Revolution for any number of vehicles titled in the name of
1062 the qualified applicant. Persons desiring the special
1063 registration plate shall offer sufficient proof of membership
1064 in the Sons of the American Revolution.

1065 (B) The division shall charge a special initial application
1066 fee of \$10 in addition to all other fees required by law. This
1067 special fee shall be collected by the division and deposited
1068 in the State Road Fund.

1069 (C) An annual fee of \$15 shall be charged for each plate
1070 in addition to all other fees required by this chapter.

1071 (57) The commissioner may issue special registration
1072 plates for horse enthusiasts as follows:

1073 (A) Upon appropriate application, the division may
1074 issue a special registration plate designed by the
1075 commissioner for any number of vehicles titled in the name
1076 of the qualified applicant.

1077 (B) The division shall charge a special initial application
1078 fee of \$10 in addition to all other fees required by law. This
1079 special fee shall be collected by the division and deposited
1080 in the State Road Fund.

1081 (C) The division shall charge an annual fee of \$15 for
1082 each special registration plate in addition to all other fees
1083 required by this chapter.

1084 (58) The commissioner may issue special registration
1085 plates to the next of kin of a member of any branch of the
1086 armed services of the United States killed in combat as
1087 follows:

1088 (A) Upon appropriate application, the division shall
1089 issue a special registration plate for any number of vehicles
1090 titled in the name of a qualified applicant depicting the Gold
1091 Star awarded by the United States Department of Defense
1092 as prescribed and designated by the commissioner.

1093 (B) The next of kin shall provide sufficient proof of
1094 receiving a Gold Star lapel button from the United States
1095 Department of Defense in accordance with Public Law 534,
1096 89th Congress, and criteria established by the United States
1097 Department of Defense, including criteria to determine next
1098 of kin.

1099 (C) The division shall charge a special initial application
1100 fee of \$10 in addition to all other fees required by law. This
1101 special fee shall be collected by the division and deposited
1102 in the State Road Fund.

1103 (D) The provisions of §17A-3-14(d) of this code are not
1104 applicable for the issuance of special license plates
1105 designated by this subdivision.

1106 (59) The commissioner may issue special registration
1107 plates for retired or former justices of the Supreme Court of
1108 Appeals of West Virginia as follows:

1109 (A) Upon appropriate application, the division may
1110 issue a special registration plate designed by the
1111 commissioner for any number of vehicles titled in the name
1112 of the qualified applicant.

1113 (B) The division shall charge a special initial application
1114 fee of \$10 in addition to all other fees required by law. This
1115 special fee shall be collected by the division and deposited
1116 in the State Road Fund.

1117 (C) The division shall charge an annual fee of \$15 for
1118 each special registration plate in addition to all other fees
1119 required by this chapter.

1120 (D) The provisions of §17A-3-14(d) of this code are not
1121 applicable for the issuance of special license plates
1122 designated by this subdivision.

1123 (60) Upon approval by the commissioner of an
1124 appropriate application, and upon all requirements of this
1125 subdivision being satisfied, the division may issue special
1126 registration plates for Class A and Class G motor vehicles
1127 to members of an organization for which a special
1128 registration plate has not been issued pursuant to any other
1129 subdivision in this subsection prior to January 1, 2010, in
1130 accordance with the provisions of this subdivision:

1131 (A) An organization desiring to create a special
1132 registration plate must comply with the following
1133 requirements to be eligible to apply for the creation and
1134 issuance of a special registration plate:

1135 (i) The organization must be a nonprofit organization
1136 organized and existing under Section 501(c)(3) of Title 26
1137 of the Internal Revenue Code and based, headquartered, or
1138 have a chapter in West Virginia;

1139 (ii) The organization may be organized for, but may not
1140 be restricted to, social, civic, higher education, or
1141 entertainment purposes;

1142 (iii) The organization may not be a political party and
1143 may not have been created or exist primarily to promote a
1144 specific political or social belief, as determined by the
1145 commissioner in his or her sole discretion;

1146 (iv) The organization may not have as its primary
1147 purpose the promotion of any specific faith, religion,
1148 religious belief, or antireligion;

1149 (v) The name of the organization may not be the name
1150 of a special product or brand name, and may not be
1151 construed, as determined by the commissioner, as
1152 promoting a product or brand name; and

1153 (vi) The organization's lettering, logo, image, or
1154 message to be placed on the registration plate, if created,
1155 may not be obscene, offensive, or objectionable as
1156 determined by the commissioner in his or her sole
1157 discretion.

1158 (B) Beginning July 1, 2010, an organization requesting
1159 the creation and issuance of a special registration plate may
1160 make application with the division. The application shall
1161 include sufficient information, as determined by the
1162 commissioner, to determine whether the special registration
1163 plate requested and the organization making the application
1164 meet all of the requirements set forth in this subdivision.
1165 The application shall also include a proposed design,
1166 including lettering, logo, image, or message to be placed on
1167 the registration plate. The commissioner shall notify the

1168 organization of the commissioner's approval or disapproval
1169 of the application.

1170 (C)(i) The commissioner may not begin the design or
1171 production of any license plates authorized and approved
1172 pursuant to this subdivision until the organization which
1173 applied for the special registration plate has collected and
1174 submitted collectively to the division applications
1175 completed by at least 250 persons and collectively deposited
1176 with the division all fees necessary to cover the first year's
1177 basic registration, one-time design and manufacturing costs,
1178 and to cover the first year additional annual fee for all of the
1179 applications submitted.

1180 (ii) If the organization fails to submit the required
1181 number of applications and fees within six months of the
1182 effective date of the approval of the application for the plate
1183 by the commissioner, the plate will not be produced until a
1184 new application is submitted and is approved by the
1185 commissioner: *Provided*, That an organization that is
1186 unsuccessful in obtaining the minimum number of
1187 applications may not make a new application for a special
1188 plate until at least two years have passed since the approval
1189 of the previous application of the organization.

1190 (D) The division shall charge a special initial
1191 application fee of \$25 for each special license plate in
1192 addition to all other fees required by law. This special fee
1193 shall be collected by the division and deposited in the State
1194 Road Fund.

1195 (E) The division shall charge an annual fee of \$15 for
1196 each special registration plate in addition to all other fees
1197 required by this chapter.

1198 (F) Upon appropriate application, the division may issue
1199 a special registration plate designed by the commissioner in
1200 consultation with the organization for any number of
1201 vehicles titled in the name of a qualified registration plate
1202 applicant. Persons desiring the special registration plate

1203 shall offer sufficient proof of membership in the
1204 organization.

1205 (G) The commissioner shall discontinue the issuance or
1206 renewal of the registration of any special plate issued
1207 pursuant to this subdivision if:

1208 (i) The number of valid registrations for the specialty
1209 plate falls below 250 plates for at least 12 consecutive
1210 months; or

1211 (ii) The organization no longer exists or no longer meets
1212 the requirements of this subdivision.

1213 (d) The minimum number of applications required prior
1214 to design and production of a special license plate shall be
1215 as follows:

1216 (1) The commissioner may not begin the design or
1217 production of any license plates for which eligibility is
1218 based on membership or affiliation with a particular private
1219 organization until at least 100 persons complete an
1220 application and deposit with the organization a check to
1221 cover the first year's basic registration, one-time design and
1222 manufacturing costs, and to cover the first year additional
1223 annual fee. If the organization fails to submit the required
1224 number of applications with attached checks within six
1225 months of the effective date of the original authorizing
1226 legislation, the plate will not be produced and will require
1227 legislative reauthorization: *Provided*, That an organization
1228 or group that is unsuccessful in obtaining the minimum
1229 number of applications may not request reconsideration of
1230 a special plate until at least two years have passed since the
1231 effective date of the original authorization: *Provided*,
1232 *however*, That the provisions of this subdivision are not
1233 applicable to the issuance of plates authorized pursuant to
1234 §17A-3-14(c)(60) of this code.

1235 (2) The commissioner may not begin the design or
1236 production of any license plates authorized by this section for

1237 which membership or affiliation with a particular organization
1238 is not required until at least 250 registrants complete an
1239 application and deposit a fee with the division to cover the first
1240 year's basic registration fee, one-time design and
1241 manufacturing fee, and additional annual fee if applicable. If
1242 the commissioner fails to receive the required number of
1243 applications within six months of the effective date of the
1244 original authorizing legislation, the plate will not be produced
1245 and will require legislative reauthorization: *Provided*, That if
1246 the minimum number of applications is not satisfied within the
1247 six months of the effective date of the original authorizing
1248 legislation, a person may not request reconsideration of a
1249 special plate until at least two years have passed since the
1250 effective date of the original authorization.

1251 (e)(1) Nothing in this section requires a charge for a free
1252 prisoner of war license plate or a free recipient of the
1253 Congressional Medal of Honor license plate for a vehicle
1254 titled in the name of the qualified applicant as authorized by
1255 other provisions of this code.

1256 (2) A surviving spouse may continue to use his or her
1257 deceased spouse's prisoner of war license plate or
1258 Congressional Medal of Honor license plate until the
1259 surviving spouse dies, remarries, or does not renew the
1260 license plate.

1261 (3) Qualified former prisoners of war and recipients of
1262 the Congressional Medal of Honor may obtain a second
1263 special registration plate for use on a passenger vehicle
1264 titled in the name of the qualified applicant. The division
1265 shall charge a one-time fee of \$10 to be deposited into the
1266 State Road Fund, in addition to all other fees required by
1267 this chapter, for the second special plate.

1268 (f) The division may issue special 10-year registration
1269 plates as follows:

1270 (1) The commissioner may issue or renew for a period
1271 of no more than 10 years any registration plate exempted

1272 from registration fees pursuant to any provision of this code
1273 or any restricted use antique motor vehicle license plate
1274 authorized by §17A-10-3a of this code: *Provided*, That the
1275 provisions of this subsection do not apply to any person who
1276 has had a special registration suspended for failure to
1277 maintain motor vehicle liability insurance as required by
1278 §17D-2A-3 of this code or failure to pay personal property
1279 taxes as required by §17A-3-3a of this code.

1280 (2) An initial nonrefundable fee shall be charged for
1281 each special registration plate issued pursuant to this
1282 subsection, which is the total amount of fees required by
1283 §17A-3-3, §17A-10-3a, or §17A-10-15 of this code for the
1284 period requested.

1285 (g) The provisions of this section may not be construed
1286 to exempt any registrant from maintaining motor vehicle
1287 liability insurance as required by §17D-2A-3 of this code or
1288 from paying personal property taxes on any motor vehicle
1289 as required by §17A-3-3a of this code.

1290 (h) The commissioner may, in his or her discretion,
1291 issue a registration plate of reflectorized material suitable
1292 for permanent use on motor vehicles, trailers, and
1293 semitrailers, together with appropriate devices to be
1294 attached to the registration to indicate the year for which the
1295 vehicles have been properly registered or the date of
1296 expiration of the registration. The design and expiration of
1297 the plates shall be determined by the commissioner. The
1298 commissioner shall, whenever possible and cost effective,
1299 implement the latest technology in the design, production,
1300 and issuance of registration plates, indices of registration
1301 renewal and vehicle ownership documents, including, but
1302 not limited to, offering Internet renewal of vehicle
1303 registration and the use of bar codes for instant
1304 identification of vehicles by scanning equipment to promote
1305 the efficient and effective coordination and communication
1306 of data for improving highway safety, aiding law
1307 enforcement, and enhancing revenue collection.

1308 (i) Any license plate issued or renewed pursuant to this
1309 chapter which is paid for by a check that is returned for
1310 nonsufficient funds is void without further notice to the
1311 applicant. The applicant may not reinstate the registration
1312 until the returned check is paid by the applicant in cash,
1313 money order, or certified check and all applicable fees
1314 assessed as a result thereof have been paid.

1315 (j) The division shall, upon request of a qualifying
1316 applicant, exempt one nonexempt military special
1317 registration plate per qualifying applicant from all
1318 registration fees. For purposes of this subsection:

1319 (1) “Exempt military special registration plate” means a
1320 special registration plate related to military service that is
1321 issued pursuant to this section for which registration fees are
1322 exempt pursuant to this section or §17A-10-8 of this code,
1323 including, but not limited to, a special registration plate
1324 issued to one of the following:

1325 (A) A disabled veteran pursuant to §17A-3-14(c)(6),
1326 §17A-10-8(4), or §17A-10-8(5) of this code;

1327 (B) A recipient of the Purple Heart medal pursuant to
1328 §17A-3-14(c)(7) of this code;

1329 (C) A survivor of the attack on Pearl Harbor pursuant to
1330 §17A-3-14(c)(8) of this code;

1331 (D) A former prisoner of war pursuant to §17A-10-8(6)
1332 of this code; or

1333 (E) A recipient of the Congressional Medal of Honor
1334 pursuant to §17A-10-8(7) of this code.

1335 (2) “Nonexempt military special registration plate”
1336 means a special registration plate related to military service
1337 that is issued pursuant to this section for which registration
1338 fees are not exempt pursuant to this section or §17A-10-8 of
1339 this code, including, but not limited to, special registration
1340 plate issued to one of the following:

1341 (A) A member of the National Guard forces pursuant to
1342 §17A-3-14(c)(3) of this code;

1343 (B) An honorably discharged veteran pursuant to §17A-
1344 3-14(c)(5) or §17A-3-14(c)(21) of this code;

1345 (C) An honorably discharged Marine Corps League
1346 member pursuant to §17A-3-14(c)(13) of this code;

1347 (D) A member of a military organization pursuant to
1348 §17A-3-14(c)(14) of this code;

1349 (E) A recipient of the Navy Cross, Distinguished
1350 Service Cross, Distinguished Flying Cross, Air Force Cross,
1351 Bronze Star, Silver Star, or Air Medal pursuant to §17A-3-
1352 14(c)(20) of this code;

1353 (F) A recipient of the Combat Infantry Badge or the
1354 Combat Medic Badge pursuant to §17A-3-14(c)(29) of this
1355 code;

1356 (G) An honorably discharged female veteran pursuant
1357 to §17A-3-14(c)(33) of this code;

1358 (H) A person retired from any branch of the armed
1359 services of the United States pursuant to §17A-3-14(c)(36)
1360 of this code; or

1361 (I) A member of the 82nd Airborne Division
1362 Association pursuant to §17A-3-14(c)(40) of this code.

1363 (3) “Qualifying applicant” means an applicant who
1364 qualifies for an exempt military special registration plate,
1365 and who also qualifies for a nonexempt military special
1366 registration plate, who requests that the division issue one
1367 such nonexempt military special registration plate instead of
1368 such exempt military special registration plate in order to
1369 have such nonexempt military special registration plate be
1370 exempt from the payment of registration fees.

●

CHAPTER 175

**(H. B. 2850 - By Delegates Porterfield, Linville, J.
Jeffries, Kessinger, Cadle, Paynter, Cooper and
Foster)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §17E-1-9 of the Code of West Virginia, 1931, as amended, relating to qualifications for commercial driver's license; and providing that a commercial license instruction permit may be issued to persons 18 years of age who have held a graduated Class E, Class E or Class D license for at least one year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-9. Commercial driver's license qualification standards.

1 (a) No person may be issued a commercial driver's
2 license unless that person is a resident of this state and has
3 passed a knowledge and skills test for driving a commercial
4 motor vehicle which complies with minimum federal
5 standards established by federal regulations enumerated in
6 49 C.F.R. Part §383, Subparts G and H (2004) and has
7 satisfied all other requirements of the Federal Motor Carrier
8 Safety Improvement Act of 1999 in addition to other
9 requirements imposed by state law or federal regulations.

10 (b) *Third-party testing.* — The commissioner may
11 authorize a person, including an agency of this or another
12 state, an employer, private individual or institution,
13 department, agency or instrumentality of local government,

14 to administer the skills test specified by this section so long
15 as:

16 (1) The test is the same which would otherwise be
17 administered by the state; and

18 (2) The party has entered into an agreement with the
19 state that complies with the requirements of 49 C.F.R., Part
20 §383.75.

21 (c) *Indemnification of driver examiners.* — No person
22 who has been officially trained and certified by the state as
23 a driver examiner, who administers a driving test, and no
24 other person, firm or corporation by whom or with which
25 that person is employed or is in any way associated, may be
26 criminally liable for the administration of the tests or civilly
27 liable in damages to the person tested or other persons or
28 property unless for gross negligence or willful or wanton
29 injury.

30 (d) The commissioner may waive the skills test
31 specified in this section for a commercial driver license
32 applicant who meets the requirements of 49 C.F.R. Part
33 §383.77 and the requirements specified by the
34 commissioner.

35 (e) A commercial driver's license or commercial
36 driver's instruction permit may not be issued to a person
37 while the person is subject to a disqualification from driving
38 a commercial motor vehicle, when the person does not
39 possess a valid or current medical certification status or
40 while the person's driver's license is suspended, revoked or
41 canceled in any state. A commercial driver's license may
42 not be issued by any other state unless the person first
43 surrenders all such licenses to the division: *Provided*, That
44 a person who became subject to a disqualification from
45 driving a commercial motor vehicle prior to possessing a
46 commercial driver's license is not disqualified from
47 possessing a commercial driver's license or commercial

48 driver's license instruction permit so long as the mandatory
49 revocation period specified in subdivision (3), subsection
50 (a), section thirteen of this article has elapsed, and the
51 individual has completed the Safety and Treatment Program
52 or other appropriate program prescribed by the division as
53 required by subdivision (2) of said subsection.

54 (f) Commercial driver's instruction permit may be
55 issued as follows:

56 (1) To an individual who holds a valid Class E or Class
57 D driver's license and has passed the vision and written tests
58 required for issuance of a commercial driver's license.

59 (2) The commercial instruction permit may not be
60 issued for a period to exceed six months. Only one renewal
61 or reissuance may be granted within a two-year period. The
62 holder of a commercial driver's instruction permit may
63 drive a commercial motor vehicle on a highway only when
64 accompanied by the holder of a commercial driver's license
65 valid for the type of vehicle driven, who is 21 years of age
66 or older, who is alert and unimpaired and who occupies a
67 seat beside the individual for the purpose of giving
68 instruction or testing.

69 (3) Only to a person who is at least 18 years of age and
70 has held a graduated Class E, Class E or Class D license for
71 at least one year.

72 (4) The applicant for a commercial driver's instruction
73 permit shall also be otherwise qualified to hold a
74 commercial driver's license.



CHAPTER 176

(Com. Sub. for S. B. 317 - By Senators Maynard, Cline and Sypolt)

[Passed March 9, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-17-1, §20-17-2, §20-17-3, §20-17-4, §20-17-5, §20-17-6, §20-17-7, §20-17-8, and §20-17-9; and to amend said code by adding thereto a new article, designated §20-17A-1, §20-17A-2, §20-17A-3, §20-17A-4, and §20-17A-5, all relating generally to forming multicounty trail network authorities; creating a framework for establishment of multicounty trail network authorities and authorizing the formation of the Mountaineer Trail Network Recreation Authority; providing legislative findings; defining terms; providing that an authority is a public corporation and joint development entity; providing procedures for counties to join a trail network authority as a participating county and providing for the merger of two established authorities; providing for appointment of individuals to the board of an authority and for the filling of vacancies on the board; establishing the terms of appointment to a board; requiring quarterly meetings of a board; describing how a quorum is established; authorizing a board to promulgate bylaws and rules; providing that an authority is subject to Freedom of Information Act laws; describing the powers and duties of an authority and its board; requiring a board to appoint an executive director; describing powers and duties of an executive director; authorizing employment of authority staff; requiring creation of an annual budget; providing for payment of an authority's expenses; allowing reimbursement of board member expenses; establishing

financial audit requirements; requiring reporting and oversight of state funds; prohibiting certain actions by users of recreational area land and providing criminal penalties; limiting the liability of owners of land used by an authority; setting forth purchasing and bidding procedures for authority contracts and purchases; providing criminal penalties for violation of purchasing and bidding requirements; clarifying that certain provisions of the code prohibiting certain officers from having a pecuniary interest in contracts applies to board members, officers, personnel, and agents of an authority; providing civil remedies for participating counties challenging purchasing contracts violating certain requirements; establishing the Mountaineer Trail Network Recreation Authority and authorizing the creation of the Mountaineer Trail Network Recreation Area; identifying participating counties; authorizing counties to join the Mountaineer Trail Network Recreation Authority through certain procedures; authorizing the Mountaineer Trail Network Recreation Authority to merge with other multicounty trail network authorities through certain procedures; providing legislative findings and purposes for this authority; listing the recreational purposes for the recreation area; specifying manner of governance and payment of expenses; and ensuring liability protections for cooperating land owners.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. MULTICOUNTY TRAIL NETWORK AUTHORITIES.

§20-17-1. Legislative findings.

1 The West Virginia Legislature finds that outdoor
2 recreation is an increasingly vital part of the state's
3 economy and that outdoor recreation participants spend
4 billions of dollars annually in the state and support a
5 significant number of local jobs.

6 The Legislature further finds that well-managed areas
7 for trail-oriented recreation in the state will increase outdoor
8 recreational tourism, increasing revenue to the state and
9 creating more jobs for West Virginia citizens.

10 The Legislature further finds that, with the cooperation
11 of private landowners, there is an opportunity to provide
12 citizens and recreational tourists with greater access to
13 trail-oriented recreation by incorporating private property
14 into recreational trail systems and areas throughout West
15 Virginia to provide significant economic and recreational
16 benefits to communities in the state.

17 The Legislature further finds that, under an appropriate
18 contractual and management scheme, well-managed trail
19 systems may exist on private property without diminishing
20 the landowner's interest, control, or profitability in the land
21 and without increasing the landowner's exposure to
22 liability.

23 The Legislature further finds that creating and
24 empowering multicounty trail network authorities, that can
25 work with the landowners, county officials, community
26 leaders, state and federal government agencies, recreational
27 user groups, and other interested parties to expand trail
28 systems will greatly assist in improving and linking
29 recreational trail systems.

30 The Legislature further finds that it is in the best
31 interests of the state to encourage private landowners to
32 make land available for public use, through multicounty
33 trail network authorities, for recreational purposes by
34 limiting landowner liability for injury to persons entering
35 thereon, by limiting landowner liability for injury to the
36 property of persons entering thereon, and by limiting
37 landowner liability to persons who may be injured or
38 otherwise damaged by the acts or omissions of persons
39 entering thereon.

§20-17-2. Definitions.

1 Unless the context clearly requires a different meaning,
2 the terms used in this article have the following meanings:

3 (1) “Adjacent county” means a nonparticipating county
4 that directly borders any participating county in a
5 multicounty trail network authority;

6 (2) “Authority” means a multicounty trail network
7 authority created pursuant to this article;

8 (3) “Board” means the board of a multicounty trail
9 network authority;

10 (4) “Contiguous counties” means a group of counties in
11 which each county shares the border of at least one other
12 county in the group;

13 (5) “Fee” means the amount of money asked in return
14 for an invitation to enter or go upon a recreational area of a
15 trail network, including a one-time fee for a particular event,
16 amusement, occurrence, adventure, incident, experience, or
17 occasion as set by an authority, which may differ in amount
18 for different categories of participants;

19 (6) “Land” or “property” includes, but is not limited to,
20 roads, water, watercourses, private ways, buildings,
21 premises, structures, and machinery or equipment, when
22 attached to the realty;

23 (7) “Owner” or “owner of land” means a person vested
24 with title to real estate and those with the ability to exercise
25 control over real estate and includes, but is not limited to, a
26 tenant, lessee, licensee, holder of a dominant estate, or other
27 lawful occupant;

28 (8) “Participant” means any person using a recreational
29 area of a trail network for recreational purposes;

30 (9) "Person" means any public or private corporation,
31 institution, association, society, firm, organization, or
32 company organized or existing under the laws of this or any
33 other state or country; the State of West Virginia; any state
34 governmental agency; any political subdivision of the state
35 or of its counties or municipalities; a sanitary district; a
36 public service district; a drainage district; a conservation
37 district; a watershed improvement district; a partnership,
38 trust, or estate; a person or individual; a group of persons or
39 individuals acting individually or as a group; any other legal
40 entity; or any authorized agent, lessee, receiver, or trustee
41 of any of the foregoing;

42 (10) "Participating county" means one of the three or
43 more counties forming a multicounty trail network
44 authority;

45 (11) "Recreational area" means the recreational trails
46 and appurtenant facilities, including trail head centers,
47 parking areas, camping facilities, picnic areas, recreational
48 areas, historic or cultural interpretive sites, and other
49 facilities or attractions that are a part of a multicounty trail
50 network authority system; and

51 (12) "Recreational purposes" means:

52 (A) Any outdoor activity undertaken, or practice or
53 instruction in any such activity, for the purpose of exercise,
54 relaxation, or pleasure, including, but not limited to any one
55 or any combination of the following noncommercial
56 recreational activities: Hunting, fishing, swimming,
57 boating, kayaking, camping, picnicking, hiking, rock
58 climbing, bouldering, bicycling, horseback riding,
59 spelunking, nature study, water skiing, winter sports, and
60 visiting, viewing, or enjoying historical, archaeological,
61 scenic, or scientific sites, aircraft, or ultralight operations on
62 private airstrips or farms, or otherwise using land for
63 purposes of the user;

64 (B) Parking on or traversing land, outside of the state
65 road system, for the purpose of engaging in a recreational
66 activity described in paragraph (A) of this subdivision; or

67 (C) Maintaining or making improvements on land,
68 including, but not limited to, artificial improvements for the
69 purpose of making the land accessible or usable for a
70 recreational activity described in paragraph (A) of this
71 subdivision.

**§20-17-3. Multicounty trail network authorities authorized;
addition of counties; merger of existing authorities.**

1 (a) For the purposes of this article, three or more
2 contiguous counties may, upon approval of the county
3 commission of each county desiring to participate, form a
4 multicounty trail network authority. An authority
5 established pursuant to this section is a public corporation
6 and a joint development entity existing for the purpose of
7 facilitating the development and operation of a system of
8 recreational trails and areas throughout the participating
9 counties. Such trails will be designated and made available
10 for recreational purposes with significant portions of the
11 trails system being located on private property throughout
12 West Virginia, made available for use through lease,
13 license, easement, or other appropriate legal form by a
14 willing landowner.

15 (b) An adjacent county may join a multicounty trail
16 network authority as a participating county upon approval
17 of both the board of the authority and the county
18 commission of the adjacent county wishing to become a
19 participating county.

20 (c) Two or more existing authorities may merge and
21 become a single authority encompassing the participating
22 counties in each merging authority upon approval of the
23 board of each authority. Upon merger of two or more
24 authorities, the board of the newly created authority will be
25 composed of all board members serving on the board of

26 each merging authority at the time the merger takes place.
27 Thereafter, the authority will fill any vacancies and appoint
28 board members as required by §20-17-4 of this code. The
29 board of the newly created authority shall adopt appropriate
30 procedures and bylaws to ensure that the newly created
31 authority complies with all requirements of this article.

**§20-17-4. Board; quorum; executive director; expenses;
application of state Freedom of Information Act.**

1 (a) The board is the governing body of an authority and
2 the board shall exercise all the powers given the authority in
3 this article. The county commission of each participating
4 county shall appoint two members to the board, as follows:

5 (1) Each participating county shall appoint one member
6 who represents and is associated with a corporation or
7 individual landowner whose land is being used or is
8 expected to be used in the future as part of the authority's
9 recreational area. This member shall be appointed to a
10 four-year term.

11 (2) Each participating county shall appoint one member
12 who is an experienced instructor, guide, or participant in
13 recreational activities in the county or an individual who
14 represents and is associated with travel, tourism, economic
15 development, land surveying, or relevant engineering
16 efforts within the county. The initial appointment for this
17 member shall be for a two-year term, but all subsequent
18 appointments shall be for a four-year term.

19 (3) Any appointed member whose term has expired
20 shall serve until his or her successor has been duly appointed
21 and qualified. Any person appointed to fill a vacancy shall
22 serve only for the unexpired term. Any appointed member
23 is eligible for reappointment. Members of the board are not
24 entitled to compensation for services performed as members
25 but are entitled to reimbursement for all reasonable and
26 necessary expenses actually incurred in the performance of
27 their duties.

28 (b) Upon joining an existing authority as a participating
29 county pursuant to §20-17-3 of this code, the newly
30 participating county shall appoint board members only for
31 the length of the unexpired terms of the authority's board
32 members serving at the time the county joins the authority.
33 Thereafter, the county shall appoint board members
34 according to the regular appointment procedure provided in
35 subsection (a) of this section.

36 (c) The board shall meet quarterly, unless a special
37 meeting is called by its chairman. During the first meeting
38 of each fiscal year beginning in an odd-numbered year, or
39 as soon as feasible thereafter, the board shall elect a
40 chairman, secretary, and treasurer from among its own
41 members to serve for two-year terms.

42 (d) A majority of the members of the board constitutes
43 a quorum and a quorum shall be present for the board to
44 conduct business.

45 (e) The board may prescribe, amend, and repeal bylaws
46 and rules governing the use of the trail system, safety
47 standards for participants, and the manner in which the
48 business of the authority is conducted.

49 (f) The board shall review and approve an annual
50 budget. The fiscal year for an authority begins on July 1 and
51 ends on the 30th day of the following June.

52 (g) The board shall appoint an executive director to act
53 as its chief executive officer, to serve at the will and pleasure
54 of the board. The board, acting through its executive
55 director, may employ any other personnel considered
56 necessary and retain such temporary legal, engineering,
57 financial, and other consultants or technicians as may be
58 required for any special study or survey consistent with the
59 provisions of this article. The executive director shall carry
60 out plans to implement the provisions of this article and to
61 exercise those powers enumerated in the bylaws. The
62 executive director shall prepare an annual budget to be

63 submitted to the board for its review and approval prior to
64 the commencement of each fiscal year. The budget shall
65 contain a detailed account of all planned and proposed
66 revenue and expenditures for the authority for the upcoming
67 fiscal year, including a detailed list of employees by title,
68 salary, cost of projected benefits, and total compensation.
69 Before August 15 of each year, the executive director shall
70 provide to the board and the county commission for each
71 participating county a detailed list of actual expenditures
72 and revenue, by account and recipient name, for the
73 previous fiscal year and a copy of the approved budget for
74 the current fiscal year.

75 (h) All costs incidental to the administration of the
76 authority, including office expenses, personal services
77 expenses, and current expenses, shall be paid in accordance
78 with guidelines issued by the board from funds accruing to
79 the authority.

80 (i) All expenses incurred by an authority in carrying out
81 the provisions of this article shall be payable solely from
82 funds that have accrued to the authority pursuant to this
83 article. An authority may not incur liability or an obligation
84 above the amount of funds that have accrued to the authority
85 pursuant to this article.

86 (j) A multicounty trail network authority and the board
87 is a “public body” for purposes of the West Virginia
88 Freedom of Information Act, as provided in §29B-1-1 *et*
89 *seq.* of this code.

§20-17-5. Financial review and oversight.

1 (a) An authority shall contract for and obtain an annual
2 financial audit to be conducted by a private accounting firm
3 in compliance with generally accepted government auditing
4 standards. When complete, the audit shall be transmitted to
5 the board, the president of the county commission of each
6 participating county, and the Legislative Auditor. The cost
7 of the audit shall be paid by the authority.

8 (b) If an authority receives any funds from the
9 Legislature by appropriation or grant, the Legislative
10 Auditor shall have the power and authority to examine the
11 revenues, expenditures, and performance of the authority,
12 and, for these purposes, shall have the power to inspect the
13 properties, equipment, and facilities of the authority and to
14 request, inspect, and obtain copies of any records of the
15 authority. For each fiscal year in which the authority
16 receives any funds from the Legislature by appropriation or
17 grant, the executive director shall provide to the Legislative
18 Auditor and Secretary of Revenue a detailed list of actual
19 expenditures and revenue by account and recipient name for
20 the previous fiscal year within 45 days of the close of that
21 fiscal year.

§20-17-6. Powers of an authority.

1 An authority, as a public corporation and joint
2 development entity, may exercise all powers necessary or
3 appropriate to carry out the purposes of this article,
4 including, but not limited to, the power:

5 (1) To acquire, own, hold, and dispose of property, real
6 and personal, tangible and intangible;

7 (2) To lease property, whether as lessee or lessor, and to
8 acquire or grant through easement, license, or other
9 appropriate legal form, the right to develop and use property
10 and open it to the public;

11 (3) To mortgage or otherwise grant security interests in
12 its property;

13 (4) To procure insurance against any losses in
14 connection with its property, licenses, easements,
15 operations, assets, or contracts, including hold-harmless
16 agreements, in such amounts and from such insurers as the
17 authority considers desirable;

18 (5) To maintain such sinking funds and reserves as the
19 board determines appropriate for the purposes of meeting
20 future monetary obligations and needs of the authority;

21 (6) To sue and be sued, implead and be impleaded, and
22 complain and defend in any court;

23 (7) To contract for the provision of legal services by
24 private counsel and, notwithstanding the provisions of
25 §5-3-1 *et seq.* of this code, the counsel may, in addition to
26 the provisions of other legal services, represent the authority
27 in court, negotiate contracts and other agreements on behalf
28 of the authority, render advice to the authority on any matter
29 relating to the authority, prepare contracts and other
30 agreements, and provide such other legal services as may be
31 requested by the authority;

32 (8) To adopt, use, and alter at will a corporate seal;

33 (9) To make, amend, repeal, and adopt bylaws for the
34 management and regulation of the authority's affairs;

35 (10) To appoint officers, agents, and employees and to
36 contract for and engage the services of consultants;

37 (11) To make contracts of every kind and nature and to
38 execute all instruments necessary or convenient for carrying
39 out the purposes of this article, including contracts with any
40 other governmental agency of this state or of the federal
41 government or with any person, individual, partnership, or
42 corporation;

43 (12) Without in any way limiting any other subdivision
44 of this section, to accept grants and loans from, and enter
45 into contracts and other transactions with, any federal
46 agency;

47 (13) To maintain an office at such place or places within
48 the state as it may designate;

49 (14) To borrow money, to issue notes, to provide for the
50 payment of notes, to provide for the rights of the holders of
51 notes, and to purchase, hold, and dispose of any of its notes;

52 (15) To issue notes payable solely from the revenue or
53 other funds available to the authority, which may be issued
54 in such principal amounts as necessary to provide funds for
55 any purpose under this article, including:

56 (A) The payment, funding, or refunding of the principal
57 of, interest on, or redemption premiums on notes issued by
58 it, whether the notes or interest to be funded or refunded
59 have or have not become due; and

60 (B) The establishment or increase of reserves to secure
61 or to pay notes, or the interest on the notes, and all other
62 costs or expenses of the authority incident to and necessary
63 or convenient to carry out its corporate purposes and
64 powers. Notes may be additionally secured by a pledge of
65 any revenues, funds, assets, or moneys of the authority from
66 any source;

67 (16) To issue renewal notes, except that no renewal
68 notes may be issued to mature more than 10 years from the
69 date of issuance of the notes renewed;

70 (17) To apply the proceeds from the sale of renewal
71 notes to the purchase, redemption, or payment of the notes
72 to be refunded;

73 (18) To accept gifts or grants of property, funds, security
74 interests, money, materials, labor, supplies, or services from
75 the federal government or from any governmental unit or
76 any person, firm, or corporation, and to take appropriate
77 measures in procuring, accepting, or disposing of gifts or
78 grants;

79 (19) To the extent permitted under its contracts with the
80 holders of notes of the authority, to consent to any
81 modification of the rate of interest, time of payment of any
82 installment of principal or interest, security or any other

83 term of any note, contract or agreement of any kind to which
84 the authority is a party;

85 (20) To construct, reconstruct, improve, maintain,
86 repair, operate, and manage the recreational areas at the
87 locations within the participating counties as may be
88 determined by the authority;

89 (21) To enter into an agreement with the West Virginia
90 Division of Natural Resources for natural resources police
91 officers to provide law-enforcement services within the
92 authority's recreational area and to reimburse the Division
93 of Natural Resources for its costs therefor;

94 (22) To exercise all power and authority provided in this
95 article necessary and convenient to plan, finance, construct,
96 renovate, maintain, and operate or oversee the operation of
97 the authority at such locations within the participating
98 counties as may be determined by the authority;

99 (23) To exercise all of the powers which a corporation
100 may lawfully exercise under the laws of this state;

101 (24) To develop, maintain, and operate or contract for
102 the development, maintenance, and operation of the
103 authority;

104 (25) To enter into contracts with landowners and other
105 persons holding an interest in the land being used for its
106 recreational facilities to hold those landowners and other
107 persons harmless with respect to any claim in tort growing
108 out of the use of the land for recreational purposes or
109 growing out of the recreational activities operated or
110 managed by the authority from any claim except a claim for
111 damages proximately caused by the willful or malicious
112 conduct of the landowner or any of his or her agents or
113 employees;

114 (26) To assess and collect a reasonable fee from those
115 persons who use the trails, parking facilities, visitor centers,
116 or other facilities which are part of the recreational area and

117 to retain and utilize that revenue for any purposes consistent
118 with this article: *Provided*, That such fee does not constitute
119 a “charge” or a “fee” within the meaning and for the
120 purposes of §19-25-5 of this code: *Provided, however*, That
121 the authority may not charge a fee for any user to enter or
122 go upon any trail that is already open for use by the public
123 without fee as of January 1, 2019;

124 (27) To enter into contracts or other appropriate legal
125 arrangements with landowners under which land is made
126 available for use as part of the recreational area;

127 (28) To directly operate and manage recreation
128 activities and facilities within the recreational area;

129 (29) To promulgate and publish rules governing the use
130 of the recreational area and the safety of participants,
131 including rules designating particular trails or segments of
132 trails within the recreational area for certain activities and
133 limiting use of designated trails to such activities;

134 (30) To coordinate and conduct athletic races,
135 competitions, or events within the recreational area, in
136 cooperation with the county commissions of participating
137 counties in which such events will take place; and

138 (31) To exercise such other and additional powers as
139 may be necessary or appropriate to carry out the purposes
140 of this article.

**§20-17-7. Requirements for trail users and prohibited acts;
criminal penalties.**

1 (a) A person may not enter or remain upon a recreational
2 area without a valid, nontransferable user permit issued by
3 the appropriate authority and properly displayed, except
4 properly identified landowners or leaseholders or their
5 officers, employees, or agents while on the land that the
6 person owns or leases for purposes related to the ownership
7 or lease of the land.

8 (b) An authority may require recreational users to wear
9 protective helmets or use safety equipment that the authority
10 determines to be appropriate for the recreational activity in
11 which the user is engaged.

12 (c) Each trail user operating a bicycle or mountain
13 bicycle shall obey all traffic laws, traffic-control devices,
14 and signs within the recreational area, including those which
15 restrict trails to certain types of bicycles or mountain
16 bicycles.

17 (d) Each trail user shall at all times remain within and
18 on a designated and marked trail while within the
19 recreational area.

20 (e) A person may not ignite or maintain any fire within
21 the recreational area except in a designated camp site.

22 (f) A person may not operate a motor vehicle within the
23 recreational area unless the person is authorized to operate
24 a motor vehicle in the area to perform maintenance services
25 or emergency response.

26 (g) A person who violates any provision of this section
27 is guilty of a misdemeanor and, upon conviction, shall be
28 fined not more than \$100. Prosecution or conviction for the
29 misdemeanor described in this subsection shall not prevent
30 or disqualify any other civil or criminal remedies for the
31 conduct prohibited by this section.

§20-17-8. Limiting liability.

1 (a) An owner of land used by an authority owes no duty
2 of care to keep his or her land safe for entry or use by others
3 for recreational purposes, or to give any warning of a
4 dangerous or hazardous condition, use, structure, activity,
5 or wild animal on such land to persons entering or going
6 upon the land for such purposes. The provisions of this
7 section apply regardless of whether the person entering or
8 going upon the leased land is permitted to enter the land or
9 is a trespasser.

10 (b) Unless otherwise agreed in writing, an owner of land
11 who grants a lease, easement, or license of land to an
12 authority for recreational purposes does not, by giving a
13 lease, easement or license: (1) Extend any assurance to any
14 person using the land that the land is safe for any purpose;
15 (2) confer upon those persons the legal status of a party to
16 whom a duty of care is owed; or (3) assume responsibility
17 for or incur liability for any injury to person or property or
18 death caused by an act or omission of a person who enters
19 upon the leased land. The provisions of this section apply
20 whether the person entering or going upon the leased land
21 is permitted to enter the land or is a trespasser.

22 (c) Nothing in this section limits in any way any liability
23 which otherwise exists for deliberate, willful, or malicious
24 infliction of injury to persons or property: *Provided*, That
25 nothing herein limits in any way the obligation of a person
26 entering upon or using the land of another for recreational
27 purposes to exercise due care in his or her use of the land
28 and in his or her activities thereon, so as to prevent the
29 creation of hazards or the commission of waste by himself
30 or herself.

§20-17-9. Purchasing and bidding procedures; criminal penalties.

1 (a) *Purchasing and bidding procedures; criminal*
2 *penalties.* —

3 (1) Whenever an authority proposes to purchase or
4 contract for commodities or services reasonably anticipated
5 to equal or exceed \$25,000 in cost, the purchase or contract
6 shall be based on competitive bidding. Where the purchase
7 of particular commodities or services is reasonably
8 anticipated to be less than \$25,000, the executive director
9 may, on behalf of the authority, solicit bids or price quotes
10 in any manner that the executive director deems appropriate
11 and the authority shall obtain its commodities or services by
12 the lowest bid. In lieu of seeking bids or quotes for
13 commodities or services in this price range, the authority

14 may purchase those commodities and services pursuant to
15 state prequalification agreements as provided in §5A-3-10e
16 of this code.

17 (2) Where the cost for the purchase of commodities or
18 services is reasonably anticipated to exceed \$25,000, the
19 executive director shall solicit sealed bids for such
20 commodities or services: *Provided*, That the executive
21 director may permit bids by electronic transmission to be
22 accepted in lieu of sealed bids. Bids shall be solicited by
23 public notice. The notice shall be published as a Class II
24 legal advertisement in all participating counties in
25 compliance with the provisions of §59-3-1 *et seq.* of this
26 code and by such other means as the executive director
27 deems appropriate. The notice shall state the general
28 character of the work and general character of the materials
29 to be furnished, the place where plans and specifications
30 therefor may be examined, and the time and place for
31 receiving bids. After all bids are received, the authority shall
32 enter into a written contract with the lowest responsible
33 bidder; however, the authority may reject any or all bids that
34 fail to meet the specifications required by the authority or
35 that exceed the authority's budget estimation for those
36 commodities or services. If the executive director
37 determines in writing that there is only one responsive and
38 responsible bidder and that there has been sufficient public
39 notice to attract competitive bids, he or she may negotiate
40 the price for a noncompetitive award or the specifications
41 for a noncompetitive award based solely on the original
42 purpose of the solicitation.

43 (3) For any contract that exceeds \$25,000 in total cost,
44 the authority shall require the vendors to post a bond, with
45 form and surety to be approved by the authority, in an
46 amount equal to at least 50 percent of the contract price
47 conditioned upon faithful performance and completion of
48 the contract.

49 (4) The bidding requirements specified in this section
50 do not apply to any leases for real property upon which the

51 authority makes improvements for public access to the
52 recreational area, information distribution, and welcome
53 centers. This exemption does not apply to leases for offices,
54 vehicle and heavy equipment storage, or administrative
55 facilities.

56 (5) Any person who violates a provision of this
57 subsection is guilty of a misdemeanor and, upon conviction,
58 shall be confined in jail not less than 10 days nor more than
59 one year, or fined not less than \$10 nor more than \$1,000,
60 or both fined and confined.

61 (b) *Conflicts of interest in contracts prohibited.* —

62 An authority or any of its board members, officers,
63 employees, or agents may not enter into any contracts,
64 agreements, or arrangements for purchases of services or
65 commodities violating the requirements of §6B-2-5 or
66 §61-10-15 of this code.

67 (c) *Civil remedies.* —

68 The county commission of a participating county in an
69 authority may challenge the validity of any contract or
70 purchase entered, solicited, or proposed by the authority in
71 violation of this section by seeking declaratory or injunctive
72 relief in the circuit court of the county of the challenging
73 party. If the court finds by a preponderance of evidence that
74 the provisions of those sections have been violated, the
75 court may declare the contract or purchase to be void and
76 may grant any injunctive relief necessary to correct the
77 violations and protect the funds of the authority as a joint
78 development entity.

ARTICLE 17A. MOUNTAINEER TRAIL NETWORK RECREATION AUTHORITY.

§20-17A-1. Legislative findings; purpose.

1 The Legislature further finds that, with the cooperation
2 of private landowners, there is an opportunity to provide

3 trail-oriented recreation facilities primarily on private
4 property in the mountainous terrain of the Potomac
5 Highlands and north central West Virginia and that the
6 facilities will provide significant economic and recreational
7 benefits to the state and to the communities in the Potomac
8 Highlands and north central West Virginia through
9 increased tourism in the same manner as whitewater rafting,
10 snow skiing, and utility terrain motor vehicle riding benefit
11 the state and communities surrounding those activities.

12 The Legislature further finds that the creation and
13 empowering of a joint development entity to work with the
14 landowners, county officials and community leaders, state
15 and federal government agencies, recreational user groups,
16 and other interested parties to enable and facilitate the
17 implementation of the facilities will greatly assist in the
18 realization of these potential benefits.

19 The purpose of this article is to provide additional
20 opportunities and regulatory authorization for recreational
21 trail networks and to provide for increased access to
22 recreational areas, including, but not limited to, creating a
23 contiguous trail system that connects to the Chesapeake and
24 Ohio Canal Tow Path.

**§20-17A-2. Creation of Mountaineer Trail Network Recreation
Authority and establishment of recreation area.**

1 (a) There is hereby created the Mountaineer Trail
2 Network Recreation Authority consisting of representatives
3 from the counties of Barbour, Grant, Harrison, Marion,
4 Mineral, Monongalia, Preston, Randolph, Taylor, and
5 Tucker organized pursuant to the provisions of §20-17-1 *et*
6 *seq.* of this code. This authority is authorized to establish a
7 Mountaineer Trail Network Recreation Area within the
8 jurisdictions of those counties and the authority shall be
9 subject to the powers, duties, immunities, and restrictions
10 provided in §20-17-1 *et seq.* of this code. Visitors and
11 participants in recreational activities within the trail network

12 shall, in similar respects, be subject to the user requirements
13 and prohibitions of §20-17-7 of this code.

14 (b) Notwithstanding subsection (a) of this section, an
15 adjacent county may join the Mountaineer Trail Network
16 Recreation Authority pursuant to the procedures set forth in
17 §20-17-3(b) of this code.

18 (c) Notwithstanding subsection (a) of this section, the
19 Mountaineer Trail Network Recreation Authority may
20 merge with another multicounty trail network authority,
21 pursuant to the procedures set forth in §20-17-3(c) of this
22 code.

§20-17A-3. Recreational purposes.

1 The permitted recreational purposes for the
2 Mountaineer Trail Network Recreation Area include, but
3 are not limited to, any one or any combination of the
4 following noncommercial recreational activities: Hunting,
5 fishing, swimming, boating, camping, picnicking, hiking,
6 bicycling, mountain bicycling, running, cross-country
7 running, nature study, winter sports and visiting, viewing or
8 enjoying historical, archaeological, scenic, or scientific
9 sites.

§20-17A-4. Governing body and expenses.

1 (a) The governing body of the authority shall be a board
2 constituted according to the provisions of §20-17-4 of this
3 code.

4 (b) All costs incidental to the administration of the
5 authority, including office expenses, personal services
6 expenses and current expenses, shall be paid in accordance
7 with guidelines issued by the board from funds accruing to
8 the authority.

9 (c) All expenses incurred in carrying out the provisions
10 of this article shall be payable solely from funds provided
11 under the authority of this article and according to the

12 requirements of §20-17-1 *et seq.* of this code. No liability or
 13 obligation may be incurred by the authority under this
 14 article beyond the extent to which moneys have been
 15 provided under the authority of this article.

§20-17A-5. Protection for private landowners.

1 Owners of land used by the authority shall have the full
 2 benefit of the limitations of liability provided in §20-17-8 of
 3 this code.

CHAPTER 177

**(Com. Sub. for H. B. 2521 - By Delegates
 Harshbarger, Paynter, Cooper, Bibby, D. Kelly,
 Atkinson, Sypolt, Hanna, Mandt and Porterfield)**

[Passed February 15, 2019; in effect ninety days from passage.]
 [Approved by the Governor on February 28, 2019.]

AN ACT to amend and reenact §20-2-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §20-2-12 of said code; and to amend and reenact §20-2-49 of said code, all relating to permitting the selling, trading, and bartering of fur-bearer parts, including carcasses for the making of lures and baits, carcass parts, including glands, skulls, claws, and bones, and fur-bearer urine; and providing that the hide and tails of legally killed squirrels may be sold, traded or bartered.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-11. Sale of wildlife; transportation of same.

1 (a) A person, except those legally licensed to operate
 2 private game preserves for the purpose of propagating game

3 for commercial purposes and those legally licensed to
4 propagate or sell fish, amphibians and other forms of
5 aquatic life, may not purchase or offer to purchase, sell or
6 offer to sell, trade or offer to trade, barter or offer to barter,
7 expose for sale, trade or barter or have in his or her
8 possession for the purpose of sale, trade or barter any
9 wildlife, or part thereof, which has been designated as game
10 animals, fur-bearing animals, game birds, game fish or
11 amphibians, or any of the song or insectivorous birds of the
12 state, or any other species of wildlife which the director may
13 designate, except for captive cervids regulated pursuant to
14 the provisions of §19-2H-1 *et seq.* of this code. However,
15 pelts of game or fur-bearing animals, fur-bearer parts,
16 including carcasses for the making of lures and baits,
17 carcass parts, including glands, skulls, claws, and bones,
18 and fur-bearer urine taken during the legal season may be
19 sold, traded or bartered and live red and gray foxes and
20 raccoon taken by legal methods during legal and established
21 trapping seasons may be sold, traded or bartered within the
22 state. In addition, the hide, head, antlers and feet of a legally
23 killed deer, lawfully collected and possessed naturally shed
24 deer antlers, the hide, head and skull of a legally killed black
25 bear, and the hide and tails of legally killed squirrels may be
26 sold, traded or bartered.

27 (b) A person, including a common carrier, may not
28 transport, carry or convey, or receive for such purposes, any
29 wildlife, the sale, trade or bartering of which is prohibited,
30 if such person knows or has reason to believe that such
31 wildlife has been or is to be sold, traded or bartered in
32 violation of this section.

33 (c) Each separate act of selling or exposing for sale,
34 trading or exposing for trade or bartering or exposing for
35 barter or having in possession for sale, trade, barter,
36 transporting or carrying in violation of this section constitutes
37 a separate misdemeanor offense. Notwithstanding this or any
38 other section of this chapter, any game birds or game bird
39 meats sold by licensed retailers may be served at any hotel,
40 restaurant or other licensed eating place in this state.

41 (d) The director may propose rules for promulgation in
42 accordance with §29A-3-1 *et seq.* of this code dealing with
43 the sale of wildlife and the skins thereof.

§20-2-12. Transportation of wildlife out of state; penalties.

1 (a) A person may not transport or have in his or her
2 possession with the intention of transporting beyond the
3 limits of the state any species of wildlife or any part thereof
4 killed, taken, captured or caught within this state, except as
5 provided in this section.

6 (1) A person legally entitled to hunt and fish in this state
7 may take with him or her personally, when leaving the state,
8 any wildlife that he or she has lawfully taken or killed, not
9 exceeding, during the open season, the number that any
10 person may lawfully possess.

11 (2) Licensed resident hunters and trappers and resident
12 and nonresident fur dealers may transport beyond the limits
13 of the state pelts of game and fur-bearing animals, fur-bearer
14 parts, including carcasses for the making of lures and baits,
15 carcass parts, including glands, skulls, claws, and bones,
16 and fur-bearer urine taken during the legal season.

17 (3) A person may transport the hide, head, antlers and
18 feet of a legally killed deer and the hide, head, skull, organs
19 and feet of a legally killed black bear beyond the limits of
20 the state.

21 (4) A person legally entitled to possess an animal
22 according to §20-2-4 of this code may transport that animal,
23 including the parts or urine of that animal, beyond the limits
24 of the state.

25 (b) The director may promulgate rules in accordance
26 with §29A-3-1 *et seq.* of this code dealing with the
27 transportation and tagging of wildlife, parts, urine and skins.

28 (c) A person who violates this section by transporting or
29 possessing with the intention of transporting beyond the

30 limits of this state deer or wild boar shall be considered to
31 have committed a separate offense for each animal so
32 transported or possessed. This section does not apply to
33 captive cervids regulated pursuant to §19-2H-1 *et seq.* of
34 this code.

35 (d) A person violating this section shall be guilty of a
36 misdemeanor and, upon conviction thereof, shall be fined
37 not less than \$20 nor more than \$300 or be confined in jail
38 not less than 10 nor more than 60 days, or both.

39 (e) This section does not apply to persons legally
40 entitled to propagate and sell wild animals, wild birds, fish,
41 amphibians and other forms of aquatic life beyond the limits
42 of the state.

§20-2-49. Licenses for dealers in furs, pelts, etc.

1 The director may issue licenses for buying or dealing in
2 raw furs, pelts or skins, and carcasses for the making of lures
3 and baits, carcass parts, including glands, skulls, claws, and
4 bones, and fur-bearer urine of fur-bearing animals as
5 follows:

6 (1) A resident county license, which shall apply only to
7 the county or counties designated on the license and shall be
8 issued only to persons who have been bona fide residents of
9 this state for a period of at least six months prior to the date
10 of application, and of a county in which the privilege is to
11 be exercised. A license shall apply to the county for which
12 issued and to such adjacent counties as are designated in the
13 license. A fee of \$1 for each county shall accompany the
14 application;

15 (2) A resident statewide license, which shall apply to all
16 counties in the state and shall be issued only to persons who
17 have been bona fide residents of this state for a period of at
18 least six months prior to the date of application. A fee of \$10
19 shall accompany the application;

20 (3) A nonresident statewide license, which shall apply to
21 all counties in the state and shall be issued only to nonresidents.
22 A fee of \$50 shall accompany the application; and

23 (4) An agent's permit which shall apply to a person
24 employed by a licensee under subsections (1), (2) or (3)
25 above, to buy or deal as an agent of the licensee other than
26 at the place of business of the licensee. A fee of \$2.50 for
27 each such agent shall accompany the application.



CHAPTER 178

**(Com. Sub. for H. B. 2540 - By Delegates
Harshbarger, Paynter, Sypolt, Cooper, Hanna,
Bibby, Hott and N. Brown)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-5i, relating to prohibiting the waste of any edible portion of big game animals or game fish; defining the term edible portion; setting forth exceptions to the term edible portion; making it unlawful to take any big game and detach or remove the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs only and leave the carcass to waste; setting forth exceptions if the person is unable to locate the carcass of any lawfully taken big game prior to the spoilage or decay of any or all edible portions; and establishing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5i. Waste of game animals, game birds, or game fish; penalties.

1 (a) It is unlawful for any person to cause through
2 carelessness, neglect, or otherwise to let any edible portion
3 of any big game or game fish to go to waste needlessly.

4 (b) For purposes of this section, “edible portion” means,
5 with respect to:

6 (1) *Big game*. — One or more of the following: (A) the
7 meat of the front quarters to the knee; (B) the meat of the
8 hind-quarters to the hock; or (C) the meat along the
9 backbone between the front quarters and hind quarters:
10 *Provided*, That an edible portion of a wild turkey is the meat
11 of the breast only.

12 (2) *Game fish*. — The fillet meat from the gill plate to
13 the tail fin.

14 (3) Edible portion does not include bones, sinew,
15 viscera, meat from the head or neck, meat that has been
16 damaged or rendered inedible by method of taking, or meat
17 that is reasonably lost as a result of boning or close trimming
18 of bones.

19 (c) It is unlawful for any person to take any big game
20 and detach or remove from the carcass the head, hide,
21 antlers, tusks, paws, claws, gallbladder, teeth, beards, or
22 spurs only and leave the carcass to waste.

23 (d) Any person who through no carelessness, neglect, or
24 otherwise, is unable to locate the carcass of any lawfully
25 taken big game prior to the spoilage or decay of any or all
26 edible portions may detach or remove from the carcass the
27 head, hide, antlers, tusks, paws, claws, gall bladder, teeth,
28 beards, or spurs: *Provided*, That the big game is registered
29 and shall be counted toward the daily, seasonal, bag, and
30 possession limit of the person in possession of, or
31 responsible for taking the big game.

32 (e) Any person violating the provisions of this section is
33 guilty of a misdemeanor and, upon conviction thereof, shall
34 be subject to the following penalties, with respect to:

35 (1) *Big game violations*. —

36 (A) A fine of not less than \$500 nor more than \$2,500,
37 or confinement in jail not less than 10 days nor more than
38 100 days, or both fined and confined;

39 (B) Suspension of hunting and fishing license for a
40 period of five years; and

41 (C) All applicable forfeiture and replacement provisions
42 in §20-2-5a of this code.

43 (2) *Game fish violations.* —

44 (A) A fine of not less than \$100 nor more than \$500, or
45 confinement in jail not less than 10 days nor more than 100
46 days, or both fined and confined;

47 (B) Suspension of hunting and fishing license for a
48 period of two years; and

49 (C) All applicable forfeiture and replacement provisions
50 in §20-2-5a of this code.

CHAPTER 179

**(H. B. 2709 - By Delegates Atkinson, Worrell,
McGeehan, Westfall, Miller, Swartzmiller, Kessinger,
Cadle, Cooper and N. Brown)**

**[By Request of the Division of Natural Resources,
Department of Commerce]**

[Passed March 9, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §20-2-27 of the Code of West Virginia, 1931, as amended, relating to hunting licenses; and exempting the list of names, addresses and contact information for license holders from public disclosure with certain exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-27. Necessity for license.**

1 (a) Except as otherwise provided by law, no resident
2 who has reached his or her 15th birthday and who has not
3 reached his or her 65th birthday before January 1, 2012, and
4 no nonresident shall at any time take, hunt, pursue, trap for,
5 kill or chase any wild animals, wild birds, or fish for, take,
6 kill or catch any fish, amphibians or aquatic life of any kind
7 whatsoever in this state without first having secured a
8 license or permit and then only during the respective open
9 seasons, except that a nonresident who has not reached his
10 or her 15th birthday may fish for, take, kill or catch any fish,
11 amphibians or aquatic life of any kind whatsoever in this
12 state without first having secured a license or permit. A
13 person under the age of 15 years shall not hunt or chase any
14 wild animals or wild birds upon lands of another unless
15 accompanied by a licensed adult.

16 (b) A resident or nonresident member of any club,
17 organization, or association or persons owning or leasing a
18 game preserve or fish preserve, plant, or pond in this state
19 shall not hunt or fish therein without first securing a license
20 or permit as required by law: *Provided*, That resident
21 landowners or their resident children, or bona fide resident
22 tenants of land, may, without a permit or license, hunt and
23 fish on their own land during open seasons in accordance
24 with laws and rules applying to such hunting and fishing
25 unless the lands have been designated as a wildlife refuge
26 or preserve.

27 (c) Licenses and permits shall be of the kinds and
28 classes set forth in this article and shall be conditioned upon
29 the payment of the fees established for the licenses and
30 permits.

31 (d) The list of names, addresses and other contact
32 information of all licensees compiled and maintained by the
33 division as a result of the sale and issuance of any resident

34 or nonresident licenses or stamps under this chapter is
35 exempt from disclosure under the Freedom of Information
36 Act, §29B-1-1, *et seq.*, of this code: *Provided*, That the
37 records specified in this section shall be available to all law-
38 enforcement agencies and other governmental entities
39 authorized to request or receive such records.

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CHAPTER 180

**(Com. Sub. for H. B. 2715 - By Delegates
Harshbarger, Worrell, McGeehan, Westfall, Miller,
Swartzmiller, Kessinger, Cadle, Cooper and N.
Brown)**

[By Request of the Division of Natural Resources]

[Passed March 8, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §20-2-46e of the Code of West Virginia, 1931, as amended, relating to Class Q special hunting permit for disabled persons; expanding the conditions of permanent disability for which an individual can obtain a Class Q permit; and providing that physician assistants, advanced practice registered nurses, and chiropractic physicians may certify Class Q permit applications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46e. Class Q special hunting permit for disabled persons.

- 1 (a) A Class Q permit is a special statewide hunting
- 2 permit entitling the permittee to hunt all legal species of
- 3 game during the designated hunting seasons from a motor
- 4 vehicle in accordance with the provisions of this section.

5 (b) The director shall furnish an application and a Class
6 Q permit will be issued to applicants who meet one of the
7 following conditions of permanent disability:

8 (1) Permanent or irreversible physical disability that
9 prevents ability to ambulate without use of a wheelchair,
10 walker, crutches, one leg brace or external prosthesis above
11 the knee, or two leg braces or external prostheses below the
12 knees for mobility.

13 (2) Multiple conditions that result in a minimum of 90
14 percent loss of use of a lower extremity.

15 (3) Lung disease to the extent that forced expiratory
16 volume for one second when measured by spirometry is less
17 than one liter or the arterial oxygen tension less than 60
18 millimeters of mercury on room air at rest.

19 (4) Cardiovascular disease to the extent that functional
20 limitations are classified in severity as class 3 or 4,
21 according to standards set by the American Heart
22 Association and where ordinary physical activity causes
23 palpitation, dyspnea or anginal pain.

24 (c) A licensed physician, physician assistant, advanced
25 practice registered nurse or chiropractic physician must
26 certify the applicant's permanent disability by completing
27 the permit application. The Class Q permit application shall
28 be submitted to the division, which will issue a wallet sized
29 card to the permittee.

30 (d) A person with a Class Q permit may not hunt or trap
31 under the provisions of this section unless he or she is in
32 possession of the Class Q permit card, a valid hunting license
33 issued pursuant to §20-2-1 *et seq.* of this code or is a person
34 excepted from licensing requirements pursuant to §20-2-27
35 and §20-2-28 of this code, and all documents or other lawful
36 authorizations as prescribed in §20-2-37 of this code.

37 (e) A Class Q permit entitles the holder to hunt from a
38 motor vehicle and, notwithstanding the provisions of §20-

39 2-5 of this code, to possess a loaded firearm in a motor
40 vehicle, but only under the following circumstances:

41 (1) The motor vehicle is stationary;

42 (2) The engine of the motor vehicle is not operating;

43 (3) The permittee and one individual, who is at least 16
44 years of age, to assist the permittee are the only occupants
45 of the vehicle;

46 (4) The individual assisting the permittee may not hunt
47 with a firearm, bow, or cross-bow while assisting the
48 permittee;

49 (5) The vehicle is not parked on the right-of-way of any
50 public road or highway; and

51 (6) The permittee observes all other pertinent laws and
52 regulations.

53 (f) The director may propose rules for legislative
54 approval in accordance with the provisions of §29A-3-1 *et*
55 *seq.* of this code setting forth the qualifications of applicants
56 and the permitting process.



CHAPTER 181

**(H. B. 2716 - By Delegates Harshbarger, Worrell,
McGeehan, Westfall, Miller, Swartzmiller, Atkinson,
Kessinger, Cadle, Cooper and Porterfield)**

[Passed March 8, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §20-7-13 of the Code of West Virginia, 1931, as amended, relating to vessel lighting and equipment requirements.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING,
LITTER.**

**§20-7-13. Motorboat classification; required lights and
equipment; rules and regulations; pilot rules.**

1 (a) Vessels on the waters of this state are subject to
2 lighting requirements, equipment requirements, and pilot
3 and navigation rules, as contained in the federal navigation
4 laws and rules promulgated by the United States Coast
5 Guard pursuant to 33 C.F.R. Subchapter E *et seq.* Inland
6 Navigation Rules, as authorized by 46 U.S.C. §4302.

7 (b) Vessels on the waters of this state are subject to
8 ventilation requirements as contained in federal navigation
9 laws and rules promulgated by the United States Coast
10 Guard pursuant to 46 C.F.R. §25.40 *et seq.*, as authorized
11 by 6 U.S.C. §4302.

12 (c) The director may promulgate rules in accordance
13 with the provisions of §29A-3-1 *et seq.* of this code
14 modifying the equipment requirements contained in this
15 section to the extent necessary to keep these requirements in
16 conformity with the provisions of the federal navigation
17 laws or with the navigation rules promulgated by the United
18 States Coast Guard.

19 (d) The director may promulgate rules in accordance
20 with the provisions of §29A-3-1 *et seq.* of this code, pilot
21 rules in conformity with the pilot rules contained in the
22 federal navigation laws, or the navigation rules promulgated
23 by the United States Coast Guard for the operation of
24 vessels on the waters of this state.

25 (e) No person shall operate or give permission for the
26 operation of a vessel which is not equipped as required by
27 this section or modification thereof.

CHAPTER 182

**(Com. Sub. for H. B. 2809 - By Delegates Shott,
Capito, Mandt, Paynter, Ellington, Porterfield and
Evans)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §20-14-8 of the Code of West Virginia, 1931, as amended, relating to prohibited acts and penalties in the Hatfield-McCoy Recreation Area; increasing fines for persons who do not remain within and on a designated and marked trail within the Hatfield-McCoy Recreation Area; and increasing fines for persons who do not remain within and on a designated and marked trail within the Hatfield-McCoy Recreation Area and cause property damage to a landowner's property outside the designated and marked trails or interfere with a landowner's or lawful possessor's use of property outside the designated and marked trails within the Hatfield-McCoy Recreation Area.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§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) (1) A person who violates any provision of this
83 section, except for subsection (e), is guilty of a
84 misdemeanor and, upon conviction thereof, shall be fined
85 not more than \$100.

86 (2) A person who violates subsection (e) of this section
87 is guilty of a misdemeanor and, upon conviction thereof,
88 shall be fined \$1,000: *Provided*, That in the event the
89 person's violation of subsection (e) of this section causes
90 damage to a landowner's property outside of the designated
91 and marked trail within the Hatfield-McCoy Recreation
92 Area or interferes with a landowner's or lawful possessor's
93 use of the property outside of the designated and marked
94 trail within the Hatfield-McCoy Recreation Area, the person
95 is guilty of a misdemeanor and, upon conviction thereof,
96 shall be fined \$2,000.

97 (3) Prosecution or conviction for the misdemeanors
98 described in this subsection may not prevent or disqualify
99 any other civil or criminal remedies for the conduct
100 prohibited by this section.

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CHAPTER 183

**(H. B. 3140 - By Delegates Cowles, Hartman, Hardy,
Espinosa, Ellington, Rowan, Pethel and Anderson)**

[Passed March 4, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-5-4 of said code, all relating to the ability of the Director of the Division of Natural Resources to authorize repair, renovation and rehabilitation for existing facilities, buildings, amenities, and infrastructure and exempting these certain Division of Natural Resources' purchases from review and approval of the Division of Purchasing; adding state forests to the definition of recreational facilities; authorizing the completing the feasibility study for the Beech Fork State Park Lodge; requiring two public hearings; and requiring the completed feasibility study to be submitted to the Joint Committee on Government and Finance.

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 intergovernmental
16 cooperative agreements and agreements with nongovernmental
17 organizations in furtherance of providing a comprehensive
18 program for the exploration, conservation, development,
19 protection, enjoyment and use of the natural resources of the
20 state are exempt from the provisions of §5A-3-1 *et seq.* of this
21 code: *Provided, however*, That repair, renovation, and
22 rehabilitation of existing facilities, buildings, amenities, and
23 infrastructure necessary to protect public health or safety or to
24 provide uninterrupted enjoyment and public use of state parks,
25 state forests, wildlife management areas and state natural areas
26 under the jurisdiction of the Division of Natural Resources are
27 exempt from the provisions of §5A-3-1 *et seq.* of this code.
28 Nothing in this section authorizes new construction of buildings
29 and new construction of recreational facilities as defined in §20-
30 5-4 of this code without complying with the provisions of §5A-
31 3-1 *et seq.* of this code.

32 (3) Conduct research in improved conservation methods
33 and disseminate information matters to the residents of the
34 state;

35 (4) Conduct a continuous study and investigation of the
36 habits of wildlife and, for purposes of control and
37 protection, to classify by regulation the various species into
38 such categories as may be established as necessary;

39 (5) Prescribe the locality in which the manner and
40 method by which the various species of wildlife may be
41 taken, or chased, unless otherwise specified by this chapter.

42 (6) Hold at least six meetings each year at such time and
43 at such points within the state, as in the discretion of the

44 Natural Resources Commission may appear to be necessary
45 and proper for the purpose of giving interested persons in
46 the various sections of the state an opportunity to be heard
47 concerning open season for their respective areas, and report
48 the results of the meetings to the Natural Resources
49 Commission before the season and bag limits are fixed by
50 it;

51 (7) Suspend open hunting season upon any or all
52 wildlife in any or all counties of the state with the prior
53 approval of the Governor in case of an emergency such as a
54 drought, forest fire hazard or epizootic disease among
55 wildlife. The suspension shall continue during the existence
56 of the emergency and until rescinded by the director.
57 Suspension, or reopening after such suspension, of open
58 seasons may be made upon twenty-four hours' notice by
59 delivery of a copy of the order of suspension or reopening
60 to the wire press agencies at the state capitol;

61 (8) Supervise the fiscal affairs and responsibilities of the
62 division;

63 (9) Designate such localities as he or she shall determine
64 to be necessary and desirable for the perpetuation of any
65 species of wildlife;

66 (10) Enter private lands to make surveys or inspections
67 for conservation purposes, to investigate for violations of
68 provisions of this chapter, to serve and execute warrants and
69 processes, to make arrests and to otherwise effectively
70 enforce the provisions of this chapter;

71 (11) Acquire for the state in the name of the Division of
72 Natural Resources by purchase, condemnation, lease or
73 agreement, or accept or reject for the state, in the name of
74 the Division of Natural Resources, gifts, donations,
75 contributions, bequests or devises of money, security or
76 property, both real and personal, and any interest in such
77 property, including lands and waters, which he or she deems
78 suitable for the following purposes:

79 (a) For state forests for the purpose of growing timber,
80 demonstrating forestry, furnishing or protecting watersheds
81 or providing public recreation;

82 (b) For state parks or recreation areas for the purpose of
83 preserving scenic, aesthetic, scientific, cultural,
84 archaeological or historical values or natural wonders, or
85 providing public recreation;

86 (c) For public hunting, trapping or fishing grounds or
87 waters for the purpose of providing areas in which the public
88 may hunt, trap or fish, as permitted by the provisions of this
89 chapter and the rules issued hereunder;

90 (d) For fish hatcheries, game farms, wildlife research
91 areas and feeding stations;

92 (e) For the extension and consolidation of lands or
93 waters suitable for the above purposes by exchange of other
94 lands or waters under his or her supervision;

95 (f) For such other purposes as may be necessary to carry
96 out the provisions of this chapter;

97 (12) Capture, propagate, transport, sell or exchange any
98 species of wildlife as may be necessary to carry out the
99 provisions of this chapter;

100 (13) Sell timber for not less than the value thereof, as
101 appraised by a qualified appraiser appointed by the director,
102 from all lands under the jurisdiction and control of the
103 director, except those lands that are designated as state parks
104 and those in the Kanawha State Forest. The appraisal shall
105 be made within a reasonable time prior to any sale, reduced
106 to writing, filed in the office of the director and shall be
107 available for public inspection. The director must obtain the
108 written permission of the Governor to sell timber when the
109 appraised value is more than \$5,000. The director shall
110 receive sealed bids therefor, after notice by publication as a
111 Class II legal advertisement in compliance with the
112 provisions of §59-3-1 *et seq.* of this code and the publication

113 area for the publication shall be each county in which the
114 timber is located. The timber so advertised shall be sold at
115 not less than the appraised value to the highest responsible
116 bidder, who shall give bond for the proper performance of
117 the sales contract as the director shall designate; but the
118 director may reject any and all bids and readvertise for bids.
119 If the foregoing provisions of this section have been
120 complied with and no bid equal to or in excess of the
121 appraised value of the timber is received, the director may,
122 at any time, during a period of six months after the opening
123 of the bids, sell the timber in such manner as he or she deems
124 appropriate, but the sale price may not be less than the
125 appraised value of the timber advertised. No contract for
126 sale of timber made pursuant to this section may extend for
127 a period of more than ten years. And all contracts heretofore
128 entered into by the state for the sale of timber may not be
129 validated by this section if a contract is otherwise invalid.
130 The proceeds arising from the sale of the timber so sold shall
131 be paid to the Treasurer of the State of West Virginia and
132 shall be credited to the division and used exclusively for the
133 purposes of this chapter: *Provided*, That nothing contained
134 herein may prohibit the sale of timber which otherwise
135 would be removed from right-of-way's necessary for and
136 strictly incidental to the extraction of minerals;

137 (14) Sell or lease, with the approval in writing of the
138 Governor, coal, oil, gas, sand, gravel and any other minerals
139 that may be found in the lands under the jurisdiction and
140 control of the director, except those lands that are
141 designated as state parks. The director, before making sale
142 or lease thereof, shall receive sealed bids therefor, after
143 notice by publication as a Class II legal advertisement in
144 compliance with the provisions of §59-3-1 *et seq.* of this
145 code, and the publication area for such publication shall be
146 each county in which such lands are located. The minerals
147 so advertised shall be sold or leased to the highest
148 responsible bidder, who shall give bond for the proper
149 performance of the sales contract or lease as the director
150 shall designate; but the director may reject any and all bids

151 and readvertise for bids. The proceeds arising from any such
152 sale or lease shall be paid to the Treasurer of the State of
153 West Virginia and shall be credited to the division and used
154 exclusively for the purposes of this chapter;

155 (15) Exercise the powers granted by this chapter for the
156 protection of forests and regulate fires and smoking in the
157 woods or in their proximity at such times and in such
158 localities as may be necessary to reduce the danger of forest
159 fires;

160 (16) Cooperate with departments and agencies of state,
161 local and federal governments in the conservation of natural
162 resources and the beautification of the state;

163 (17) Report to the Governor each year all information
164 relative to the operation and functions of the division and
165 the director shall make such other reports and
166 recommendations as may be required by the Governor,
167 including an annual financial report covering all receipts
168 and disbursements of the division for each fiscal year, and
169 he or she shall deliver the report to the Governor on or
170 before December 1, next after the end of the fiscal year so
171 covered. A copy of the report shall be delivered to each
172 house of the Legislature when convened in January next
173 following;

174 (18) Keep a complete and accurate record of all
175 proceedings, record and file all bonds and contracts taken or
176 entered into and assume responsibility for the custody and
177 preservation of all papers and documents pertaining to his
178 or her office, except as otherwise provided by law;

179 (19) Offer and pay, in his or her discretion, rewards for
180 information respecting the violation, or for the apprehension
181 and conviction of any violators, of any of the provisions of
182 this chapter;

183 (20) Require such reports as he or she may determine to
184 be necessary from any person issued a license or permit

185 under the provisions of this chapter, but no person may be
186 required to disclose secret processes or confidential data of
187 competitive significance;

188 (21) Purchase as provided by law all equipment
189 necessary for the conduct of the division;

190 (22) Conduct and encourage research designed to
191 further new and more extensive uses of the natural resources
192 of this state and to publicize the findings of the research;

193 (23) Encourage and cooperate with other public and
194 private organizations or groups in their efforts to publicize
195 the attractions of the state including, completing the
196 feasibility study for the Beech Fork State Park Lodge as
197 follows:

198 (A) The director shall convene, prior to October 1, 2019,
199 two public hearings:

200 (i) An initial public hearing shall be for the purpose of
201 seeking public input regarding options for the construction
202 of a lodge and a conference center, including all available
203 public, private, or public-private partnership (PPP) funding
204 and financing options; and

205 (ii) A subsequent public hearing at which the feasibility
206 study and any recommendation shall be available for public
207 comment;

208 (B) The public hearings required by this subdivision
209 must be held in a suitable location reasonably close to Beech
210 Fork State Park so as to accommodate public participation
211 from the citizens of Cabell, Lincoln, and Wayne counties;
212 and

213 (C) Upon completion of the feasibility study it shall be
214 submitted by the director to the Joint Committee on
215 Government and Finance on or before December 1, 2019;

216 (24) Accept and expend, without the necessity of
217 appropriation by the Legislature, any gift or grant of money
218 made to the division for all purposes specified in this chapter
219 and he or she shall account for and report on all such receipts
220 and expenditures to the Governor;

221 (25) Cooperate with the state historian and other
222 appropriate state agencies in conducting research with
223 reference to the establishment of state parks and monuments
224 of historic, scenic and recreational value and to take such
225 steps as may be necessary in establishing the monuments or
226 parks as he or she deems advisable;

227 (26) Maintain in his or her office at all times, properly
228 indexed by subject matter and also in chronological
229 sequence, all rules made or issued under the authority of this
230 chapter. The records shall be available for public inspection
231 on all business days during the business hours of working
232 days;

233 (27) Delegate the powers and duties of his or her office,
234 except the power to execute contracts not related to land and
235 stream management, to appointees and employees of the
236 division, who shall act under the direction and supervision
237 of the director and for whose acts he or she shall be
238 responsible;

239 (28) Conduct schools, institutions and other educational
240 programs, apart from or in cooperation with other
241 governmental agencies, for instruction and training in all
242 phases of the natural resources programs of the state;

243 (29) Authorize the payment of all or any part of the
244 reasonable expenses incurred by an employee of the
245 division in moving his or her household furniture and effects
246 as a result of a reassignment of the employee: *Provided*,
247 That no part of the moving expenses of any one such
248 employee may be paid more frequently than once in twelve
249 months;

250 (30) Establishing procedures and fee schedule for
251 individuals applying for limited permit hunts; and

252 (31) Promulgate rules, in accordance with the
253 provisions of §29A-1-1 *et seq.* of this code, to implement
254 and make effective the powers and duties vested in him or
255 her by the provisions of this chapter and take such other
256 steps as may be necessary in his or her discretion for the
257 proper and effective enforcement of the provisions of this
258 chapter.

§20-5-4. Definitions; state parks and recreation system.

1 As used in this article, unless the context clearly
2 requires otherwise:

3 “Bonds” shall mean bonds issued by the director.

4 “Cost of project” shall embrace the cost of construction,
5 the cost of all land, property, material and labor which are
6 deemed essential thereto, cost of improvements, financing
7 charges, interest during construction and all other expenses,
8 including legal fees, trustees’, engineers’ and architects’
9 fees which are necessary or properly incidental to the
10 project.

11 “Project” shall be deemed to mean collectively the
12 acquisition of land, the construction of any buildings or
13 other works, together with incidental approaches, structures
14 and facilities, reasonably necessary and useful in order to
15 provide new or improved recreational facilities.

16 “Recreational facilities” shall mean and embrace
17 cabins, lodges, swimming pools, golf courses, restaurants,
18 commissaries and other revenue producing facilities in any
19 state park or state forest.

20 “Rent or rental” shall include all moneys received for
21 the use of any recreational facility.

●

CHAPTER 184

(Com. Sub. for S. B. 60 - By Senators Plymale and Stollings)

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6, and §30-20A-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto nine new sections, designated §30-20A-8, §30-20A-9, §30-20A-10, §30-20A-11, §30-20A-12, §30-20A-13, §30-20A-14, §30-20A-15, and §30-20A-16, all relating to licensing the practice of athletic training; making the practice of athletic training unlawful without license or permit; establishing applicable law; defining terms; establishing eligibility for license; defining the scope of practice; establishing requirements for reciprocal agreements; establishing requirements for temporary permits; establishing renewal requirements; establishing requirements for delinquent or expedited licenses; establishing requirements for an active license; creating exemptions; requiring display of license; establishing complaint process and investigation procedures; establishing grounds for disciplinary action; establishing hearing procedures and right to appeal; providing for judicial review of decision; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20A. ATHLETIC TRAINERS.

§30-20A-1. Unlawful acts.

- 1 (a) It is unlawful for any person to practice or offer to
- 2 practice athletic training in this state without a license or

3 permit issued under the provisions of this article, or
4 advertise or use any title or description tending to convey
5 the impression that they are an athletic trainer unless the
6 person has been duly licensed or permitted under the
7 provisions of this article, and the license or permit has not
8 expired, been suspended, or revoked.

9 (b) A business entity may not render any service or
10 engage in any activity which, if rendered or engaged in by
11 an individual, would constitute the practice of athletic
12 training, except through a licensee or permittee.

13 (c) A person may not advertise or represent himself or
14 herself as an “athletic trainer”, “licensed athletic trainer”,
15 “certified athletic trainer”, “athletic trainer certified”,
16 “L.A.T.”, “C.A.T.”, and/or “ATC” or make use of any
17 words, abbreviations, titles, or insignia that indicate, imply,
18 or represent that he or she is an athletic trainer, unless he or
19 she is licensed by the board.

§30-20A-2. Applicable law.

1 The practices licensed under the provisions of this
2 article and the Board of Physical Therapy are subject to §30-
3 1-1 *et seq.* and §30-20A-1 *et seq.* of this code and any rules
4 promulgated hereunder.

5 (a) The board has all the powers and duties set forth in
6 this article, by rule, §30-1-1 *et seq.* of this code, and
7 elsewhere in law.

8 (b) The board shall:

9 (1) Hold meetings, conduct hearings, and administer
10 examinations;

11 (2) Establish requirements for licenses and permits;

12 (3) Establish procedures for submitting, approving, and
13 rejecting applications for licenses and permits;

14 (4) Determine the qualifications of any applicant for
15 licenses and permits;

16 (5) Prepare, conduct, administer, and grade
17 examinations for licenses;

18 (6) Determine the passing grade for the examinations;

19 (7) Maintain records of the examinations the board or a
20 third party administers, including the number of persons
21 taking the examination and the pass and fail rate;

22 (8) Hire, discharge, establish the job requirements, and
23 fix the compensation of the executive secretary;

24 (9) Maintain an office, and hire, discharge, establish the
25 job requirements, and fix the compensation of employees,
26 investigators, and contracted employees necessary to
27 enforce the provisions of this article;

28 (10) Investigate alleged violations of the provisions of
29 this article, legislative rules, orders, and final decisions of
30 the board;

31 (11) Conduct disciplinary hearings of persons regulated
32 by the board;

33 (12) Determine disciplinary action and issue orders;

34 (13) Institute appropriate legal action for the
35 enforcement of the provisions of this article;

36 (14) Maintain an accurate registry of names and
37 addresses of all persons regulated by the board;

38 (15) Keep accurate and complete records of its
39 proceedings, and certify the same as may be necessary and
40 appropriate;

41 (16) Establish the continuing education requirements
42 for licenses;

43 (17) Issue, renew, combine, deny, suspend, restrict,
44 revoke, or reinstate licenses and permits;

45 (18) Establish a fee schedule;

46 (19) Take all other actions necessary and proper to
47 effectuate the purposes of this article;

48 (20) Propose rules for legislative approval, in
49 accordance with the provisions of §29A-3-1 *et seq.* of this
50 code to implement provisions of this article, including:

51 (A) Establish standards and requirements for licenses
52 and permits;

53 (B) Establish procedures for examinations and re-
54 examinations;

55 (C) Establish requirements for third parties to prepare
56 and administer examinations and re-examinations;

57 (D) Establish educational and experience requirements;

58 (E) Establish the passing grade on examinations;

59 (F) Establish standards for approval of courses and
60 curriculum;

61 (G) Establish procedures for the issuance and renewal
62 of licenses and permits;

63 (H) Establish a fee schedule;

64 (I) Establish continuing education requirements for
65 licenses;

66 (J) Establish the procedures for denying, suspending,
67 restricting, revoking, reinstating, or limiting the practice of
68 licensees and permittees;

69 (K) Adopt a standard for ethics;

70 (L) Establish requirements for inactive or revoked
71 licenses or permits;

72 (M) Any other rules necessary to effectuate the
73 provisions of this article; and

74 (N) All of the board's rules in effect January 1, 2020,
75 shall remain in effect until they are amended or repealed,
76 and references to provisions of former enactments of this
77 section are interpreted to mean provisions of this article;

78 (21) All fees and other moneys, except administrative
79 fines, received by the board shall be deposited in a separate
80 special revenue fund in the State Treasury designated the
81 West Virginia Board of Physical Therapy Fund which is
82 continued. The fund is used by the board for the
83 administration of this article. Except as may be provided in
84 §30-1-1 *et seq.* of this code, the board retains the amount in
85 the special revenue account from year to year. No
86 compensation or expense incurred under this article is a
87 charge against the General Revenue Fund;

88 (22) Any amounts received as fines pursuant to this
89 article shall be deposited into the General Revenue Fund of
90 the State Treasury.

91 (c)The board may:

92 (1) Contract with third parties to administer
93 examinations required under the provisions of this article;

94 (2) Sue and be sued in its official name as an agency of
95 this state; and

96 (3) Confer with the Attorney General or his or her
97 assistant in connection with legal matters and questions.

§30-20A-3. Definitions.

1 As used in this article:

2 “Applicant” means any person making application for
3 an original or renewal license to act as an athletic trainer
4 under the provisions of this article.

5 “Athletic injury or condition” means any injury or
6 condition sustained by an individual that occurs during, or
7 as a result of, the individual’s participation in organized
8 athletic or recreational athletic activity that requires
9 physical strength, agility, flexibility, speed, stamina, or
10 range of motion or a substantially similar injury or condition
11 resulting from occupational activity immediately upon the
12 onset of such injury or condition.

13 “Athletic trainer” is an individual engaged in the
14 practice of athletic training who holds a license under the
15 provisions of this article.

16 “Athletic training” and “the practice of athletic training”
17 means the care and services provided by a licensed athletic
18 trainer as described under the provisions of this article.

19 “Board” means the West Virginia Board of Physical
20 Therapy established under §30-20-1 *et seq.* of this code.

21 “Consulting” means that an athletic trainer renders an
22 opinion or advice to another athletic trainer or health care
23 provider through telecommunication or other means or
24 electronic communication.

25 “Direct supervision” means the licensed athletic trainer
26 must be physically present and be able to intervene on
27 behalf of the athletic training student, permittee, and patient
28 when the athletic training student is providing athletic
29 training services.

30 “General supervision” means referral by prescription to
31 treat conditions for an athletic injury or condition from a
32 licensed doctor of medicine, doctor of osteopathy, doctor of
33 chiropractic, podiatrist, or physical therapist except that the
34 physical presence of the licensed doctor of medicine, doctor
35 of osteopathy, doctor of chiropractic, podiatrist, or physical

36 therapist is not required if the supervising licensed doctor of
37 medicine, doctor of osteopathy, doctor of chiropractic,
38 podiatrist, or physical therapist is readily available for
39 consultation by direct communication, radio, telephone,
40 facsimile, telecommunication, or other electronic means.

41 “License” means an athletic trainer license or license to
42 act as an athletic trainer issued by the board under the
43 provisions of this article.

44 “Licensee” means a person licensed as an athletic
45 trainer under the provisions of this article.

46 “Permittee” means any person holding a temporary
47 permit issued pursuant to the provision of this article.

48 “Permit” or “temporary permit” means a temporary
49 permit issued under the provisions of this article.

50 “The practice of athletic training” means the services as
51 described in §30-20A-5 of this code.

§30-20A-4. License to practice athletic training.

1 (a) To be eligible for a license to engage in the practice
2 of athletic training, the applicant must:

3 (1) Be at least 18 years of age;

4 (2) Submit an application in the form prescribed by the
5 board;

6 (3) An athletic trainer registration issued by the board
7 prior to January 1, 2020, is considered a license issued under
8 this article: *Provided*, That a person holding a license issued
9 prior to January 1, 2020, must renew the license pursuant to
10 a registration and renewal schedule adopted by the board
11 and the provisions of this article;

12 (4) If subsequent to January 1, 2020, be a graduate of an
13 accredited institution as approved by the Commission on

14 Accreditation of Athletic Training Education or successor
15 organization;

16 (5) Pass a national examination approved by the board;

17 (6) Complete a criminal background check as required
18 by §30-1D-1 of this code;

19 (7) Pay the required fee;

20 (8) Not be an alcohol or drug abuser, as these terms are
21 defined in §27-1A-11 of this code: *Provided*, That an
22 applicant in an active recovery process, which may, in the
23 discretion of the board, be evidenced by participation in a
24 12-step program or other similar group or process, may be
25 considered;

26 (9) Not have been convicted of a felony in any
27 jurisdiction within 10 years preceding the date of
28 application for license which conviction remains
29 unreversed;

30 (10) Not have been convicted of a misdemeanor or
31 felony in any jurisdiction if the offense for which he or she
32 was convicted related to the practice of athletic training,
33 which conviction remains unreversed; and

34 (11) Has fulfilled any other requirement specified by the
35 board.

36 (b) An athletic trainer shall use the letters "LAT"
37 immediately following his or her name followed by the
38 "ATC" credential to designate licensure under this article.

§30-20A-5. Scope of practice of an athletic trainer.

1 (a) The practice of athletic training is defined as the
2 application of principles, methods, and procedures for
3 managing athletic injuries or conditions, which shall include
4 the prevention, emergency care, clinical examination and
5 assessment, therapeutic intervention, and treatment of

6 athletic injuries or conditions through the use of appropriate
7 preventative and supportive devices, and within the
8 professional preparation and education of a licensed athletic
9 trainer subject to the general supervision within this article.
10 Athletic training includes recognizing illness and referring
11 to the appropriate health care professional and
12 implementation of treatment pursuant to the orders of those
13 professionals listed under “General Supervision” within this
14 article. Athletic training also includes instruction to
15 coaches, athletes, parents, medical personnel, and
16 communities in the area of care and prevention of athletic
17 injuries or conditions.

18 (b) The scope of practice described in this section does
19 not include the practice of physical therapy, the practice of
20 occupational therapy, the practice of medicine, the practice
21 of osteopathic medicine, surgery, the practice of
22 chiropractic, or the management of systemic medical or
23 neurological conditions or diseases of body systems that are
24 not within the professional preparation and education of a
25 licensed athletic trainer.

§30-20A-6. License to practice athletic training from another jurisdiction.

1 (a) The board may issue a license to practice athletic
2 training to an applicant who holds a valid license or other
3 authorization to practice athletic training from another state,
4 if the applicant:

5 (1) Holds a license or other authorization to practice
6 athletic training in another state which was granted after
7 completion of educational requirements substantially
8 equivalent to those required in this state;

9 (2) Passed an examination that is substantially
10 equivalent to the examination required in this state;

11 (3) Does not have charges pending against his or her
12 license or other authorization to practice, and has never had
13 a license or other authorization to practice revoked;

14 (4) Has paid the applicable fee;

15 (5) Is a citizen of the United States or is eligible for
16 employment in the United States; and

17 (6) Has fulfilled any other requirement specified by the
18 board.

19 (b) The board may issue a license to practice athletic
20 training to an applicant who has been educated outside of
21 the United States, if the applicant:

22 (1) Provides satisfactory evidence that the applicant's
23 education is substantially equivalent to the educational
24 requirements for athletic trainers under the provisions of
25 this article;

26 (2) Provides written proof that the applicant's school of
27 athletic training is recognized by its own ministry of
28 education;

29 (3) Has undergone a credentials evaluation as directed
30 by the board that determines that the candidate has met
31 uniform criteria for educational requirements as further
32 established by rule;

33 (4) Has paid the applicable fee;

34 (5) Is eligible for employment in the United States; and

35 (6) Completes any additional requirements as required
36 by the board.

37 (c) The board may issue a restricted license to an
38 applicant who substantially meets the criteria established in
39 subsection (b) of this section.

§30-20A-7. Temporary permits.

1 (a) Upon completion of the application and payment of
2 the nonrefundable fees, the board may issue a temporary
3 permit, for a period not to exceed 90 days, to an applicant to

4 practice as an athletic trainer in this state if the applicant has
5 completed the educational requirements set out in this
6 article, pending the examination, and who works under the
7 direct supervision of a licensed athletic trainer.

8 (b) The temporary permit expires 30 days after the board
9 gives written notice to the permittee of the results of the first
10 examination held following the issuance of the temporary
11 permit, if the permittee receives a passing score on the
12 examination. The permit shall expire immediately if the
13 permittee receives a failing score on the examination.

14 (c) A temporary permit may be revoked by a majority
15 vote of the board.

16 (d) An applicant may be issued only one temporary
17 permit, and, upon the expiration of the temporary permit,
18 may not practice as an athletic trainer until he or she is fully
19 licensed under the provisions of this article.

§30-20A-8. Renewal requirements.

1 (a) All persons regulated by this article shall annually or
2 biennially by June 30 renew his or her license by completing
3 a form prescribed by the board and submitting any other
4 information required by the board.

5 (b) The board shall charge a fee for each renewal of a
6 license and shall charge a late fee for any renewal not paid
7 by the due date.

8 (c) The board shall require as a condition of renewal that
9 each licensee complete continuing education as defined by
10 rule.

11 (d) The board may deny an application for renewal for
12 any reason which would justify the denial of an original
13 application for a license.

§30-20A-9. Delinquent and expired license requirements.

1 (a) If a license is not renewed when due, then the board
2 shall automatically place the licensee on delinquent status.

3 (b) The fee for a person on delinquent status shall
4 increase at a rate, determined by the board, for each month
5 or fraction thereof that the renewal fee is not paid, up to a
6 maximum of 36 months.

7 (c) Within 36 months of being placed on delinquent
8 status, if a licensee wants to return to active practice, he or
9 she must complete all the continuing education
10 requirements and pay all the applicable fees as set by rule.

11 (d) After 36 months of being placed on delinquent
12 status, a license is automatically placed on expired status
13 and cannot be renewed. A person whose license has expired
14 must reapply for a new license.

§30-20A-10. Inactive license requirements.

1 (a) A licensee who does not want to continue an active
2 practice shall notify the board in writing and be granted
3 inactive status.

4 (b) A person granted inactive status is not subject to the
5 payment of any fee and may not practice athletic training in
6 this state.

7 (c) When the person wants to return to the practice of
8 athletic training, the person shall submit an application for
9 renewal along with all applicable fees as set by rule.

§30-20A-11. Exemptions from licensure.

1 The following persons are exempt from licensing
2 requirements under the provisions of this article:

3 (1) A person who practices athletic training pursuant to
4 a course of study at an institution of higher learning
5 including, but not limited to, activities conducted at the
6 institution of higher learning and activities conducted
7 outside the institution if under the direct supervision of a
8 licensed athletic trainer;

9 (2) An athletic trainer who practices athletic training in
10 the United States armed services, United States Public
11 Health Service or Veterans Administration pursuant to
12 federal regulations for state licensure of health care
13 providers;

14 (3) An athletic trainer who is licensed in another
15 jurisdiction of the United States or credentialed to practice
16 athletic training in another country if that person is teaching,
17 demonstrating, or providing athletic training services in
18 connection with teaching or participating in an educational
19 seminar of no more than 60 calendar days in a calendar year;

20 (4) An athletic trainer who is licensed in another state if
21 that person is consulting;

22 (5) An athletic trainer who is licensed in another
23 jurisdiction, if that person by contract or employment is
24 providing athletic training to individuals affiliated with or
25 employed by established athletic teams, athletic
26 organizations, or performing arts companies temporarily
27 practicing, competing, or performing in the state for no
28 more than 60 calendar days in a calendar year;

29 (6) An athletic trainer who is licensed in another
30 jurisdiction who enters this state to provide athletic training
31 during a declared local, state, or national disaster or
32 emergency. This exemption applies for no longer than 60
33 calendar days in a calendar year following the declaration
34 of the emergency. The athletic trainer shall notify the board
35 of his or her intent to practice;

36 (7) An athletic trainer licensed in another jurisdiction
37 who is forced to leave his or her residence or place of
38 employment due to a declared local, state, or national
39 disaster or emergency and due to the displacement seeks to
40 practice as an athletic trainer. This exemption applies for no
41 longer than 60 calendar days in a calendar year following
42 the declaration of the emergency. The athletic trainer shall
43 notify the board of his or her intent to practice;

44 (8) Nothing in this article may be construed to prohibit
45 or otherwise limit the use of the term “athletic trainer” in
46 secondary school settings by persons who were practicing
47 athletic training under a West Virginia Board of Education
48 Athletic Certification, provided the practice is in accordance
49 with Board of Education policy in effect prior to July 1,
50 2011: *Provided*, That this provision only applies to persons
51 practicing athletic training certified by the West Virginia
52 Board of Education prior to July 1, 2011, and any additional
53 persons practicing athletic training excluding these
54 specified individuals, shall meet the provisions of this
55 article; and

56 (9) Nothing contained in this article prohibits a person
57 from practicing within his or her scope of practice as
58 authorized by law.

§30-20A-12. Display of license.

1 (a) The board shall prescribe the form for a license and
2 permit, and may issue a duplicate license or permit upon
3 payment of a fee.

4 (b) Any person regulated by the article shall
5 conspicuously display his or her license or permit at his or
6 her principal business location.

§30-20A-13. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The board may upon its own motion based on
2 credible information and shall upon the written complaint
3 of any person cause an investigation to be made to
4 determine whether grounds exist for disciplinary action
5 under this article or the legislative rules promulgated
6 pursuant to this article.

7 (b) Upon initiation or receipt of the complaint, the board
8 shall provide a copy of the complaint to the licensee or
9 permittee.

10 (c) After reviewing any information obtained through an
11 investigation, the board shall determine if probable cause
12 exists that the licensee or permittee has violated subsection
13 (g) of this section or rules promulgated pursuant to this
14 article.

15 (d) Upon a finding that probable cause exists that the
16 licensee or permittee has violated subsection (g) of this
17 section or rules promulgated pursuant to this article, the
18 board may enter into a consent decree or hold a hearing for
19 the suspension or revocation of the license or permit or the
20 imposition of sanctions against the licensee or permittee.
21 Any hearing shall be held in accordance with the provisions
22 of this article.

23 (e) Any member of the board or the executive secretary
24 of the board may issue subpoenas and subpoenas duces
25 tecum to obtain testimony and documents to aid in the
26 investigation of allegations against any person regulated by
27 the article.

28 (f) Any member of the board or its executive secretary
29 may sign a consent decree or other legal document on behalf
30 of the board.

31 (g) The board may, after notice and opportunity for
32 hearing, deny or refuse to renew, suspend, restrict, or revoke
33 the license or permit of, or impose probationary conditions
34 upon or take disciplinary action against, any licensee or
35 permittee for any of the following reasons once a violation
36 has been proven by a preponderance of the evidence:

37 (1) Obtaining a license or permit by fraud,
38 misrepresentation, or concealment of material facts;

39 (2) Being convicted of a felony or other crime involving
40 moral turpitude;

41 (3) Being guilty of unprofessional conduct which placed
42 the public at risk, as defined by legislative rule of the board;

43 (4) Intentional violation of a lawful order or legislative
44 rule of the board;

45 (5) Having had a license or other authorization revoked
46 or suspended, other disciplinary action taken, or an
47 application for licensure or other authorization revoked or
48 suspended by the proper authorities of another jurisdiction;

49 (6) Aiding or abetting unlicensed practice; or

50 (7) Engaging in an act while acting in a professional
51 capacity which has endangered or is likely to endanger the
52 health, welfare, or safety of the public.

53 (h) For the purposes of subsection (g) of this section,
54 effective January 1, 2020, disciplinary action may include:

55 (1) Reprimand;

56 (2) Probation;

57 (3) Restrictions;

58 (4) Administrative fine, not to exceed \$1,000 per day
59 per violation;

60 (5) Mandatory attendance at continuing education
61 seminars or other training;

62 (6) Practicing under supervision or other restriction; or

63 (7) Requiring the licensee or permittee to report to the
64 board for periodic interviews for a specified period of time.

65 (i) In addition to any other sanction imposed, the board
66 may require a licensee or permittee to pay the costs of the
67 proceeding.

§30-20A-14. Procedures for hearing; right of appeal.

1 (a) Hearings are governed by §30-1-8 of this code.

2 (b) The board may conduct the hearing or elect to have
3 an administrative law judge conduct the hearing.

4 (c) If the hearing is conducted by an administrative law
5 judge, at the conclusion of a hearing he or she shall prepare
6 a proposed written order containing findings of fact and
7 conclusions of law. The proposed order may contain
8 proposed disciplinary actions if the board so directs. The
9 board may accept, reject, or modify the decision of the
10 administrative law judge.

11 (d) Any member or the executive secretary of the board
12 has the authority to administer oaths, examine any person
13 under oath, and issue subpoenas and subpoenas duces
14 tecum.

15 (e) If, after a hearing, the board determines the licensee
16 or permittee has violated provisions of this article or the
17 board's rules, a formal written decision shall be prepared
18 which contains findings of fact, conclusions of law, and a
19 specific description of the disciplinary actions imposed.

§30-20A-15. Judicial review.

1 Any licensee or permittee adversely affected by a
2 decision of the board entered after a hearing may obtain
3 judicial review of the decision in accordance with §29A-5-
4 4 of this code, and may appeal any ruling resulting from
5 judicial review in accordance with §29A-6-1 *et seq.* of this
6 code.

§30-20A-16. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this
2 article or otherwise, the board has reason to believe that a
3 licensee or permittee has committed a criminal offense
4 under this article, the board may bring its information to the
5 attention of an appropriate law-enforcement official.

6 (b) A person violating §30-20A-1 of this code is guilty
7 of a misdemeanor and, upon conviction thereof, shall be
8 fined not less than \$100 nor more than \$5,000, or confined
9 in jail not more than six months, or both fined and confined.

●

CHAPTER 185

(S. B. 119 - By Senators Trump and Boso)

[Passed January 29, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 8, 2019.]

AN ACT to amend and reenact §30-3C-1 and §30-3C-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-3C-5, all relating to discovery in certain proceedings; specifying certain health care peer review documents are confidential and not subject to discovery; providing that a person who testifies before a review organization or is a member of a review organization shall not be required to testify or asked about his or her testimony; providing that peer review proceedings, communications, and documents of a review organization are confidential and privileged and shall not be subject to discovery; providing that an individual may be given access to documents used as basis for an adverse professional review action, subject to a protective order as may be appropriate; providing that privilege is not deemed to be waived unless the review organization executes a written waiver; defining terms; and addressing original source materials.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.

§30-3C-1. Definitions.

- 1 As used in this article:
- 2 “Document” means any information, data, reports, or
- 3 records prepared by or on behalf of a health care provider and
- 4 includes mental impressions, analyses, and/or work product.

5 “Health care facility” means any clinic, hospital,
6 pharmacy, nursing home, assisted living facility,
7 residential care community, end-stage renal disease
8 facility, home health agency, child welfare agency, group
9 residential facility, behavioral health care facility or
10 comprehensive community mental health center,
11 intellectual/developmental disability center or program, or
12 other ambulatory health care facility in and licensed,
13 regulated, or certified by the State of West Virginia under
14 state or federal law and any state-operated institution or
15 clinic providing health care and any related entity to the
16 health care facility as that term is defined in §55-7B-1 *et*
17 *seq.* of this code.

18 “Health care provider” means a person, partnership,
19 corporation, professional limited liability company, health
20 care facility, entity or institution licensed by, or certified in,
21 this state or another state, to provide health care or
22 professional health care services, including a physician,
23 osteopathic physician, physician’s assistant, advanced
24 practice registered nurse, health care facility, dentist,
25 registered or licensed practical nurse, optometrist,
26 podiatrist, chiropractor, physical therapist, speech-language
27 pathologist, audiologist, occupational therapist,
28 psychologist, pharmacist, technician, certified nursing
29 assistant, emergency medical services personnel,
30 emergency medical services authority or agency, any person
31 supervised by or acting under the direction of a licensed
32 professional, any person taking actions or providing service
33 or treatment pursuant to or in furtherance of a physician’s
34 plan of care, a health care facility’s plan of care, medical
35 diagnosis, or treatment; or an officer, employee, or agent of
36 a health care provider acting in the course and scope of the
37 officer’s, employee’s, or agent’s employment.

38 “Peer review” means the procedure for evaluation by
39 health care providers of the quality, delivery, and efficiency
40 of services ordered or performed by other health care
41 professionals, including practice analysis, inpatient hospital
42 and extended care facility utilization review, medical audit,

43 ambulatory care review, claims review and patient safety
44 review, preparation for or simulation of audits or surveys of
45 any kind, and all forms of quality assurance/performance
46 improvement whether or not required by any statute, rule,
47 or regulation applicable to a health care facility or health
48 care provider.

49 “Review organization” means any committee,
50 organization, individual, or group of individuals
51 engaging in peer review, including, without limitation, a
52 hospital medical executive committee and/or
53 subcommittee thereof, a hospital utilization review
54 committee, a hospital tissue committee, a medical audit
55 committee, a health insurance review committee, a health
56 maintenance organization review committee, hospital,
57 medical, dental, and health service corporation review
58 committee, a hospital plan corporation review committee,
59 a professional health service plan review committee or
60 organization, a dental review committee, a physicians’
61 advisory committee, a podiatry advisory committee, a
62 nursing advisory committee, any committee or
63 organization established pursuant to a medical assistance
64 program, the Joint Commission on Accreditation of
65 Health Care Organizations or similar accrediting body or
66 any entity established by such accrediting body or to
67 fulfill the requirements of such accrediting body, any
68 entity established pursuant to state or federal law for peer
69 review purposes, and any committee established by one
70 or more state or local professional societies or institutes,
71 to gather and review information relating to the care and
72 treatment of patients for the purposes of: (i) Evaluating
73 and improving the quality of health care rendered; (ii)
74 reducing morbidity or mortality; or (iii) establishing and
75 enforcing guidelines designed to keep within reasonable
76 bounds the cost of health care. It shall also mean any
77 hospital board committee or organization reviewing the
78 professional qualifications or activities of its medical
79 staff or applicants for admission thereto, and any
80 professional standards review organizations established
81 or required under state or federal statutes or regulations.

§30-3C-3. Confidentiality of records.

1 (a) Any document prepared by or on behalf of a health
2 care provider for the purpose of improving the quality,
3 delivery, or efficiency of health care or for the purpose of
4 credentialing or reviewing health care providers is
5 confidential and privileged and shall not be subject to
6 discovery in a civil action or administrative proceeding.
7 Such documents include, without limitation:

8 (1) Nursing home, as referred to in §55-7B-6(e) of this
9 code, incident or event reports, except reports pertaining to
10 the plaintiff of that civil action, or reports of same or similar
11 incidents within a reasonable time frame of the events at
12 issue in the civil action, containing only factual information,
13 but excluding personal identification information;

14 (2) Documents related to review organization
15 proceedings for hiring, disciplining, terminating,
16 credentialing, issuing staff privileges, renewing staff
17 privileges, or alleged misconduct of a health care provider;

18 (3) Review organization documents;

19 (4) Quality control and performance improvement
20 documents;

21 (5) Documents satisfying regulatory obligations related
22 to quality assurance and performance improvement; and

23 (6) Reviews, audits, and recommendations of
24 consultants or other persons or entities engaged in the
25 performance of peer review.

26 (b) A person who testifies before a review organization,
27 or who is a member of a review organization, shall not be
28 required to testify regarding, or be asked about, his or her
29 testimony before such review organization, deliberations of
30 the review organization, or opinions formed as a result of
31 the review organization's proceedings. A person who
32 testifies before a review organization, or who is a member
33 of a review organization, shall not be prevented from

34 testifying in court or an administrative hearing as to matters
35 within his or her personal knowledge.

36 (c) All peer review proceedings, communications, and
37 documents of a review organization and all records
38 developed or obtained during an investigation conducted
39 pursuant to §30-3-1 *et seq.*, §30-3E-1 *et seq.*, and/or §30-
40 14-1 *et seq.* of this code shall be confidential and privileged
41 and shall not be subject to discovery in any civil action or
42 administrative proceeding: *Provided*, That an individual
43 may be given access to any document that was used as the
44 basis for an adverse professional review action against him
45 or her, subject to such protective order as may be
46 appropriate to maintain the confidentiality of the
47 information contained therein. Privilege is not deemed to be
48 waived unless the review organization executes a written
49 waiver authorizing the release of such peer review
50 proceedings, communications, or documents.

51 (d) Nothing in this section limits the disclosure of peer
52 review proceedings, communications, and documents by a
53 review organization or a health care facility to a medical
54 licensing board pursuant to the provisions of §30-3-1 *et seq.*
55 and §30-14-1 *et seq.* of this code.

§30-3C-5. Original source; waivers; further proceedings.

1 Information available from original sources are not to
2 be construed as immune from discovery or use in any civil
3 action merely because they were included in any report or
4 analysis related to improving the quality, delivery, or
5 efficiency of health care or for the purpose of credentialing
6 or reviewing health care providers. Documents contained in
7 peer review files are not discoverable on the basis that they
8 were not created as part of the peer review process; rather,
9 the document must be produced from the original source:
10 *Provided*, That if the party seeking production can show that
11 obtaining source documents will be unduly burdensome, the
12 court may, in its discretion, order production of the
13 nonprivileged documents contained in the peer review file.

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CHAPTER 186

(Com. Sub. for S. B. 369 - By Senators Takubo, Stollings and Baldwin)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §30-5-12b of the Code of West Virginia, 1931, as amended, relating generally to generic drug products; providing definitions; providing that when a pharmacist substitutes a drug the patient shall receive the savings which shall be equal to the difference in acquisition cost of the product prescribed and the acquisition cost of the substituted product; providing an exception for covered individuals; and clarifying that the West Virginia Board of Pharmacy has primary responsibility for enforcement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS, AND PHARMACIES.

§30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.

1 (a) As used in this section:

2 (1) “Brand name” means the proprietary or trade name
3 selected by the manufacturer and placed upon a drug or drug
4 product, its container, label, or wrapping at the time of
5 packaging.

6 (2) “Covered entity” means:

7 (A) Any hospital or medical service organization,
8 insurer, health coverage plan, or health maintenance
9 organization licensed in the state that contracts with another
10 entity to provide prescription drug benefits for its customers
11 or clients;

12 (B) Any health program administered by the state in its
13 capacity as provider of health coverage; or

14 (C) Any employer, labor union, or other group of
15 persons organized in the state that contracts with another
16 entity to provide prescription drug benefits for its
17 employees or members.

18 (3) “Covered individual” means a member, participant,
19 enrollee, contract holder, policy holder, or beneficiary of a
20 covered entity who is provided a prescription drug benefit
21 by a covered entity. The term “covered individual” includes
22 a dependent or other person provided a prescription drug
23 benefit through a policy, contract, or plan for a covered
24 individual.

25 (4) “Generic name” means the official title of a drug or
26 drug combination for which a new drug application, or an
27 abbreviated new drug application, has been approved by the
28 United States Food and Drug Administration and is in
29 effect.

30 (5) “Substitute” means to dispense a therapeutically
31 equivalent generic drug product in the place of the drug
32 ordered or prescribed.

33 (6) “Equivalent” means drugs or drug products which
34 are the same amounts of identical active ingredients and
35 same dosage form and which will provide the same
36 therapeutic efficacy and toxicity when administered to an
37 individual and is approved by the United States Food and
38 Drug Administration.

39 (b) A pharmacist who receives a prescription for a brand
40 name drug or drug product shall substitute a less expensive

41 equivalent generic name drug or drug product unless, in the
42 exercise of his or her professional judgment, the pharmacist
43 believes that the less expensive drug is not suitable for the
44 particular patient: *Provided*, That a substitution may not be
45 made by the pharmacist where the prescribing practitioner
46 indicates that, in his or her professional judgment, a specific
47 brand name drug is medically necessary for a particular
48 patient.

49 (c) A written prescription order shall permit the
50 pharmacist to substitute an equivalent generic name drug or
51 drug product except where the prescribing practitioner has
52 indicated in his or her own handwriting the words “Brand
53 Medically Necessary”. The following sentence shall be
54 printed on the prescription form: “This prescription may be
55 filled with a generically equivalent drug product unless the
56 words ‘Brand Medically Necessary’ are written, in the
57 practitioner’s own handwriting, on this prescription form”:
58 *Provided*, That “Brand Medically Necessary” may be
59 indicated on the prescription order other than in the
60 prescribing practitioner’s own handwriting unless otherwise
61 required by federal mandate.

62 (d) A verbal prescription order shall permit the
63 pharmacist to substitute an equivalent generic name drug or
64 drug product except where the prescribing practitioner
65 indicates to the pharmacist that the prescription is “Brand
66 Necessary” or “Brand Medically Necessary”. The
67 pharmacist shall note the instructions on the file copy of the
68 prescription or chart order form.

69 (e) A person may not by trade rule, work rule, contract
70 or in any other way prohibit, restrict, limit, or attempt to
71 prohibit, restrict, or limit the making of a generic name
72 substitution under the provisions of this section. An
73 employer or his or her agent may not use coercion or other
74 means to interfere with the professional judgment of the
75 pharmacist in deciding which generic name drugs or drug
76 products shall be stocked or substituted: *Provided*, That this
77 section may not be construed to permit the pharmacist to

78 generally refuse to substitute less expensive therapeutically
79 equivalent generic drugs for brand name drugs and that any
80 pharmacist so refusing is subject to the penalties prescribed
81 §30-5-34 of this code.

82 (f) A pharmacist may substitute a drug pursuant to the
83 provisions of this section only where there will be a savings
84 to the purchaser. Where substitution is proper, pursuant to
85 this section, or where the practitioner prescribes the drug by
86 generic name, the pharmacist shall, consistent with his or
87 her professional judgment, dispense the lowest retail cost-
88 effective brand which is in stock.

89 (g) If a pharmacist substitutes a drug pursuant to the
90 provisions of this section, the patient shall receive the
91 savings which shall be equal to the difference in the
92 patient's acquisition cost of the product prescribed and the
93 acquisition cost of the substituted product: *Provided*, That
94 this subsection may not apply if the patient is a covered
95 individual.

96 (h) Each pharmacy shall maintain a record of any
97 substitution of an equivalent generic name drug product for
98 a prescribed brand name drug product on the file copy of a
99 written, electronic or verbal prescription or chart order. The
100 record shall include the manufacturer and generic name of
101 the drug product selected.

102 (i) All drugs shall be labeled in accordance with the
103 instructions of the practitioner.

104 (j) Unless the practitioner directs otherwise, the
105 prescription label on all drugs dispensed by the pharmacist
106 shall indicate the generic name using abbreviations, if
107 necessary, and either the name of the manufacturer or
108 packager, whichever is applicable in the pharmacist's
109 discretion. The same notation will be made on the original
110 prescription retained by the pharmacist.

111 (k) A pharmacist may not dispense a product under the
112 provisions of this section unless the manufacturer has
113 shown that the drug has been manufactured with the
114 following minimum good manufacturing standards and
115 practices by:

116 (1) Labeling products with the name of the original
117 manufacturer and control number;

118 (2) Maintaining quality control standards equal to or
119 greater than those of the United States Food and Drug
120 Administration;

121 (3) Marking products with an identification code or
122 monogram; and

123 (4) Labeling products with an expiration date.

124 (l) The West Virginia Board of Pharmacy shall
125 promulgate rules in accordance with the provisions of
126 §29A-3-1 *et seq.* of this code which establish a formulary of
127 generic type and brand name drug products which are
128 determined by the board to demonstrate significant
129 biological or therapeutic inequivalence and which, if
130 substituted, would pose a threat to the health and safety of
131 patients receiving prescription medication. The formulary
132 shall be promulgated by the board within 90 days of the date
133 of passage of this section and may be amended in
134 accordance with the provisions of that chapter.

135 (m) A pharmacist may not substitute a generic-named
136 therapeutically equivalent drug product for a prescribed
137 brand name drug product if the brand name drug product or
138 the generic drug type is listed on the formulary established
139 by the West Virginia Board of Pharmacy pursuant to this
140 article or is found to be in violation of the requirements of
141 the United States Food and Drug Administration.

142 (n) Any pharmacist who substitutes any drug shall,
143 either personally or through his or her agent, assistant, or
144 employee, notify the person presenting the prescription of

145 the substitution. The person presenting the prescription may
146 refuse the substitution. Upon request the pharmacist shall
147 relate the retail price difference between the brand name and
148 the drug substituted for it.

149 (o) Every pharmacy shall post in a prominent place that
150 is in clear and unobstructed public view, at or near the place
151 where prescriptions are dispensed, a sign which shall read:
152 “West Virginia law requires pharmacists to substitute a less
153 expensive generic-named therapeutically equivalent drug
154 for a brand name drug, if available, unless you or your
155 physician direct otherwise”. The sign shall be printed with
156 lettering of at least one and one-half inches in height with
157 appropriate margins and spacing as prescribed by the West
158 Virginia Board of Pharmacy.

159 (p) The West Virginia Board of Pharmacy shall
160 promulgate rules in accordance with §29A-3-1 *et seq.* of this
161 code setting standards for substituted drug products and
162 obtaining compliance with the provisions of this section.
163 The board has the primary responsibility for enforcing the
164 provisions of this section.

165 (q) Any person may file a complaint with the West
166 Virginia Board of Pharmacy regarding any violation of the
167 provisions of this article. The complaints shall be
168 investigated by the Board of Pharmacy.

169 (r) Fifteen days after the board has notified, by
170 registered mail, a person, firm, corporation, or copartnership
171 that the person, firm, corporation, or copartnership is
172 suspected of being in violation of a provision of this section,
173 the board shall hold a hearing on the matter. If, as a result of
174 the hearing, the board determines that a person, firm,
175 corporation, or copartnership is violating any of the
176 provisions of this section, it may, in addition to any penalties
177 prescribed by §30-5-22 of this code, suspend or revoke the
178 permit of any person, firm, corporation, or copartnership to
179 operate a pharmacy.

180 (s) A pharmacist or pharmacy complying with the
181 provisions of this section may not be liable in any way for
182 the dispensing of a generic-named therapeutically
183 equivalent drug, substituted under the provisions of this
184 section, unless the generic-named therapeutically
185 equivalent drug was incorrectly substituted.

186 (t) In no event where the pharmacist substitutes a drug
187 under the provisions of this section may the prescribing
188 physician be liable in any action for loss, damage, injury, or
189 death of any person occasioned by or arising from the use
190 of the substitute drug unless the original drug was
191 incorrectly prescribed.

192 (u) Failure of a practitioner to specify that a specific
193 brand name is necessary for a particular patient may not
194 constitute evidence of negligence unless the practitioner had
195 reasonable cause to believe that the health of the patient
196 required the use of a certain product and no other.



CHAPTER 187

**(Com. Sub. for S. B. 396 - By Senators Tarr and
Cline)**

[Passed March 8, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-23, relating to waiver of initial occupational licensing fees for certain individuals; requiring boards and licensing authorities to waive certain initial occupational licensing fees for low-income individuals and military families; defining terms; requiring individuals seeking waiver of initial occupational

licensing fees to apply on a form provided by the board or licensing authority; and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-23. Waiver of initial licensing fees for certain individuals; definitions.

1 (a) As used in this section:

2 (1) "Initial" means obtaining a license in West Virginia
3 for the occupation sought for the first time;

4 (2) "Low-income individuals" means individuals in the
5 local labor market as defined in §21-1C-2 of this code
6 whose household adjusted gross income is below 130
7 percent of the federal poverty line. This term also includes
8 any person enrolled in a state or federal public assistance
9 program including, but not limited to, the Temporary
10 Assistance for Needy Families Program, Medicaid, or the
11 Supplemental Nutrition Assistance Program; and

12 (3) "Military families" means any person who serves as
13 an active member of the armed forces of the United States,
14 the National Guard, or a reserve component as described in
15 38 U.S.C. §101, honorably discharged veterans of those
16 forces, and their spouses. This term also includes surviving
17 spouses of deceased service members who have not
18 remarried.

19 (b) Each board or licensing authority referred to in this
20 chapter shall waive all initial occupational licensing fees for
21 the following classes of individuals:

22 (1) Low-income individuals; and

23 (2) Military families.

24 (c) Individuals seeking a waiver of initial occupational
25 licensing fees must apply to the appropriate board or
26 licensing authority in a format prescribed by the board or
27 licensing authority. The board or licensing authority shall
28 process the application within 30 days of receiving it from
29 the applicant.

30 (d) The board or licensing authority shall propose rules
31 for legislative approval in accordance with §29A-3-1 *et seq.*
32 of this code to implement the provisions of this section.



CHAPTER 188

**(Com. Sub. for S. B. 400 - By Senators Romano and
Takubo)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §30-4-3, §30-4-8, and §30-4-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-4-8a, all relating generally to dentistry; permitting the West Virginia Board of Dentistry to create specialty licenses; setting forth those specialty licenses; changing the specific examination an applicant must pass before being issued a license to practice dentistry; changing the type of exam an applicant must pass before being issued a license to practice dental hygiene; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-3. Definitions.

1 As used in §30-4-1 *et seq.*, §30-4A-1 *et seq.*, and §30-
2 4B-1 *et seq.* of this code, the following words and terms
3 have the following meanings:

4 “AAOMS” means the American Association of Oral
5 and Maxillofacial Surgeons;

6 “AAPD” means the American Academy of Pediatric
7 Dentistry;

8 “ACLS” means advanced cardiac life support;

9 “ADA” means the American Dental Association;

10 “AMA” means the American Medical Association;

11 “ASA” means American Society of Anesthesiologists;

12 “Anxiolysis/minimal sedation” means removing,
13 eliminating, or decreasing anxiety by the use of a single
14 anxiety or analgesia medication that is administered in an
15 amount consistent with the manufacturer’s current
16 recommended dosage for the unsupervised treatment of
17 anxiety, insomnia, or pain, in conjunction with nitrous oxide
18 and oxygen. This does not include multiple dosing or
19 exceeding current normal dosage limits set by the
20 manufacturer for unsupervised use by the patient at home
21 for the treatment of anxiety;

22 “Approved dental hygiene program” means a program
23 that is approved by the board and is accredited or its
24 educational standards are deemed by the board to be
25 substantially equivalent to those required by the
26 Commission on Dental Accreditation of the American
27 Dental Association;

28 “Approved dental school, college, or dental department
29 of a university” means a dental school, college, or dental
30 department of a university that is approved by the board and
31 is accredited or its educational standards are deemed by the
32 board to be substantially equivalent to those required by the

33 Commission on Dental Accreditation of the American
34 Dental Association;

35 “Authorize” means that the dentist is giving permission
36 or approval to dental auxiliary personnel to perform
37 delegated procedures in accordance with the dentist’s
38 diagnosis and treatment plan;

39 “BLS” means basic life support;

40 “Board” means the West Virginia Board of Dentistry;

41 “Business entity” means any firm, partnership,
42 association, company, corporation, limited partnership,
43 limited liability company, or other entity;

44 “Central nervous system anesthesia” means an induced,
45 controlled state of unconsciousness or depressed
46 consciousness produced by a pharmacologic method;

47 “Certificate of qualification” means a certificate
48 authorizing a dentist to practice a specialty;

49 “CPR” means cardiopulmonary resuscitation;

50 “Conscious sedation/moderate sedation” means an
51 induced, controlled state of depressed consciousness,
52 produced through the administration of nitrous oxide and
53 oxygen and/or the administration of other agents whether
54 enteral or parenteral, in which the patient retains the ability
55 to independently and continuously maintain an airway and
56 to respond purposefully to physical stimulation and to
57 verbal command;

58 “CRNA” means certified registered nurse anesthetist;

59 “Defibrillator” means a device used to sustain asthmatic
60 heartbeat in an emergency and includes an Automatic
61 Electronic Defibrillator (AED);

62 “Delegated procedures” means those procedures
63 specified by law or by rule of the board and performed by

64 dental auxiliary personnel under the supervision of a
65 licensed dentist;

66 “Dentist anesthesiologist” means a dentist who is
67 trained in the practice of anesthesiology and has completed
68 an additional approved anesthesia education course;

69 “Dental assistant” means a person qualified by
70 education, training or experience who aids or assists a
71 dentist in the delivery of patient care in accordance with
72 delegated procedures as specified by the board by rule or
73 who may perform nonclinical duties in the dental office;

74 “Dental auxiliary personnel” or “auxiliary” means
75 dental hygienists and dental assistants who assist the dentist
76 in the practice of dentistry;

77 “Dental hygiene” means the performance of
78 educational, preventive or therapeutic dental services and as
79 further provided in §30-4-11 of this code and legislative
80 rule;

81 “Dental hygienist” means a person licensed by the board
82 to practice and who provides dental hygiene and other
83 services as specified by the board by rule to patients in the
84 dental office and in a public health setting;

85 “Dental laboratory” means a business performing dental
86 laboratory services;

87 “Dental laboratory services” means the fabricating,
88 repairing, or altering of a dental prosthesis;

89 “Dental laboratory technician” means a person qualified
90 by education, training, or experience who has completed a
91 dental laboratory technology education program and who
92 fabricates, repairs, or alters a dental prosthesis in
93 accordance with a dentist’s work authorization;

94 “Dental office” means the place where the licensed
95 dentist and dental auxiliary personnel are practicing
96 dentistry;

97 “Dental prosthesis” means an artificial appliance
98 fabricated to replace one or more teeth or other oral or peri-
99 oral structure in order to restore or alter function or
100 aesthetics;

101 “Dental public health” is the science and art of
102 preventing and controlling dental diseases and promoting
103 dental health through organized community efforts. It is that
104 form of dental practice which considers the community to
105 be the patient rather than any individual. It is concerned with
106 the dental health education of the public, with applied dental
107 research, and with the administration of group dental care
108 programs as well as the prevention and control of dental
109 diseases on a community basis;

110 “Dentist” means an individual licensed by the board to
111 practice dentistry;

112 “Dentistry” means the evaluation, diagnosis,
113 prevention, and treatment of diseases, disorders, and
114 conditions of the oral cavity, maxillofacial area, and the
115 adjacent and associated structures provided by a dentist;

116 “Direct supervision” means supervision of dental
117 auxiliary personnel provided by a licensed dentist who is
118 physically present in the dental office or treatment facility
119 when procedures are being performed;

120 “Endodontics” is the branch of dentistry which is
121 concerned with the morphology, physiology, and pathology
122 of the human dental pulp and periradicular tissues. Its study
123 and practice encompass the basic and clinical sciences
124 including biology of the normal pulp, the etiology,
125 diagnosis, prevention, and treatment of diseases and injuries
126 of the pulp and associated periradicular conditions;

127 “Facility permit” means a permit for a facility where
128 sedation procedures are used that correspond with the level
129 of anesthesia provided;

130 “General anesthesia” means an induced, controlled state
131 of unconsciousness in which the patient experiences
132 complete loss of protective reflexes, as evidenced by the
133 inability to independently maintain an airway, the inability
134 to respond purposefully to physical stimulation or the
135 inability to respond purposefully to verbal command;

136 “Deep conscious sedation/general anesthesia” includes
137 partial loss of protective reflexes while the patient retains
138 the ability to independently and continuously maintain an
139 airway;

140 “General supervision” means a dentist is not required to
141 be in the office or treatment facility when procedures are
142 being performed by the auxiliary dental personnel, but has
143 personally diagnosed the condition to be treated, has
144 personally authorized the procedures, and will evaluate the
145 treatment provided by the dental auxiliary personnel;

146 “Good moral character” means a lack of history of
147 dishonesty;

148 “Health care provider BLS/CPR” means health care
149 provider basic life support/cardiopulmonary resuscitation;

150 “License” means a license to practice dentistry or dental
151 hygiene;

152 “Licensee” means a person holding a license;

153 “Mobile dental facility” means any self-contained
154 facility in which dentistry or dental hygiene will be
155 practiced which may be moved, towed, or transported from
156 one location to another;

157 “Portable dental unit” means any nonfacility in which
158 dental equipment, utilized in the practice of dentistry, is

159 transported to and utilized on a temporary basis in an out-
160 of-office location, including, but not limited to, patients'
161 homes, schools, nursing homes, or other institutions;

162 “Oral pathology” is the specialty of dentistry and
163 discipline of pathology that deals with the nature,
164 identification, and management of diseases affecting the
165 oral and maxillofacial regions. It is a science that
166 investigates the causes, processes, and effects of these
167 diseases. The practice of oral pathology includes research
168 and diagnosis of diseases using clinical, radiographic,
169 microscopic, biochemical, or other examinations;

170 “Oral and maxillofacial radiology” is the specialty of
171 dentistry and discipline of radiology concerned with the
172 production and interpretation of images and data produced
173 by all modalities of radiant energy that are used for the
174 diagnosis and management of diseases, disorders, and
175 conditions of the oral and maxillofacial region;

176 “Oral and maxillofacial surgery” is the specialty of
177 dentistry which includes the diagnosis, surgical and
178 adjunctive treatment of diseases, injuries, and defects
179 involving both the functional and aesthetic aspects of the
180 hard and soft tissues of the oral and maxillofacial region;

181 “Orthodontics and dentofacial orthopedics” is the dental
182 specialty that includes the diagnosis, prevention,
183 interception, and correction of malocclusion, as well as
184 neuromuscular and skeletal abnormalities of the developing
185 or mature orofacial structures;

186 “Other dental practitioner” means those persons
187 excluded from the definition of the practice of dentistry
188 under the provisions of §30-4-24(3), §30-4-24(4), and §30-
189 4-24(5) of this code and also those persons who hold
190 teaching permits which have been issued to them under the
191 provisions of §30-4-14 of this code;

192 “PALS” means pediatric advanced life support;

193 “Pediatric dentistry” is an age-defined specialty that
194 provides both primary and comprehensive preventive and
195 therapeutic oral health care for infants and children through
196 adolescence, including those with special health care needs;

197 “Pediatric patient” means infants and children;

198 “Periodontics” is that specialty of dentistry which
199 encompasses the prevention, diagnosis, and treatment of
200 diseases of the supporting and surrounding tissues of the
201 teeth or their substitutes and the maintenance of the health,
202 function, and aesthetics of these structures and tissues;

203 “Physician anesthesiologist” means a physician,
204 medical doctor, or doctor of osteopathy who is specialized
205 in the practice of anesthesiology;

206 “Prosthodontics” is the dental specialty pertaining to the
207 diagnosis, treatment planning, rehabilitation and
208 maintenance of the oral function, comfort, appearance and
209 health of patients with clinical conditions associated with
210 missing or deficient teeth and/or oral and maxillofacial
211 tissues using biocompatible substitutes;

212 “Public health practice” means treatment or procedures
213 in a public health setting which shall be designated by a rule
214 promulgated by the board to require direct, general, or no
215 supervision of a dental hygienist by a dentist;

216 “Public health setting” means hospitals, schools,
217 correctional facilities, jails, community clinics, long-term
218 care facilities, nursing homes, home health agencies, group
219 homes, state institutions under the West Virginia
220 Department of Health and Human Resources, public health
221 facilities, homebound settings, accredited dental hygiene
222 education programs, and any other place designated by the
223 board by rule;

224 “Qualified monitor” means an individual who by virtue
225 of credentialing and/or training is qualified to check closely

226 and document the status of a patient undergoing anesthesia
227 and observe utilized equipment;

228 “Relative analgesia/minimal sedation” means an
229 induced, controlled state of minimally depressed
230 consciousness, produced solely by the inhalation of a
231 combination of nitrous oxide and oxygen or single oral
232 premedication without the addition of nitrous oxide and
233 oxygen in which the patient retains the ability to
234 independently and continuously maintain an airway and to
235 respond purposefully to physical stimulation and to verbal
236 command;

237 “Specialty” means the practice of a certain branch of
238 dentistry;

239 “Subcommittee” means West Virginia Board of
240 Dentistry Subcommittee on Anesthesia; and

241 “Work authorization” means a written order for dental
242 laboratory services which has been issued by a licensed
243 dentist or other dental practitioner.

§30-4-8. License to practice dentistry.

1 (a) The board shall issue a license to practice dentistry
2 to an applicant who meets the following requirements:

3 (1) Is at least 18 years of age;

4 (2) Is of good moral character;

5 (3) Is a graduate of and has a diploma from a school
6 accredited by the Commission on Dental Accreditation or
7 equivalently approved dental college, school, or dental
8 department of a university as determined by the board;

9 (4) Has passed a national board examination as given by
10 the Joint Commission on National Dental Examinations and
11 a clinical examination administered by the Commission on
12 Dental Competency Assessments, the Central Regional

13 Dental Testing Service, the Council of Interstate Testing
14 Agencies, the Southern Regional Testing Agency, or the
15 Western Regional Examining Board, or the successor to any
16 of those entities, which demonstrates competency, and
17 passed each individual component with no compensatory
18 scoring in:

19 (A) Endodontics, including access opening of a
20 posterior tooth and access, canal instrumentation, and
21 obturation of an anterior tooth;

22 (B) Fixed prosthodontics, including an anterior crown
23 preparation and two posterior crown preparations involving
24 a fixed partial denture factor;

25 (C) Periodontics, including scaling and root planing in
26 a patient-based clinical setting;

27 (D) Restorative, including a class II amalgam or
28 composite preparation and restoration and a class III
29 composite preparation and restoration in a patient-based
30 clinical setting; and

31 (E) The board may consider clinical examinations taken
32 prior to July 1, 2019, or individual state clinical
33 examinations as equivalent which demonstrates
34 competency.

35 (5) Has not been found guilty of cheating, deception, or
36 fraud in the examination or any part of the application;

37 (6) Has paid the application fee specified by rule; and

38 (7) Not be an alcohol or drug abuser, as these terms are
39 defined in §27-1A-11 of this code: *Provided*, That an
40 applicant in an active recovery process, which may, in the
41 discretion of the board, be evidenced by participation in a
42 12-step program or other similar group or process, may be
43 considered.

44 (b) A dentist may not represent to the public that he or
45 she is a specialist in any branch of dentistry or limit his or
46 her practice to any branch of dentistry unless first issued a
47 certificate of qualification in that branch of dentistry by the
48 board.

49 (c) A license to practice dentistry issued by the board
50 shall for all purposes be considered a license issued under
51 this section: *Provided*, That a person holding a license shall
52 renew the license.

§30-4-8a. Dental specialties.

1 (a) The Board of Dentistry may issue a dental specialty
2 license authorizing a dentist to represent himself or herself
3 to the public as a specialist, and to practice as a specialist,
4 upon proper application and fee for each specialty and as
5 provided pursuant to the provisions of this article.

6 (b) A dentist may not represent himself or herself to the
7 public as a specialist, nor practice as a specialist, unless the
8 individual:

9 (1) Has successfully completed a board-recognized
10 dental specialty/advanced education program accredited by
11 the Commission on Dental Accreditation;

12 (2) Holds a general dental license in this state; and

13 (3) Has completed any additional requirements set forth
14 in state law or rules and has been issued a dental specialty
15 license by the board.

16 (c) Specialties recognized by the board shall include:

17 (1) *Dental public health*. — In order to qualify for this
18 specialty, the licensee shall have successfully completed a
19 minimum of one full-time academic year of at least eight
20 calendar months each of graduate or post-graduate
21 education, internship, or residency.

22 (2) *Endodontics*. — In order to qualify for this specialty,
23 the licensee shall have successfully completed a minimum
24 of two full-time academic years of at least eight calendar
25 months each of graduate or post-graduate education,
26 internship, or residency.

27 (3) *Oral and maxillofacial surgery*. — In order to
28 qualify for this specialty, the licensee shall have
29 successfully completed a minimum of three full-time
30 academic years of at least eight calendar months each of
31 graduate or post-graduate education, internship, or
32 residency.

33 (4) *Oral and maxillofacial radiology*. — In order to
34 qualify for this specialty, the licensee shall have
35 successfully completed a minimum of two full-time years
36 of at least eight calendar months each of graduate or post-
37 graduate education, internship, or residency.

38 (5) *Orthodontics and dentofacial orthopedics*. — In
39 order to qualify for this specialty, the licensee shall have
40 successfully completed a minimum of two full-time
41 academic years of at least eight calendar months each of
42 graduate or post-graduate education, internship, or
43 residency. In addition, any applicant for an orthodontic and
44 dentofacial orthopedic specialty certificate commencing on
45 July 1, 2019, shall submit verification of successful
46 completion of the American Board of Orthodontics written
47 examination.

48 (6) *Pediatric dentistry*. — In order to qualify for this
49 specialty, the licensee shall have successfully completed a
50 minimum of two full-time academic years of at least eight
51 calendar months each of graduate or post-graduate
52 education, internship, or residency.

53 (7) *Periodontics*. — In order to qualify for this specialty,
54 the licensee shall have successfully completed a minimum
55 of two full-time academic years of at least eight calendar

56 months each of graduate or post-graduate education,
57 internship, or residency.

58 (8) *Prosthodontics*. — In order to qualify for this
59 specialty, the licensee shall have successfully completed a
60 minimum of two full-time academic years of at least eight
61 calendar months each of graduate or post-graduate
62 education, internship, or residency.

63 (9) *Oral pathology*. — In order to qualify for this
64 specialty, the licensee shall have successfully completed a
65 minimum of two full-time academic years of at least eight
66 calendar months each of graduate or post-graduate
67 education, internship, or residency.

68 (d) The licensee shall limit his or her practice of
69 dentistry only to the specialty in which he or she is licensed
70 and in which he or she holds himself or herself out to the
71 public as a specialist.

72 (e) The licensee shall limit his or her listing in the
73 telephone directory to the specialties in which he or she has
74 an office or offices.

75 (f) The limitation of practice is removed for purposes of
76 volunteering services in organized health clinics and at
77 charitable events.

§30-4-10. License to practice dental hygiene.

1 (a) The board shall issue a dental hygienist license to an
2 applicant who meets the following requirements:

3 (1) Is at least 18 years of age;

4 (2) Is of good moral character;

5 (3) Is a graduate with a degree in dental hygiene from
6 an approved dental hygiene program of a college, school, or
7 dental department of a university;

8 (4) Has passed a national board examination as given by
9 the Joint Commission on National Dental Examinations and
10 passed a board-approved patient-based examination
11 designed to determine the applicant's level of clinical skills;

12 (5) Has not been found guilty of cheating, deception, or
13 fraud in the examination or any part of the application;

14 (6) Has paid the application fee specified by rule; and

15 (7) Is not an alcohol or drug abuser, as those terms are
16 defined in §27-1A-11 of this code: *Provided*, That an
17 applicant in an active recovery process, which may, in the
18 discretion of the board, be evidenced by participation in a
19 12-step program or other similar group or process, may be
20 considered.

21 (b) A dental hygienist license issued by the board and in
22 good standing on the effective date of the amendments to
23 this section shall for all purposes be considered a dental
24 hygienist license issued under this section: *Provided*, That a
25 person holding a dental hygienist license shall renew the
26 license.

CHAPTER 189

**(Com. Sub. for S. B. 597 - By Senators Boso and
Sypolt)**

[Passed March 7, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §30-38A-7, §30-38A-12, and §30-38A-17 of the Code of West Virginia, 1931, as amended, all relating to conforming the state law to the federal law for appraisal management companies' registration; expanding

certification requirements; changing requirements for removing appraiser from panel; and imposing disciplinary action reporting requirement.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 38A. APPRAISAL MANAGEMENT COMPANIES
REGISTRATION ACT.**

§30-38A-7. Certification requirements.

1 (a) The certification for registration shall be in writing,
2 on a form prescribed by the board and signed by the
3 applicant or controlling person. The certification shall
4 include statements that the applicant:

5 (1) Has a process in place to verify that any person used
6 as an appraiser or added to the appraiser panel of the
7 applicant is a licensed or certified appraiser in good standing
8 in West Virginia;

9 (2) Has set requirements to verify that appraisers are
10 geographically competent and can perform the appraisals
11 assigned;

12 (3) Has set procedures for an appraiser, licensed or
13 certified in this state or in any state with a minimum of the
14 same certification level for the property type as the appraiser
15 who performed the appraisal, to review the work of the
16 appraisers performing appraisals for the applicant to verify
17 that the appraisals are being conducted in accordance with
18 the minimum Uniform Standards of Professional Appraisal
19 Practice (USPAP) standards;

20 (4) Will require appraisals to be conducted
21 independently and free from inappropriate influence and
22 coercion as required by the appraisal independence
23 standards established under Section 129E of the Truth in
24 Lending Act and the rules and regulations issued pursuant
25 to the Act, including the requirement that appraisers be
26 compensated at a customary and reasonable rate when the

27 appraisal management company is providing services for a
28 consumer credit transaction secured by the principal
29 dwelling of a consumer;

30 (5) Maintains a detailed record of each request for
31 appraisal it receives from a client and the appraiser that
32 performs the appraisal; and

33 (6) Has submitted any other information required by the
34 board.

35 (b) The applicant, each owner, and any controlling
36 person shall submit a written verification, on a form
37 prescribed by the board, that includes statements that:

38 (1) The written application and verification for
39 registration contain no false or misleading statements;

40 (2) The applicant has complied with the requirements of
41 this article;

42 (3) The applicant, each owner, and the controlling
43 person of the firm seeking registration has not pleaded
44 guilty or nolo contendere to or been convicted of a felony;

45 (4) Within the past 10 years, the applicant, each owner,
46 and the controlling person of the firm seeking registration
47 has not pleaded guilty or nolo contendere to or been
48 convicted of:

49 (A) A misdemeanor involving mortgage lending or real
50 estate appraisals; or

51 (B) An offense involving breach of trust or fraudulent
52 or dishonest dealing;

53 (5) The applicant, each owner, and the controlling
54 person of the firm seeking registration are of good character
55 and reputation and that none of them has had a license or
56 certificate to act as an appraiser refused, denied, canceled,
57 revoked, or surrendered in this state or any other

58 jurisdiction, and the license or certification was not
59 subsequently granted or reinstated;

60 (6) The applicant, each owner, and the controlling
61 person of the firm seeking registration are not permanently
62 or temporarily enjoined by a court of competent jurisdiction
63 from engaging in or continuing any conduct or practice
64 involving appraisals, appraisal management services, or
65 operating an appraisal management company;

66 (7) The applicant, each owner, and the controlling
67 person of the firm seeking registration are not the subject of
68 an order of the board or any other jurisdiction's agency that
69 regulates appraisal management companies that denied,
70 suspended, or revoked the applicant's or firm's privilege to
71 operate as an appraisal management company;

72 (8) The applicant, each owner, and the controlling
73 person of the firm seeking registration have not acted as an
74 appraisal management company while not being properly
75 registered by the board; and

76 (9) Set forth any other requirements of the board.

§30-38A-12. Requirements for removal from an appraiser panel.

1 (a) An appraisal management company may only
2 remove an appraiser from an appraiser panel or refuse to
3 assign appraisals to an appraiser after providing the
4 appraiser 20 days' prior written notice stating the reasons
5 for the removal or refusal and providing an opportunity for
6 the appraiser to be heard.

7 (b) An appraiser who is removed from an appraiser
8 panel or refused appraisal assignments for an alleged act or
9 omission that would constitute grounds for disciplinary
10 action under the provisions of §30-38-12 of this code, a
11 violation of the Uniform Standards of Professional
12 Appraisal Practice (USPAP), or a violation of state law or

13 legislative rule may file a complaint with the board for a
14 review of the appraisal management company's decision.

15 (c) The board's review under this subsection is limited
16 to determining whether:

17 (1) The appraisal management company has complied
18 with subsection (a) of this section; and

19 (2) The appraiser has engaged in an act or omission that
20 would constitute grounds for disciplinary action under the
21 provisions of §30-38-12 of this code, or has committed a
22 violation of the USPAP or a violation of state law or
23 legislative rule.

24 (d) The board shall hold a hearing on the complaint
25 within a reasonable time, not exceeding six months after the
26 complaint was filed, unless there are extenuating
27 circumstances that are noted in the board's minutes.

28 (e) If the board determines after the hearing that an
29 appraisal management company acted improperly, then the
30 board shall order the appraisal management company to
31 restore the appraiser to the appraiser panel or assign
32 appraisals to the appraiser.

33 (f) After the board's order, an appraisal management
34 company may not:

35 (1) Reduce the number of appraisals given to the
36 appraiser; or

37 (2) Penalize the appraiser in any other manner.

§30-38A-17. Notice and hearing procedures.

1 (a) The board, on its own motion or upon receipt of a
2 written complaint, may investigate an appraisal
3 management company, a person or firm associated with an
4 appraisal management company, or a person or firm
5 performing appraisal management services.

6 (b) If the board determines after the investigation there
7 are grounds for disciplinary action, the board may hold a
8 hearing after giving 30 days' prior notice.

9 (c) The board has the same powers set out in §30-38-1
10 *et seq.* of this code.

11 (d) After notice and a hearing, the board may:

12 (1) Deny, revoke, or refuse to issue or renew the
13 registration of an appraisal management company or restrict
14 or limit the activities of an appraisal management company
15 or of a person or firm that owns an interest in or participates
16 in the business of an appraisal management company;

17 (2) Impose a fine not to exceed \$25,000 for each
18 violation; or

19 (3) Take other disciplinary action as established by the
20 board by rule.

21 (e) The board may seek injunctive relief in the Kanawha
22 County Circuit Court to prevent a person or firm from
23 violating the provisions of this article or the rules
24 promulgated hereunder. The circuit court may grant a
25 temporary or permanent injunction.

26 (f) Within five days of a final disciplinary action, the
27 board will report any action taken to the Appraisal
28 Subcommittee of the Federal Financial Institutions
29 Examination Council via its extranet application.

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CHAPTER 190

(Com. Sub. for S. B. 653 - By Senators Stollings and Maroney)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §30-3-15 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-9a of said code, all relating to medical corporations; updating terminology; providing that medical corporations may only practice medicine through certain licensees; permitting certain licensees to be employees of medical corporations; and providing that licensed hospitals do not need to obtain a certificate of authorization so long as the hospital does not exercise control of the independent medical judgment of a licensee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-15. Certificate of authorization requirements for medical corporations.

1 (a) *Unlawful acts.* — It is unlawful for any corporation
2 to practice or offer to practice medicine, surgery, podiatric
3 medicine, or to perform medical acts through one or more
4 physician assistants in this state without a certificate of
5 authorization issued by the board designating the
6 corporation as an authorized medical corporation.

7 (b) *Certificate of authorization for in-state medical*
8 *corporation.* — The board may issue a certificate of
9 authorization for a medical corporation to one or more
10 individuals licensed by the board. Licensees of the West

11 Virginia Board of Osteopathic Medicine may join with
12 licensees of the board to receive a certificate of
13 authorization from the board. Eligible licensees may apply
14 for a certificate of authorization by:

15 (1) Filing a written application with the board on a form
16 prescribed by the board;

17 (2) Furnishing satisfactory proof to the board that each
18 shareholder of the proposed medical or podiatry corporation
19 is a licensed physician pursuant to this article, §30-3E-1 *et*
20 *seq.*, or §30-14-1 *et seq.* of this code; and

21 (3) Submitting applicable fees which are not refundable.

22 (c) *Certificate of authorization for out-of-state medical*
23 *corporation.* — A medical corporation formed outside of
24 this state for the purpose of engaging in the practice of
25 medicine, surgery, and/or podiatric medicine may receive a
26 certificate of authorization from the board to be designated
27 a foreign medical corporation by:

28 (1) Filing a written application with the board on a form
29 prescribed by the board;

30 (2) Furnishing satisfactory proof to the board that the
31 medical corporation has received a certificate of
32 authorization or similar authorization from the appropriate
33 authorities as a medical corporation or professional
34 corporation in its state of incorporation and is currently in
35 good standing with that authority;

36 (3) Furnishing satisfactory proof to the board that at
37 least one shareholder of the proposed medical corporation
38 is a licensed physician or podiatric physician pursuant to
39 this article and is designated as the corporate representative
40 for all communications with the board regarding the
41 designation and continuing authorization of the corporation
42 as a foreign medical corporation;

43 (4) Furnishing satisfactory proof to the board that all of
44 the medical corporation's shareholders are licensed
45 physicians, podiatric physicians, or physician assistants in
46 one or more states and submitting a complete list of the
47 shareholders, including each shareholder's name, their state
48 or states of licensure, and their license number(s); and

49 (5) Submitting applicable fees which are not refundable.

50 (d) *Notice of certificate of authorization to Secretary of*
51 *State.* — When the board issues a certificate of authorization
52 to a medical corporation, then the board shall notify the
53 Secretary of State that a certificate of authorization has been
54 issued. When the Secretary of State receives a notification
55 from the board, he or she shall attach that certificate of
56 authorization to the corporation application and, upon
57 compliance by the corporation with the pertinent provisions
58 of this code, shall notify the incorporators that the medical
59 corporation, through licensed physicians, podiatrists, and/or
60 physician assistants may engage in the practice of medicine,
61 surgery, or the practice of podiatry in West Virginia.

62 (e) *Authorized practice of medical corporation.* — An
63 authorized medical corporation may only practice medicine
64 and surgery through individual physicians, podiatric
65 physicians, or physician assistants licensed to practice
66 medicine and surgery in this state. Physicians, podiatric
67 physicians, and physician assistants may be employees
68 rather than shareholders of a medical corporation, and
69 nothing herein requires a license for or other legal
70 authorization of, any individual employed by a medical
71 corporation to perform services for which no license or
72 other legal authorization is otherwise required.

73 (f) *Renewal of certificate of authorization.* — A medical
74 corporation holding a certificate of authorization shall
75 register biennially, on or before the expiration date on its
76 certificate of authorization, on a form prescribed by the
77 board, and pay a biennial fee. If a medical corporation does

78 not timely renew its certificate of authorization, then its
79 certificate of authorization automatically expires.

80 (g) *Renewal for expired certificate of authorization.* —
81 A medical corporation whose certificate of authorization
82 has expired may reapply for a certificate of authorization by
83 submitting a new application and application fee in
84 conformity with subsection (b) or (c) of this section.

85 (h) *Ceasing operation - In-state medical corporation.* —
86 A medical corporation formed in this state and holding a
87 certificate of authorization shall cease to engage in the
88 practice of medicine, surgery, or podiatry when notified by
89 the board that:

90 (1) One of its shareholders is no longer a duly licensed
91 physician, podiatric physician, or physician assistant in this
92 state; or

93 (2) The shares of the medical corporation have been sold
94 or transferred to a person who is not licensed by the board
95 or the Board of Osteopathic Medicine. The personal
96 representative of a deceased shareholder shall have a period,
97 not to exceed 12 months from the date of the shareholder's
98 death, to transfer the shares. Nothing herein affects the
99 existence of the medical corporation or its right to continue
100 to operate for all lawful purposes other than the professional
101 practice of licensed physicians, podiatric physicians, and
102 physician assistants.

103 (i) *Ceasing operation - Out-of-state medical corporation.*
104 — A medical corporation formed outside of this state and
105 holding a certificate of authorization shall immediately cease
106 to engage in practice in this state if:

107 (1) The corporate shareholders no longer include at least
108 one shareholder who is licensed to practice in this state
109 pursuant to this article;

110 (2) The corporation is notified that one of its
111 shareholders is no longer a licensed physician, podiatric
112 physician, or physician assistant; or

113 (3) The shares of the medical corporation have been sold
114 or transferred to a person who is not a licensed physician,
115 podiatric physician, or physician assistant. The personal
116 representative of a deceased shareholder shall have a period,
117 not to exceed 12 months from the date of the shareholder's
118 death, to transfer the shares. In order to maintain its
119 certificate of authorization to practice medicine and surgery,
120 podiatric medicine, or to perform medical acts through one
121 or more physician assistants during the 12-month period, the
122 medical corporation shall, at all times, have at least one
123 shareholder who is licensed in this state pursuant to this
124 article. Nothing herein affects the existence of the medical
125 corporation or its right to continue to operate for all lawful
126 purposes other than the professional practice of licensed
127 physicians, podiatric physicians, and physician assistants.

128 (j) *Notice to Secretary of State.* — Within 30 days of the
129 expiration, revocation, or suspension of a certificate of
130 authorization by the board, the board shall submit written
131 notice to the Secretary of State.

132 (k) *Unlawful acts.* — It is unlawful for any corporation
133 to practice or offer to practice medicine, surgery, podiatric
134 medicine, or to perform medical acts through one or more
135 physician assistants after its certificate of authorization has
136 expired or been revoked, or if suspended, during the term of
137 the suspension.

138 (l) *Application of section.* — Nothing in this section is
139 meant or intended to change in any way the rights, duties,
140 privileges, responsibilities, and liabilities incident to the
141 physician-patient or podiatrist-patient relationship, nor is it
142 meant or intended to change in any way the personal
143 character of the practitioner-patient relationship. Nothing in
144 this section shall be construed to require a hospital licensed
145 pursuant to §16-5B-1 *et seq.* of this code to obtain a

146 certificate of authorization from the board so long as the
147 hospital does not exercise control of the independent
148 medical judgment of physicians and podiatric physicians
149 licensed pursuant to this article.

150 (m) *Court evidence.* — A certificate of authorization
151 issued by the board to a corporation to practice medicine
152 and surgery, podiatric medicine, or to perform medical acts
153 through one or more physician assistants in this state that
154 has not expired, been revoked, or suspended is admissible
155 in evidence in all courts of this state and is prima facie
156 evidence of the facts stated therein.

157 (n) *Penalties.* — Any officer, shareholder, or employee
158 of a medical corporation who violates this section is guilty
159 of a misdemeanor and, upon conviction thereof, shall be
160 fined not more than \$1,000 per violation.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to Secretary of State of issuance of certificate; action by Secretary of State.

1 (a) One or more osteopathic physicians, allopathic
2 physicians, or physician assistants may form an osteopathic
3 medical corporation. An osteopathic physician or
4 osteopathic physician assistant shall file a written
5 application with the board on a form prescribed by the
6 board, and shall furnish proof satisfactory to the board that
7 the signer or all of the signers of such application is or are
8 duly licensed. A reasonable fee, to be set by the board rules,
9 shall accompany the application, no part of which shall be
10 returnable.

11 (b) If the board finds that the signer or all of the signers
12 of the application are licensed, the board shall notify the
13 Secretary of State that a certificate of authorization has been
14 issued.

15 (c) When the Secretary of State receives notification
16 from the board that a certain individual or individuals has or
17 have been issued a certificate of authorization, he or she
18 shall attach the authorization to the corporation application
19 and upon compliance by the corporation with §31-1-1 *et*
20 *seq.* of this code, the Secretary of State shall notify the
21 incorporators that the corporation may engage in the
22 appropriate practice.



CHAPTER 191

**(S. B. 668 - By Senators Azinger, Maynard, Palumbo,
Prezioso, Roberts, Rucker, Stollings, Tarr, Takubo,
Weld and Maroney)**

[Passed March 6, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §30-3E-1, §30-3E-3, §30-3E-9, §30-3E-11, §30-3E-12, and §30-3E-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-3E-10a, all relating to physician assistants collaborating with physicians in hospitals; requiring written notice to the appropriate licensing board; requiring rulemaking; amending scope of practice; providing for disciplinary proceedings for failure to provide timely notice of termination of practice notification; and specifying practice requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-1. Definitions.

1 As used in this article:

2 (1) "Advance duties" means medical acts that require
3 additional training beyond the basic education program
4 training required for licensure as a physician assistant.

5 (2) "Alternate collaborating physician" means one or
6 more physicians licensed in this state and designated by the
7 collaborating physician to provide collaboration with a
8 physician assistant in accordance with an authorized
9 practice agreement.

10 (3) "Approved program" means an educational program
11 for physician assistants approved and accredited by the
12 Accreditation Review Commission on Education for the
13 Physician Assistant or its successor. Prior to 2001, approval
14 and accreditation would have been by either the Committee
15 on Allied Health Education and Accreditation or the
16 Accreditation Review Commission on Education for the
17 Physician Assistant.

18 (4) "Boards" means the West Virginia Board of
19 Medicine and the West Virginia Board of Osteopathic
20 Medicine.

21 (5) "Chronic condition" means a condition which lasts
22 three months or more, generally cannot be prevented by
23 vaccines, can be controlled but not cured by medication, and
24 does not generally disappear. These conditions include, but
25 are not limited to, arthritis, asthma, cardiovascular disease,
26 cancer, diabetes, epilepsy and seizures, and obesity.

27 (6) "Collaborating physician" means a doctor of
28 medicine, osteopathy, or podiatry fully licensed, by the
29 appropriate board in this state, without restriction or
30 limitation, who collaborates with physician assistants.

31 (7) "Collaboration" means overseeing the activities of
32 the medical services rendered by a physician assistant.
33 Constant physical presence of the collaborating physician is
34 not required as long as the collaborating physician and
35 physician assistant are, or can be, easily in contact with one

36 another by telecommunication. Collaboration does not
37 require the personal presence of the collaborating physician
38 at the place or places where services are rendered.

39 (8) “Endorsement” means a summer camp or volunteer
40 endorsement authorized under this article.

41 (9) “Health care facility” means any licensed hospital,
42 nursing home, extended care facility, state health or mental
43 institution, clinic, or physician’s office.

44 (10) “Hospital” means a facility licensed pursuant to
45 §16-5B-1 *et seq.* of this code and any acute-care facility
46 operated by the state government that primarily provides
47 inpatient diagnostic, treatment, or rehabilitative services to
48 injured, disabled, or sick persons under the supervision of
49 physicians and includes psychiatric hospitals.

50 (11) “License” means a license issued by either of the
51 boards pursuant to the provisions of this article.

52 (12) “Licensee” means a person licensed pursuant to the
53 provisions of this article.

54 (13) “Physician” means a doctor of allopathic or
55 osteopathic medicine who is fully licensed pursuant to the
56 provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of
57 this code to practice medicine and surgery in this state.

58 (14) “Physician assistant” means a person who meets
59 the qualifications set forth in this article and is licensed
60 pursuant to this article to practice medicine under
61 collaboration.

62 (15) “Practice agreement” means a document that is
63 executed between a collaborating physician and a physician
64 assistant pursuant to the provisions of this article, and is
65 filed with and approved by the appropriate licensing board.

66 (16) “Practice notification” means a written notice to the
67 appropriate licensing board that a physician assistant will

68 practice in collaboration with one or more physicians in a
69 hospital in the state of West Virginia.

§30-3E-3. Rulemaking.

1 (a) The boards shall propose rules for legislative
2 approval in accordance with the provisions of §29A-3-1 *et*
3 *seq.* of this code to implement the provisions of this article,
4 including:

5 (1) The extent to which physician assistants may
6 practice in this state;

7 (2) The extent to which physician assistants may
8 pronounce death;

9 (3) Requirements for licenses and temporary licenses;

10 (4) Requirements for practice agreements and practice
11 notifications;

12 (5) Requirements for continuing education;

13 (6) Conduct of a licensee for which discipline may be
14 imposed;

15 (7) The eligibility and extent to which a physician
16 assistant may prescribe, including: A state formulary
17 classifying those categories of drugs which may not be
18 prescribed by a physician assistant, including, but not
19 limited to, Schedules I and II of the Uniform Controlled
20 Substances Act, antineoplastics, radiopharmaceuticals, and
21 general anesthetics. Drugs listed under Schedule III shall be
22 limited to a 30-day supply without refill. In addition to the
23 above referenced provisions and restrictions and pursuant to
24 a practice agreement or practice notification as set forth in
25 this article, the rules shall permit the prescribing of an
26 annual supply of any drug, with the exception of controlled
27 substances, which is prescribed for the treatment of a
28 chronic condition, other than chronic pain management. For
29 the purposes of this section, a chronic condition is a

30 condition which lasts three months or more, generally
31 cannot be prevented by vaccines, can be controlled but not
32 cured by medication, and does not generally disappear.
33 These conditions, with the exception of chronic pain,
34 include, but are not limited to, arthritis, asthma,
35 cardiovascular disease, cancer, diabetes, epilepsy and
36 seizures, and obesity;

37 (8) The authority a collaborating physician may
38 delegate for prescribing, dispensing, and administering of
39 controlled substances, prescription drugs, or medical
40 devices if the practice agreement includes:

41 (A) A notice of intent to delegate prescribing of
42 controlled substances, prescription drugs, or medical
43 devices;

44 (B) An attestation that all prescribing activities of the
45 physician assistant shall comply with applicable federal and
46 state law governing the practice of physician assistants;

47 (C) An attestation that all medical charts or records shall
48 contain a notation of any prescriptions written by a
49 physician assistant;

50 (D) An attestation that all prescriptions shall include the
51 physician assistant's name and the collaborating physician's
52 name, business address, and business telephone number
53 legibly written or printed; and

54 (E) An attestation that the physician assistant has
55 successfully completed each of the requirements established
56 by the appropriate board to be eligible to prescribe pursuant
57 to a practice agreement accompanied by the production of
58 any required documentation establishing eligibility;

59 (9) A fee schedule; and

60 (10) Any other rules necessary to effectuate the
61 provisions of this article.

62 (b) The boards may propose emergency rules pursuant
63 to §29A-3-1 *et seq.* of this code to ensure conformity with
64 this article.

§30-3E-9. Practice requirements.

1 (a) A physician assistant may not practice independent
2 of a collaborating physician.

3 (b) A physician assistant may practice in a hospital in
4 collaboration with physicians after filing a practice
5 notification with the appropriate board.

6 (c) Except as set forth in subsection (b) of this section,
7 before a licensed physician assistant may practice and
8 before a collaborating physician may delegate medical acts
9 to a physician assistant, the collaborating physician, and the
10 physician assistant shall:

11 (1) File a practice agreement with the appropriate
12 licensing board, including any designated alternate
13 collaborating physicians;

14 (2) Pay the applicable fees; and

15 (3) Receive written authorization from the appropriate
16 licensing board to commence practicing as a physician
17 assistant pursuant to the practice agreement.

18 (d) A physician applying to collaborate with a physician
19 assistant shall affirm that:

20 (1) The medical services set forth in the practice
21 agreement are consistent with the skills and training of the
22 collaborating physician and the physician assistant; and

23 (2) The activities delegated to a physician assistant are
24 consistent with sound medical practice and will protect the
25 health and safety of the patient.

26 (e) A collaborating physician may enter into practice
27 agreements with up to five full-time physician assistants at
28 any one time.

29 (f) A physician may collaborate with physician
30 assistants in a hospital as approved by the hospital.

§30-3E-10a. Practice notification requirements.

1 (a) A physician assistant shall collaborate with
2 physicians in a hospital only after the physician assistant is
3 notified by the appropriate licensing board that a complete
4 practice notification has been filed with the board.

5 (b) The licensing boards shall promulgate emergency
6 rules to establish the content and criteria for submission of
7 practice notifications for physician assistant hospital
8 practice.

9 (c) A physician assistant shall notify the board, in
10 writing, within 10 days of the termination of a practice
11 notification. Failure to provide timely notice of the
12 termination constitutes unprofessional conduct and
13 disciplinary proceedings may be instituted by the
14 appropriate licensing board.

§30-3E-11. Collaboration with physician assistants.

1 (a) A licensed physician or podiatrist may collaborate
2 with a physician assistant:

3 (1) As a collaborating physician in accordance with an
4 authorized practice agreement;

5 (2) As an alternate collaborating physician who:

6 (A) Collaborates in accordance with an authorized
7 practice agreement;

8 (B) Has been designated an alternate collaborating
9 physician in the authorized practice agreement; and

10 (C) Only delegates those medical acts that have been
11 authorized by the practice agreement and are within the
12 scope of practice of both the primary collaborating
13 physician and the alternate collaborating physician; or

14 (3) In a hospital pursuant to a practice notification.

15 (b) A collaborating physician shall observe, direct, and
16 evaluate the physician assistant's work records and
17 practices, including collaborating with the physician
18 assistant in the care and treatment of a patient in a health
19 care facility.

20 (c) A health care facility is only legally responsible for
21 the actions or omissions of a physician assistant when the
22 physician assistant is employed by or on behalf of the
23 facility.

24 (d) Every licensed physician assistant shall be
25 individually responsible and liable for the care they provide.
26 This article does not relieve physician assistants or
27 collaborating physicians of responsibility and liability
28 which otherwise may exist for acts and omissions occurring
29 during collaboration.

§30-3E-12. Scope of practice.

1 (a) A license issued to a physician assistant by the
2 appropriate state licensing board shall authorize the
3 physician assistant to perform medical acts:

4 (1) Pursuant to a practice notification or delegated to the
5 physician assistant as part of an authorized practice
6 agreement;

7 (2) Appropriate to the education, training, and
8 experience of the physician assistant;

9 (3) Customary to the practice of the collaborating
10 physician; and

11 (4) Consistent with the laws of this state and rules of the
12 boards.

13 (b) This article does not authorize a physician assistant
14 to perform any specific function or duty delegated by this
15 code to those persons licensed as chiropractors, dentists,
16 dental hygienists, optometrists, or pharmacists, or certified
17 as nurse anesthetists.

§30-3E-13. Identification.

1 (a) While practicing, a physician assistant shall wear a
2 name tag that identifies him or her as a physician assistant.

3 (b) A physician assistant shall keep his or her license
4 and current practice agreement or practice notification
5 available for inspection at his or her place of practice.

CHAPTER 192

(H. B. 2209 - By Delegates Howell, Shott and Foster)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §30-24-8, relating
to allowing military veterans who meet certain qualifications
to qualify for examination for license as an emergency
medical technician.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 24. QUALIFICATION OF ARMED FORCES
HEALTH TECHNICIANS FOR CIVILIAN HEALTH
OCCUPATIONS.**

§30-24-8. Qualification for examination for license as an emergency medical technician.

1 Any person who has served on reserve or active duty in
2 the medical corps of any of the Armed Forces of the United
3 States and who has successfully completed the course of
4 instruction required to qualify him or her for rating as an
5 emergency medical technician, hospital corpsman, combat
6 medic, health care specialist, or other equivalent rating in
7 his or her particular branch of the Armed Forces, and whose
8 service in the Armed Forces was under honorable
9 conditions, may submit to the West Virginia Office of
10 Emergency Medical Services, a photostatic copy of the
11 certificate issued to him or her certifying successful
12 completion of such course of instruction, a photostatic copy
13 of his or her discharge from the Armed Forces, an
14 application for a certification as an emergency medical
15 technician, and the prescribed license fee.

16 If the certificate and discharge, as evidenced by the
17 photostatic copies thereof, the application, and prescribed
18 license fee are in order, and if the veteran meets all of the
19 requirements of §16-4C-1 *et seq.* of this code, the veteran
20 shall be permitted to take the same examination or
21 examinations as are required under §16-4C-1 *et seq.* of this
22 code for applicants who do not apply for a license under the
23 provisions of this article: *Provided*, That the veteran may be
24 required to attend additional training courses prior to taking
25 the examination if more than 30 years has passed from his
26 or her successful completion of the course of instruction and
27 date of application. If the veteran passes the examination or
28 examinations, he or she shall be licensed as an emergency
29 medical technician and shall thereafter be subject to all of
30 the provisions of §16-4C-1 *et seq.* of this code. If the veteran
31 does not pass such examination or examinations, any
32 provisions of §16-4C-1 *et seq.* of this code relating to
33 reexaminations shall apply to the veteran the same as they
34 apply to a person who does not apply for a license under the
35 provisions of this article.

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CHAPTER 193

**(Com. Sub. for H. B. 2307 - By Delegates Howell,
Hanna, Hott, Steele, Linville, Pack, Phillips, Cadle,
Worrell, Hill and Wilson)**

[Passed February 11, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 19, 2019.]

AN ACT to amend and reenact §30-27-9 of the Code of West Virginia, 1931, as amended, relating to barbering and cosmetology; removing certain requirements to take an examination for a license; to establish a provisional license to practice in this state by an applicant with an expired license from another state; and directing the board to set the applicable fees for a provisional license.

Be it enacted by the Legislature of West Virginia:

§30-27-9. Professional license from another state; license to practice in this state; provisional license to practice in this state.

1 (a) The board shall issue a professional license to
2 practice to an applicant of good moral character who holds
3 a valid license or other authorization to practice in that
4 particular field from another state, if the applicant
5 demonstrates that he or she:

6 (1) Holds a valid license or other authorization to
7 practice in another state which was granted after completion
8 of educational requirements required in another state;

9 (2) Does not have charges pending against his or her
10 valid license or other authorization to practice and has never
11 had a valid license or other authorization to practice
12 revoked;

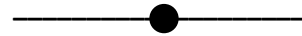
- 13 (3) Has paid the applicable fee;
 - 14 (4) Is at least 18 years of age;
 - 15 (5) Has a high school diploma, a GED, or has passed the
16 “ability to benefit test” approved by the United States
17 Department of Education;
 - 18 (6) Is a citizen of the United States or is eligible for
19 employment in the United States;
 - 20 (7) Has presented a certificate of health issued by a
21 licensed physician; and
 - 22 (8) Has fulfilled any other requirement specified by the
23 board.
- 24 (b) The board shall award an applicant holding an
25 expired license from another state a provisional license to
26 practice in this state: *Provided*, That applicant does not have
27 charges pending against his or her expired license or other
28 authorization to practice and has never had a license
29 revoked or other authorization to practice revoked. The
30 provisional license will become a full license after the
31 applicant:
- 32 (1) Has worked for one year under the supervision of
33 someone with a valid license in this state;
 - 34 (2) Does not have any complaints filed against him or
35 her during the year the applicant holds a provisional license;
 - 36 (3) Has paid all applicable fees for a provisional license
37 and valid license;
 - 38 (4) Is at least 18 years of age;
 - 39 (5) Has a high school diploma, a GED, or has passed the
40 “ability to benefit test” approved by the United States
41 Department of Education;

42 (6) Is a citizen of the United States or is eligible for
43 employment in the United States;

44 (7) Has presented a certificate of health issued by a
45 licensed physician; and

46 (8) Has fulfilled any other requirement specified by the
47 board.

48 The board may determine the applicable fees for a
49 provisional license: *Provided*, That the cost shall not exceed
50 one-half the cost of a full license.



CHAPTER 194

(Com. Sub. for H. B. 2324 - By Delegates Summers and Pushkin)

[Passed February 21, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2019.]

AN ACT to amend and reenact §30-36-2, §30-36-7, §30-36-9, §30-36-10, §30-36-14, §30-36-17, and §30-36-18 of the Code of West Virginia, 1931, as amended, all relating to authorizing the acupuncture board to issue certificates to perform auricular acudetox therapy; defining terms; providing rulemaking and emergency rule-making authority; requiring certificates; establishing qualifications for certificate holders; providing for the surrender of certificates; limiting scope; prohibiting advertising; and providing for the suspension or revocation of certificates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 36. ACUPUNCTURISTS.

§30-36-2. Definitions.

1 (a) Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) “Acupuncture” means a form of health care, based
4 on a theory of energetic physiology, that describes the
5 interrelationship of the body organs or functions with an
6 associated point or combination of points.

7 (2) “Auricular acudetox” means auricular detoxification
8 therapy, as approved by the board or as stipulated by the
9 National Acupuncture Detoxification Association (NADA)
10 for the treatment of substance abuse, alcoholism, chemical
11 dependency, detoxification, behavioral therapy, or trauma
12 recovery.

13 (3) “Board” means the West Virginia Acupuncture
14 Board.

15 (4) “Certificate holder” means an authorization issued
16 by the board to persons trained in auricular acudetox who
17 meet the qualifications, established pursuant to this article
18 and by board rules, to be certified as an auricular
19 detoxification specialist (ADS).

20 (5) “License” means a license issued by the board to
21 practice acupuncture.

22 (6) “Moxibustion” means the burning of mugwort on or
23 near the skin to stimulate the acupuncture point.

24 (7) “NADA” means the National Acupuncture
25 Detoxification Association.

26 (8) “NADA protocol” means the National Acupuncture
27 Detoxification Association protocol for auricular
28 detoxification therapy.

29 (9) “Practice acupuncture” means the use of oriental
30 medical therapies for the purpose of normalizing energetic
31 physiological functions including pain control, and for the
32 promotion, maintenance, and restoration of health.

33 (b) (1) “Practice acupuncture” includes:

34 (A) Stimulation of points of the body by the insertion of
35 acupuncture needles;

36 (B) The application of moxibustion; and

37 (C) Manual, mechanical, thermal, or electrical therapies
38 only when performed in accordance with the principles of
39 oriental acupuncture medical theories.

§30-36-7. Rule-making authority; miscellaneous powers and duties.

1 (a) The board may propose for promulgation legislative
2 rules to carry out the provisions of this article in accordance
3 with the provisions of §29A-3-1 *et seq.* of this code.

4 (b) The board may adopt a code of ethics for licensure.

5 (c) In addition to the powers set forth elsewhere in this
6 article, the board shall keep:

7 (1) Records and minutes necessary for the orderly
8 conduct of business; and

9 (2) A list of each currently licensed acupuncturist.

10 (d) The board may propose emergency legislative rules
11 upon the effective date of the reenactment of this article
12 during the 2019 regular session of the Legislature to
13 effectuate the provisions necessary to issue certificates to
14 persons trained in auricular acudetox, and to establish fees
15 for certificate holders pursuant to this article.

§30-36-9. License or certificate required; exemptions.

1 (a) Except as otherwise provided in this article, an
2 individual shall be licensed or certified by the board before
3 he or she may practice acupuncture or auricular acudetox in
4 this state.

5 (b) This section does not apply to:

6 (1) An individual employed by the federal government
7 as an acupuncturist while practicing within the scope of that
8 employment; or

9 (2) A student, trainee, or visiting teacher who is
10 designated as a student, trainee, or visiting teacher while
11 participating in a course of study or training under the
12 supervision of a licensed acupuncturist in a program that is
13 approved by the board or the State Board of Education.

**§30-36-10. Qualifications of applicants for licensure; and
qualifications for certificate holders.**

1 (a) To qualify for a license, an applicant shall:

2 (1) Be of good moral character;

3 (2) Be at least 18 years of age;

4 (3) Demonstrate competence in performing acupuncture
5 by meeting one of the following standards for education,
6 training, or demonstrated experience:

7 (A) Graduation from a course of training of at least
8 1,800 hours, including 300 clinical hours, that is:

9 (i) Approved by the national accreditation commission
10 for schools and colleges of acupuncture and oriental
11 medicine; or

12 (ii) Found by the board to be equivalent to a course
13 approved by the national accreditation commission for
14 schools and colleges of acupuncture and oriental medicine;

15 (B) Achievement of a passing score on an examination
16 that is:

17 (i) Given by the national commission for the
18 certification of acupuncturists; or

19 (ii) Determined by the board to be equivalent to the
20 examination given by the national commission for the
21 certification of acupuncturists;

22 (C) Successful completion of an apprenticeship
23 consisting of at least 2,700 hours within a five-year period
24 under the direction of an individual properly approved by
25 that jurisdiction to perform acupuncture; or

26 (D) Performance of the practice of acupuncture in
27 accordance with the law of another jurisdiction or
28 jurisdictions for a period of at least three years within the
29 five years immediately prior to application that consisted of
30 at least 500 patient visits per year; and

31 (4) Achievement of any other qualifications that the
32 board establishes in rules.

33 (b) Notwithstanding any other provisions of this code to
34 the contrary, to qualify for a certificate as an auricular
35 detoxification specialist, an applicant shall:

36 (1) Be at least 18 years old;

37 (2) Be authorized in this state to engage in any of the
38 following:

39 (A) Physician assistant, pursuant to §30-3E-1 *et seq.* of
40 this code;

41 (B) Dentist, pursuant to §30-4-1 *et seq.* of this code;

42 (C) Registered professional nurse, pursuant to §30-7-1
43 *et seq.* of this code;

44 (D) Practical nurse, pursuant to §30-7A-1 *et seq.* of this
45 code;

46 (E) Psychologist, pursuant to §30-21-1 *et seq.* of this
47 code;

48 (F) Occupational therapist, pursuant to §30-28-1 *et seq.*
49 of this code;

50 (G) Social worker, pursuant to §30-30-1 *et seq.* of this
51 code;

52 (H) Professional counselor, pursuant to §30-31-1 *et seq.*
53 of this code;

54 (I) Emergency medical services provider, pursuant to
55 §16-4C-1 *et seq.* of this code; or

56 (J) Corrections medical providers, pursuant to §15A-1-
57 1 *et seq.* of this code.

58 (3) Provide evidence of successful completion of a
59 board-approved auricular acudetox program;

60 (4) Submit a completed application as prescribed by the
61 board; and

62 (5) Submit the appropriate fees as provided for by
63 legislative rule.

64 (c) A certificate may be issued to a retired or inactive
65 professional as described in §30-36-10(b) of this code:
66 *Provided*, That the professional meets the qualifications for
67 a certificate holder and the last three years of professional
68 activity were performed in good standing: *Provided*,
69 *however*, That a person who holds a certificate or its
70 equivalent in another jurisdiction as an auricular
71 detoxification specialist may be approved by the board to
72 practice auricular acudetox during a public health
73 emergency or state of emergency for a duration to be
74 provided for in legislative rules of the board.

**§30-36-14. Term and renewal of licenses and certificates;
restrictions; and advertisements.**

1 (a) Terms of license and certificate:

2 (1) The board shall provide for the term and renewal of
3 licenses and certificates under this section;

4 (2) The term of a license or certificate may not be more
5 than three years;

6 (3) A license or a certificate expires at the end of its
7 term, unless the license or certificate is renewed for a term
8 as provided by the board.

9 (b) Renewal notice. At least one month before the
10 license or certificate expires, the board shall send to the
11 licensee or certificate holder, by first-class mail to the last
12 known address of the licensee, a renewal notice that states:

13 (1) The date on which the current license or certificate
14 expires;

15 (2) The date by which the renewal application must be
16 received by the board for the renewal to be issued and
17 mailed before the license or certificate expires; and

18 (3) The amount of the renewal fee.

19 (c) Applications for renewal. Before the license or
20 certificate expires, the licensee or certificate holder
21 periodically may renew it for an additional term, if the
22 licensee or certificate holder:

23 (1) Otherwise is entitled to be licensed or certified;

24 (2) Pays to the board a renewal fee set by the board; and

25 (3) Submits to the board:

26 (A) A renewal application on the form that the board
27 requires; and

28 (B) Satisfactory evidence of compliance with any
29 continuing education requirements set under this section for
30 license or certificate renewal.

31 (d) In addition to any other qualifications and
32 requirements established by the board, the board may
33 establish continuing education requirements as a condition
34 to the renewal of licenses and certificates under this section.

35 (e) The board shall renew the license of and issue a
36 renewal certificate to each licensee and certificate holder
37 who meets the requirements of this section.

38 (f) A licensee may advertise only as permitted by rules
39 adopted by the board.

40 (g) A certificate holder recognized as an auricular
41 detoxification specialist is prohibited from needling any
42 acupuncture body points beyond the scope of auricular
43 acudetox, and may not advertise themselves as an
44 acupuncturist: *Provided*, That nothing contained in this
45 section prohibits a person from practicing within his or her
46 scope of practice as authorized by law.

§30-36-17. Surrender of license by licensee or certificate by certificate holder.

1 (a) Unless the board agrees to accept the surrender of a
2 license or certificate, a licensee or certificate holder may not
3 surrender the license or certificate nor may the license or
4 certificate lapse by operation of law while the licensee or
5 certificate holder is under investigation or while charges are
6 pending against the licensee or certificate holder.

7 (b) The board may set conditions on its agreement with
8 the licensee or certificate holder under investigation or
9 against whom charges are pending to accept surrender of the
10 license or certificate.

§30-36-18. Reprimands, probations, suspensions and revocations; grounds.

1 The board, on the affirmative vote of a majority of its
2 full authorized membership, may reprimand any licensee or
3 certificate holder, place any licensee or certificate holder on

4 probation, or suspend or revoke a license or certificate if the
5 licensee or certificate holder:

6 (1) Fraudulently or deceptively obtains or attempts to
7 obtain a license or certificate for the applicant or licensee or
8 certificate holder or for another;

9 (2) Fraudulently or deceptively:

10 (A) Uses a license or certificate; or

11 (B) Solicits or advertises.

12 (3) Is guilty of immoral or unprofessional conduct in the
13 practice of acupuncture or auricular acudetox;

14 (4) Is professionally, physically, or mentally
15 incompetent;

16 (5) Provides professional services while:

17 (A) Under the influence of alcohol; or

18 (B) Using any narcotic or controlled substance, as
19 defined in §60A-1-101 of this code, or other drug that is in
20 excess of therapeutic amounts or without a valid medical
21 indication;

22 (6) Knowingly violates any provision of this article or
23 any rule of the board adopted under this article;

24 (7) Is convicted of or pleads guilty or nolo contendere
25 to a felony or to a crime involving moral turpitude, whether
26 or not any appeal or other proceeding is pending to have the
27 conviction or plea set aside;

28 (8) Practices acupuncture or auricular detoxification
29 therapy with an unauthorized person or assists an
30 unauthorized person in the practice of acupuncture or
31 auricular detoxification therapy;

32 (9) Is disciplined by the licensing or disciplinary
33 authority of this state or any other state or country or
34 convicted or disciplined by a court of any state or country
35 for an act that would be grounds for disciplinary action
36 under this section;

37 (10) Willfully makes or files a false report or record in
38 the practice of acupuncture or auricular detoxification
39 therapy;

40 (11) Willfully fails to file or record any report as
41 required by law, willfully impedes or obstructs the filing or
42 recording of the report, or induces another to fail to file or
43 record the report;

44 (12) Submits a false statement to collect a fee; or

45 (13) Refuses, withholds from, denies, or discriminates
46 against an individual with regard to the provision of
47 professional services for which the person is licensed and
48 qualified to render because the individual is HIV positive,
49 in conformity with standards established for treatment by
50 physicians, dentists and other licensed health care
51 professionals in cases of this nature.

CHAPTER 195

**(Com. Sub. for H. B. 2524 - By Delegates Atkinson,
Hill, D. Jeffries, Hollen, Fleischauer and Staggers)**

[Passed March 8, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto two new sections, designated §30-5-35 and
§30-5-36, all relating to pharmacist dispensing of drugs;

permitting a pharmacist to dispense an amount equal to the prescription limit; permitting a pharmacist to provide an equal amount of drugs based upon dosage; and permitting a pharmacist to refill a prescription in an emergency.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.**

§30-5-35. Conversion of prescriptions authorizing refills.

1 (a) If a prescription authorizes a drug to be dispensed by
2 refilling the prescription one or more times and the total
3 quantity of the drug does not exceed a 90-day supply of the
4 drug, a pharmacist who is filling or refilling the prescription
5 may dispense a quantity of the drug that varies from the
6 quantity or amount of the drug originally written on the
7 prescription, if all of these conditions are met:

8 (1) The action taken by the pharmacist does not result in
9 a quantity or amount of the drug being dispensed that
10 exceeds the total quantity that may be dispensed by filling
11 and refilling the prescription.

12 (2) The prescription is for one of the following:

13 (A) A maintenance drug to be taken on a regular,
14 recurring basis to treat a chronic condition;

15 (B) A drug to be taken on a regular, recurring basis to
16 prevent disease; or

17 (C) A contraceptive.

18 (3) If the prescription is for a maintenance drug, the
19 patient has used an initial 30-day supply of the drug, or a
20 90-day supply of the drug has previously been prescribed to
21 the patient, and the pharmacist determines, after consulting
22 with the patient, that the drug has stabilized the patient's
23 condition.

24 (4) The prescription is not for a controlled substance, as
25 set forth in §60A-1-1 *et seq.*; and

26 (5) The pharmacist consults with the patient, and the
27 pharmacist determines the action authorized by this section
28 is appropriate for the patient.

29 (b) When a licensed practitioner authorizes a drug to be
30 dispensed in a certain dosage, and the pharmacist is unable
31 to dispense the drug in the same dosage as specified, the
32 pharmacist may substitute the same drug in a different
33 dosage, if the aggregate dosage of the prescription remains
34 the same and the following conditions are met:

35 (1) The pharmacist counsels the patient on the
36 differences; and

37 (2) The pharmacist notifies the patient's prescriber of
38 the drug product substitution within five business days of
39 the substitution.

40 (c) This section does not require a health care insurer,
41 government health care program, pharmacy benefit
42 manager, or other entity that offers health benefit plans to
43 provide coverage for a drug in a manner that is inconsistent
44 with the patient's benefit plan.

§30-5-36. Emergency prescriptions for life-sustaining medication

1 (a) A pharmacist may distribute or sell a dangerous
2 drug, other than a schedule II-controlled substance as
3 defined in §60A-2-206, without a written or oral
4 prescription from a licensed health professional authorized
5 to prescribe drugs if all the following conditions are met:

6 (1) The pharmacy at which the pharmacist works has a
7 record of a prescription for the drug in the name of the
8 patient who is requesting it, but the prescription does not
9 provide for a refill or the time permitted by the rules adopted

10 by the state board of pharmacy for providing refills has
11 elapsed;

12 (2) The pharmacist is unable to obtain authorization to
13 refill the prescription from a health care professional who
14 issued the prescription or another health professional
15 responsible for the patient's care;

16 (3) In the exercise of the pharmacist's professional
17 judgment:

18 (A) The drug is essential to sustain the life of the patient
19 or continue therapy for a chronic condition of the patient.

20 (B) Failure to dispense or sell the drug to the patient
21 could result in harm to the health of the patient.

22 (4) Except as provided in this section, the amount of the
23 drug that is dispensed or sold under this section does not
24 exceed a seventy-two-hour supply as provided in the
25 prescription; and

26 (5) If the drug sold or dispensed under this section is not
27 a controlled substance and the patient has been on a
28 consistent drug therapy as demonstrated by records
29 maintained by a pharmacy, the amount of the drug
30 dispensed or sold does not exceed a thirty-day supply as
31 provided in the prescription or, if the standard unit of
32 dispensing for the drug exceeds a thirty-day supply, the
33 amount of the drug dispensed or sold does not exceed the
34 standard unit of dispensing. A pharmacist shall not dispense
35 or sell a particular drug to the same patient in an amount
36 described in this section more than once in any twelve-
37 month period.

38 (b) A Pharmacist who dispenses or sells a drug under
39 this section shall:

40 (1) For one year after the date of dispensing or sale,
41 maintain a record in accordance with this chapter of the drug
42 dispensed or sold, including the name and address of the

43 patient and the individual receiving the drug, if the
44 individual receiving the drug is not the patient, the amount
45 dispensed or sold, and the original prescription number;

46 (2) Notify the health professional who issued the initial
47 prescription or another health professional responsible for
48 the patient's care not later than seventy-two hours after the
49 drug is sold or dispensed; and within seven days after
50 authorizing an emergency oral prescription, the practitioner
51 has a written prescription for the emergency quantity
52 prescribed delivered to the dispensing pharmacist. The
53 prescription shall have written on its face "Authorization for
54 Emergency Dispensing" and the date of the orally or
55 electronically transmitted prescription. The written
56 prescription may be delivered to the pharmacist in person or
57 by mail, but if delivered by mail, it must be postmarked
58 within the seven-day period. Upon receipt, the dispensing
59 pharmacist shall attach this written prescription to the
60 emergency oral prescription which had earlier been reduced
61 to writing or to the hard copy of the electronically
62 transmitted prescription. The pharmacist shall notify the
63 nearest office of the U.S. Drug Enforcement Administration
64 if the prescribing practitioner fails to deliver a written
65 prescription.

66 (3) If applicable, obtain authorization for additional
67 dispensing from one of the health professionals in division
68 (A) (1) of this section.

69 (4) A pharmacist who dispenses or sells a drug under
70 this section may do so once for each prescription described
71 here.

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CHAPTER 196

**(Com. Sub. for H. B. 2849 - By Delegates Howell,
Pack, C. Martin, D. Jeffries, Dean and Hamrick)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §30-5-11 and §30-5-12 of the Code of West Virginia, 1931, as amended, all relating to establishing different classes of pharmacy technicians; establishing an application process for a registered pharmacy technician to obtain an endorsement as a pharmacy technician; establishing an application process for a nuclear pharmacy technician endorsement; expanding the scope of practice for a registered pharmacy technician endorsement; and defining the scope of practice for a nuclear pharmacy technician endorsement.

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 12-step program or other similar group or process, may be
27 considered;

28 (7) Not have been convicted of a felony in any
29 jurisdiction within 10 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) To be eligible to obtain a nuclear pharmacy
43 technician endorsement, the applicant shall:

44 (1) Submit a written application to the board;

45 (2) Pay the applicable fees;

46 (3) Have graduated from high school or obtained a
47 Certificate of General Educational Development (GED) or
48 equivalent;

49 (4) Have successfully completed a pharmacy provided,
50 competency-based nuclear pharmacy technician education
51 and training program approved by the board;

52 (5) Have all applicable national certifications and
53 comply with all federal rules and regulations;

54 (6) Not be an alcohol or drug abuser, as these terms are
55 defined in §27-1A-11 of this code: *Provided*, That an
56 applicant in an active recovery process, which may, in the
57 discretion of the board, be evidenced by participation in a
58 12-step program or other similar group or process, may be
59 considered;

60 (7) Not have been convicted of a felony in any
61 jurisdiction within 10 years preceding the date of
62 application for license, which conviction remains
63 unreversed;

64 (8) Not have been convicted of a misdemeanor or felony
65 in any jurisdiction if the offense for which he or she was
66 convicted bearing a rational nexus to the practice of
67 pharmacist care, which conviction remains unreversed; and

68 (9) Has fulfilled any other requirement specified by the
69 board in any rule.

70 (d) A person whose license to practice pharmacist care
71 has been denied, revoked, suspended, or restricted for
72 disciplinary purposes in any jurisdiction is not eligible to be
73 registered as a nuclear pharmacy technician.

§30-5-12. Scope practice for registered pharmacy technician.

1 (a) A registered pharmacy technician shall, under the
2 direct supervision of the licensed pharmacist, perform at a
3 minimum the following:

4 (1) Assist in the dispensing process;

5 (2) Receive new written or electronic prescription drug
6 orders;

7 (3) Compound;

8 (4) Stock medications;

9 (5) Complete a list of a patient's current prescription and
10 nonprescription medications to provide for medication
11 reconciliation;

12 (6) Supervise registered pharmacy technicians and
13 pharmacy technician trainees;

14 (7) Medical records screening; and

15 (8) Perform pharmacy technician product verification,
16 where no clinical judgment is necessary and the pharmacist
17 makes the final verification; if the registered pharmacy
18 technician furnishes to the Board an affidavit signed and
19 dated by the supervising pharmacist-in-charge of the facility
20 which will employ the applicant attesting to the
21 applicant's competency in the advanced areas of practice
22 that he or she will practice; and has either:

23 (A) Worked as a full-time registered pharmacy
24 technician holding a pharmacy technician endorsement in
25 West Virginia for at least the previous two years; or

26 (B) Worked as a full-time registered pharmacy
27 technician holding a pharmacy technician license in good
28 standing in another jurisdiction for at least the previous two
29 years.

30 (b) A registered pharmacy technician may perform the
31 following under indirect supervision of a licensed
32 pharmacist:

33 (1) Process medical coverage claims; and

34 (2) Cashier.

35 (c) A registered pharmacy technician may not perform
36 the following:

37 (1) Drug regimen review;

38 (2) Clinical conflict resolution;

39 (3) Contact a prescriber concerning prescription drug
40 order clarification or therapy modification;

41 (4) Patient counseling;

42 (5) Dispense process validation;

43 (6) Prescription transfer;

44 (7) Receive new oral prescription drug orders;

45 (8) An act within the practice of pharmacist care that
46 involves discretion or independent professional judgment;
47 or

48 (9) A function which the registrant has not been trained
49 and the function has not been specified in a written protocol
50 with competency established.

51 (d) Indirect supervision of a registered pharmacy
52 technician is permitted to allow a pharmacist to take one
53 break of no more than 30 minutes during any contiguous

54 eight-hour period. The pharmacist may leave the pharmacy
55 area but may not leave the building during the break. When
56 a pharmacist is on break, a pharmacy technician may
57 continue to prepare prescriptions for the pharmacist's
58 verification. A prescription may not be delivered until the
59 pharmacist has verified the accuracy of the prescription, and
60 counseling, if required, has been provided to or refused by
61 the patient.

62 (e) A pharmacy that permits indirect supervision of a
63 pharmacy technician during a pharmacist's break shall have
64 either an interactive voice response system or a voice mail
65 system installed on the pharmacy phone line in order to
66 receive new prescription orders and refill authorizations
67 during the break.

68 (f) The pharmacy shall establish protocols that require a
69 registered pharmacy technician to interrupt the pharmacist's
70 break if an emergency arises.

71 (g) A registered pharmacy technician who has obtained
72 a nuclear pharmacy technician endorsement, may under the
73 direct supervision of the licensed nuclear pharmacist,
74 perform the following:

75 (1) Assist in the dispensing process;

76 (2) Receive new written or electronic prescription drug
77 orders;

78 (3) Mix compound ingredients for liquid products,
79 suspensions, ointments, mixes, or blend for tablet
80 granulations and capsule powders;

81 (4) Prepare radiopharmaceuticals;

82 (5) Record keeping;

83 (6) File and organize prescriptions;

84 (7) Create reports;

- 85 (8) Inventory tasks;
- 86 (9) Handle raw materials and intermediate or finished
87 products;
- 88 (10) Perform general maintenance as required on
89 pumps, homogenizers, filter presses, tablet compression
90 machines, and other like machines;
- 91 (11) Perform standard operating procedures to meet
92 current good manufacturing practices (GMP);
- 93 (12) Maintain records;
- 94 (13) Monitor and verify quality in accordance with
95 statistical process or other control procedures; and
- 96 (14) Stock medications.
- 97 (h) A registered pharmacy technician who has obtained
98 a nuclear pharmacy technician endorsement may not
99 perform the following:
- 100 (1) Drug regimen review;
- 101 (2) Clinical conflict resolution;
- 102 (3) Contact a prescriber concerning prescription drug
103 order clarification or therapy modification;
- 104 (4) Receive new oral prescription drug orders.

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CHAPTER 197

**(Com. Sub. for H. B. 2947 - By Delegates Steele, Pack,
Rohrbach and Atkinson)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-12d of said code, all relating to telemedicine prescription practice requirements; providing exceptions; allowing for physician submitted Schedule II telemedicine prescriptions for immediate administration in a hospital.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rulemaking.

1 (a) *Definitions.* – For the purposes of this section:

2 (1) “Chronic nonmalignant pain” means pain that has
3 persisted after reasonable medical efforts have been made
4 to relieve the pain or cure its cause and that has continued,
5 either continuously or episodically, for longer than three
6 continuous months. “Chronic nonmalignant pain” does not
7 include pain associated with a terminal condition or illness
8 or with a progressive disease that, in the normal course of
9 progression, may reasonably be expected to result in a
10 terminal condition or illness.

11 (2) “Physician” means a person licensed by the West
12 Virginia Board of Medicine to practice allopathic medicine
13 in West Virginia.

14 (3) “Store and forward telemedicine” means the
15 asynchronous computer-based communication of medical
16 data or images from an originating location to a physician
17 or podiatrist at another site for the purpose of diagnostic or
18 therapeutic assistance.

19 (4) “Telemedicine” means the practice of medicine
20 using tools such as electronic communication, information
21 technology, store and forward telecommunication, or other
22 means of interaction between a physician or podiatrist in
23 one location and a patient in another location, with or
24 without an intervening health care provider.

25 (5) “Telemedicine technologies” means technologies
26 and devices which enable secure electronic communications
27 and information exchange in the practice of telemedicine,
28 and typically involve the application of secure real-time
29 audio/video conferencing or similar secure video services,
30 remote monitoring or store and forward digital image
31 technology to provide or support health care delivery by
32 replicating the interaction of a traditional in-person
33 encounter between a physician or podiatrist and a patient.

34 (b) *Licensure.* –

35 (1) The practice of medicine occurs where the patient is
36 located at the time the telemedicine technologies are used.

37 (2) A physician or podiatrist who practices telemedicine
38 must be licensed as provided in this article.

39 (3) This section does not apply to:

40 (A) An informal consultation or second opinion, at the
41 request of a physician or podiatrist who is licensed to
42 practice medicine or podiatry in this state, provided that the

43 physician or podiatrist requesting the opinion retains
44 authority and responsibility for the patient's care; and

45 (B) Furnishing of medical assistance by a physician or
46 podiatrist in case of an emergency or disaster, if no charge
47 is made for the medical assistance.

48 (c) *Physician-patient or Podiatrist-patient relationship*
49 *through telemedicine encounter.* –

50 (1) A physician-patient or podiatrist-patient relationship
51 may not be established through:

52 (A) Audio-only communication;

53 (B) Text-based communications such as e-mail, Internet
54 questionnaires, text-based messaging or other written forms
55 of communication; or

56 (C) Any combination thereof.

57 (2) If an existing physician-patient or podiatrist-patient
58 relationship does not exist prior to the utilization to
59 telemedicine technologies, or if services are rendered solely
60 through telemedicine technologies, a physician-patient or
61 podiatrist-patient relationship may only be established:

62 (A) Through the use of telemedicine technologies which
63 incorporate interactive audio using store and forward
64 technology, real-time videoconferencing or similar secure
65 video services during the initial physician-patient or
66 podiatrist-patient encounter; or

67 (B) For the practice of pathology and radiology, a
68 physician-patient relationship may be established through
69 store and forward telemedicine or other similar
70 technologies.

71 (3) Once a physician-patient or podiatrist-patient
72 relationship has been established, either through an in-
73 person encounter or in accordance with subdivision (2) of

74 this subsection, the physician or podiatrist may utilize any
75 telemedicine technology that meets the standard of care and
76 is appropriate for the patient presentation.

77 (d) *Telemedicine practice.* –

78 A physician or podiatrist using telemedicine
79 technologies to practice medicine or podiatry shall:

80 (1) Verify the identity and location of the patient;

81 (2) Provide the patient with confirmation of the identity
82 and qualifications of the physician or podiatrist;

83 (3) Provide the patient with the physical location and
84 contact information of the physician;

85 (4) Establish or maintain a physician-patient or
86 podiatrist-patient relationship that conforms to the standard
87 of care;

88 (5) Determine whether telemedicine technologies are
89 appropriate for the patient presentation for which the
90 practice of medicine or podiatry is to be rendered;

91 (6) Obtain from the patient appropriate consent for the
92 use of telemedicine technologies;

93 (7) Conduct all appropriate evaluations and history of
94 the patient consistent with traditional standards of care for
95 the patient presentation;

96 (8) Create and maintain health care records for the
97 patient which justify the course of treatment and which
98 verify compliance with the requirements of this section; and

99 (9) The requirements of subdivisions (1) through (8),
100 inclusive, of this subsection do not apply to the practice of
101 pathology or radiology medicine through store and forward
102 telemedicine.

103 (e) *Standard of care.* –

104 The practice of medicine or podiatry provided via
105 telemedicine technologies, including the establishment of a
106 physician-patient or podiatrist-patient relationship and
107 issuing a prescription via electronic means as part of a
108 telemedicine encounter, are subject to the same standard of
109 care, professional practice requirements and scope of
110 practice limitations as traditional in-person physician-
111 patient or podiatrist-patient encounters. Treatment,
112 including issuing a prescription, based solely on an online
113 questionnaire, does not constitute an acceptable standard of
114 care.

115 (f) *Patient records.* –

116 The patient record established during the use of
117 telemedicine technologies shall be accessible and
118 documented for both the physician or podiatrist and the
119 patient, consistent with the laws and legislative rules
120 governing patient health care records. All laws governing
121 the confidentiality of health care information and governing
122 patient access to medical records shall apply to records of
123 practice of medicine or podiatry provided through
124 telemedicine technologies. A physician or podiatrist solely
125 providing services using telemedicine technologies shall
126 make documentation of the encounter easily available to the
127 patient, and subject to the patient's consent, to any identified
128 care provider of the patient.

129 (g) *Prescribing limitations.* –

130 (1) A physician or podiatrist who practices medicine to
131 a patient solely through the utilization of telemedicine
132 technologies may not prescribe to that patient any controlled
133 substances listed in Schedule II of the Uniform Controlled
134 Substances Act.

135 (2) The prescribing limitations in this subsection do not
136 apply when a physician is providing treatment to patients
137 who are minors, or if 18 years of age or older, who are
138 enrolled in a primary or secondary education program and

139 are diagnosed with intellectual or developmental
140 disabilities, neurological disease, Attention Deficit
141 Disorder, Autism, or a traumatic brain injury in accordance
142 with guidelines as set forth by organizations such as the
143 American Psychiatric Association, the American Academy
144 of Child and Adolescent Psychiatry or the American
145 Academy of Pediatrics. The physician must maintain
146 records supporting the diagnosis and the continued need of
147 treatment.

148 (3) The prescribing limitations in this subsection do not
149 apply to a hospital, excluding the emergency department,
150 when a physician submits an order to dispense a controlled
151 substance, listed in Schedule II of the Uniform Controlled
152 Substances Act, to a hospital patient for immediate
153 administration in a hospital.

154 (4) A physician or podiatrist may not prescribe any pain-
155 relieving controlled substance listed in Schedules II through
156 V of the Uniform Controlled Substance Act as part of a
157 course of treatment for chronic nonmalignant pain solely
158 based upon a telemedicine encounter.

159 (5) A physician or health care provider may not
160 prescribe any drug with the intent of causing an abortion.
161 The term “abortion” has the same meaning ascribed to it in
162 §16-2F-2 of this code.

163 (h) *Exceptions.* –

164 This article does not prohibit the use of audio-only or
165 text-based communications by a physician or podiatrist who
166 is:

167 (1) Responding to a call for patients with whom a
168 physician-patient or podiatrist-patient relationship has been
169 established through an in-person encounter by the physician
170 or podiatrist;

171 (2) Providing cross coverage for a physician or
172 podiatrist who has established a physician-patient or

173 podiatrist-patient relationship with the patient through an in-
174 person encounter; or

175 (3) Providing medical assistance in the event of an
176 emergency.

177 (i) *Rulemaking.* –

178 The West Virginia Board of Medicine and West
179 Virginia Board of Osteopathic Medicine may propose joint
180 rules for legislative approval in accordance with §29A-3-1
181 *et seq.*, of this code to implement standards for and
182 limitations upon the utilization of telemedicine technologies
183 in the practice of medicine and podiatry in this state.

184 (j) *Preserving traditional physician-patient or*
185 *podiatrist-patient relationship.* –

186 Nothing in this section changes the rights, duties,
187 privileges, responsibilities and liabilities incident to the
188 physician-patient or podiatrist-patient relationship, nor is it
189 meant or intended to change in any way the personal
190 character of the physician-patient or podiatrist-patient
191 relationship. This section does not alter the scope of practice
192 of any health care provider or authorize the delivery of
193 health care services in a setting, or in a manner, not
194 otherwise authorized by law.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12d. Telemedicine practice; requirements; exceptions; definitions; rulemaking.

1 (a) *Definitions.* – For the purposes of this section:

2 (1) “Chronic nonmalignant pain” means pain that has
3 persisted after reasonable medical efforts have been made
4 to relieve the pain or cure its cause and that has continued,
5 either continuously or episodically, for longer than three
6 continuous months. “Chronic nonmalignant pain” does not

7 include pain associated with a terminal condition or illness
8 or with a progressive disease that, in the normal course of
9 progression, may reasonably be expected to result in a
10 terminal condition or illness.

11 (2) “Physician” means a person licensed by the West
12 Virginia Board of Osteopathic Medicine to practice
13 osteopathic medicine in West Virginia.

14 (3) “Store and forward telemedicine” means the
15 asynchronous computer-based communication of medical
16 data or images from an originating location to a physician at
17 another site for the purpose of diagnostic or therapeutic
18 assistance.

19 (4) “Telemedicine” means the practice of medicine
20 using tools such as electronic communication, information
21 technology, store and forward telecommunication or other
22 means of interaction between a physician in one location
23 and a patient in another location, with or without an
24 intervening health care provider.

25 (5) “Telemedicine technologies” means technologies
26 and devices which enable secure electronic communications
27 and information exchange in the practice of telemedicine,
28 and typically involve the application of secure real-time
29 audio/video conferencing or similar secure video services,
30 remote monitoring or store and forward digital image
31 technology to provide or support health care delivery by
32 replicating the interaction of a traditional in-person
33 encounter between a physician and a patient.

34 (b) *Licensure.* –

35 (1) The practice of medicine occurs where the patient is
36 located at the time the telemedicine technologies are used.

37 (2) A physician who practices telemedicine must be
38 licensed as provided in this article.

39 (3) This section does not apply to:

40 (A) An informal consultation or second opinion, at the
41 request of a physician who is licensed to practice medicine
42 in this state, provided that the physician requesting the
43 opinion retains authority and responsibility for the patient's
44 care; and

45 (B) Furnishing of medical assistance by a physician in
46 case of an emergency or disaster if no charge is made for the
47 medical assistance.

48 (c) *Physician-patient relationship through telemedicine*
49 *encounter.* –

50 (1) A physician-patient relationship may not be
51 established through:

52 (A) Audio-only communication;

53 (B) Text-based communications such as e-mail, Internet
54 questionnaires, text-based messaging or other written forms
55 of communication; or

56 (C) Any combination thereof.

57 (2) If an existing physician-patient relationship is not
58 present prior to the utilization to telemedicine technologies,
59 or if services are rendered solely through telemedicine
60 technologies, a physician-patient relationship may only be
61 established:

62 (A) Through the use of telemedicine technologies which
63 incorporate interactive audio using store and forward
64 technology, real-time videoconferencing or similar secure
65 video services during the initial physician-patient
66 encounter; or

67 (B) For the practice of pathology and radiology, a
68 physician-patient relationship may be established through
69 store and forward telemedicine or other similar
70 technologies.

71 (3) Once a physician-patient relationship has been
72 established, either through an in-person encounter or in
73 accordance with subdivision (2) of this subsection, the
74 physician may utilize any telemedicine technology that
75 meets the standard of care and is appropriate for the patient
76 presentation.

77 (d) *Telemedicine practice.* – A physician using
78 telemedicine technologies to practice medicine shall:

79 (1) Verify the identity and location of the patient;

80 (2) Provide the patient with confirmation of the identity
81 and qualifications of the physician;

82 (3) Provide the patient with the physical location and
83 contact information of the physician;

84 (4) Establish or maintain a physician-patient
85 relationship which conforms to the standard of care;

86 (5) Determine whether telemedicine technologies are
87 appropriate for the patient presentation for which the
88 practice of medicine is to be rendered;

89 (6) Obtain from the patient appropriate consent for the
90 use of telemedicine technologies;

91 (7) Conduct all appropriate evaluations and history of
92 the patient consistent with traditional standards of care for
93 the patient presentation;

94 (8) Create and maintain health care records for the
95 patient which justify the course of treatment and which
96 verify compliance with the requirements of this section; and

97 (9) The requirements of subdivisions (1) through (7),
98 inclusive, of this subsection do not apply to the practice of
99 pathology or radiology medicine through store and forward
100 telemedicine.

101 (e) *Standard of care.* –

102 The practice of medicine provided via telemedicine
103 technologies, including the establishment of a physician-
104 patient relationship and issuing a prescription via electronic
105 means as part of a telemedicine encounter, are subject to the
106 same standard of care, professional practice requirements
107 and scope of practice limitations as traditional in-person
108 physician-patient encounters. Treatment, including issuing
109 a prescription, based solely on an online questionnaire does
110 not constitute an acceptable standard of care.

111 (f) *Patient records.* –

112 The patient record established during the use of
113 telemedicine technologies shall be accessible and
114 documented for both the physician and the patient,
115 consistent with the laws and legislative rules governing
116 patient health care records. All laws governing the
117 confidentiality of health care information and governing
118 patient access to medical records shall apply to records of
119 practice of medicine provided through telemedicine
120 technologies. A physician solely providing services using
121 telemedicine technologies shall make documentation of the
122 encounter easily available to the patient, and subject to the
123 patient's consent, to any identified care provider of the
124 patient.

125 (g) *Prescribing limitations.* –

126 (1) A physician or podiatrist who practices medicine to
127 a patient solely through the utilization of telemedicine
128 technologies may not prescribe to that patient any controlled
129 substances listed in Schedule II of the Uniform Controlled
130 Substances Act.

131 (2) The prescribing limitations in this subsection do not
132 apply when a physician is providing treatment to patients
133 who are minors, or if 18 years of age or older, who are
134 enrolled in a primary or secondary education program and
135 are diagnosed with intellectual or developmental
136 disabilities, neurological disease, Attention Deficit

137 Disorder, Autism, or a traumatic brain injury in accordance
138 with guidelines as set forth by organizations such as the
139 American Psychiatric Association, the American Academy
140 of Child and Adolescent Psychiatry or the American
141 Academy of Pediatrics. The physician must maintain
142 records supporting the diagnosis and the continued need of
143 treatment.

144 (3) The prescribing limitations in this subsection do not
145 apply to a hospital, excluding the emergency department,
146 when a physician submits an order to dispense a controlled
147 substance, listed in Schedule II of the Uniform Controlled
148 Substances Act, to a hospital patient for immediate
149 administration in a hospital.

150 (4) A physician or podiatrist may not prescribe any pain-
151 relieving controlled substance listed in Schedules II through
152 V of the Uniform Controlled Substance Act as part of a
153 course of treatment for chronic nonmalignant pain solely
154 based upon a telemedicine encounter.

155 (5) A physician or health care provider may not
156 prescribe any drug with the intent of causing an abortion.
157 The term “abortion” has the same meaning ascribed to it in
158 §16-2F-2 of this code.

159 (h) *Exceptions.* –

160 This section does not prohibit the use of audio-only or
161 text-based communications by a physician who is:

162 (1) Responding to a call for patients with whom a
163 physician-patient relationship has been established through
164 an in-person encounter by the physician;

165 (2) Providing cross coverage for a physician who has
166 established a physician-patient or relationship with the
167 patient through an in-person encounter; or

168 (3) Providing medical assistance in the event of an
169 emergency.

170 (i) *Rulemaking.* –

171 The West Virginia Board of Medicine and West
172 Virginia Board of Osteopathic Medicine may propose joint
173 rules for legislative approval in accordance with §29A-3-1
174 *et seq.*, of this code to implement standards for and
175 limitations upon the utilization of telemedicine technologies
176 in the practice of medicine in this state.

177 (j) *Preservation of the traditional physician-patient*
178 *relationship.* –

179 Nothing in this section changes the rights, duties,
180 privileges, responsibilities and liabilities incident to the
181 physician-patient relationship, nor is it meant or intended to
182 change in any way the personal character of the physician-
183 patient relationship. This section does not alter the scope of
184 practice of any health care provider or authorize the delivery
185 of health care services in a setting, or in a manner, not
186 otherwise authorized by law.

●

CHAPTER 198

**(Com. Sub. for S. B. 539 - By Senators Mann,
Baldwin, Facemire, Ihlenfeld, Jeffries, Maroney,
Romano, Rucker, Stollings, Takubo, Weld, Woelfel,
Unger, Hamilton, Hardesty, Beach, Prezioso,
Plymale, Swope, Tarr, Cline and Lindsay)**

[Passed March 9, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §5-10D-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §15-2A-6 of said code, all relating to the West Virginia State Police Retirement System; increasing accrued benefit of

retirees in the West Virginia State Police Retirement System on a certain date; and adding a member to the Consolidated Public Retirement Board who is a member, annuitant, or retirant of the West Virginia State Police Retirement System.

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 10D. CONSOLIDATED PUBLIC RETIREMENT
BOARD.**

**§5-10D-1. Consolidated Public Retirement Board continued;
members; vacancies; investment of plan funds.**

1 (a) The Consolidated Public Retirement Board is
2 continued to administer all public retirement plans in this
3 state. It shall administer the Public Employees Retirement
4 System established in §5-10-1 *et seq.* of this code; the
5 Teachers Retirement System established in §18-7A-1 *et seq.*
6 of this code; the Teachers' Defined Contribution Retirement
7 System created by §18-7B-1 *et seq.* of this code; the West
8 Virginia State Police Death, Disability, and Retirement
9 Fund created by §15-2-1 *et seq.* of this code; the West
10 Virginia State Police Retirement System created by §15-
11 2A-1 *et seq.* of this code; the Deputy Sheriff Death,
12 Disability, and Retirement Fund created by §7-14D-1 *et seq.*
13 of this code; the Judges' Retirement System created under
14 §51-9-1 *et seq.* of this code; the Emergency Medical
15 Services Retirement System established in §16-5V-1 *et seq.*
16 of this code; and the Municipal Police Officers and
17 Firefighters Retirement System established in §8-22A-1 *et*
18 *seq.* of this code.

19 (b) The membership of the Consolidated Public
20 Retirement Board consists of:

- 21 (1) The Governor or his or her designee;
- 22 (2) The State Treasurer or his or her designee;
- 23 (3) The State Auditor or his or her designee;
- 24 (4) The Secretary of the Department of Administration
25 or his or her designee;
- 26 (5) Four residents of the state, who are not members,
27 retirants, or beneficiaries of any of the public retirement
28 systems, to be appointed by the Governor, with the advice
29 and consent of the Senate; and
- 30 (6) A member, annuitant, or retirant of the Public
31 Employees Retirement System who is or was a state
32 employee; a member, annuitant, or retirant of the Public
33 Employees Retirement System who is not or was not a state
34 employee; a member, annuitant, or retirant of the Teachers
35 Retirement System; a member, annuitant, or retirant of the
36 West Virginia State Police Death, Disability, and
37 Retirement Fund; a member, annuitant, or retirant of the
38 West Virginia State Police Retirement System; a member,
39 annuitant, or retirant of the Deputy Sheriff Death,
40 Disability, and Retirement Fund; a member, annuitant, or
41 retirant of the Teachers' Defined Contribution Retirement
42 System; a member, annuitant, or retirant of the Emergency
43 Medical Services Retirement System; and beginning as
44 soon as practicable after January 1, 2010, one person who is
45 a member, annuitant, or retirant of a municipal policemen's
46 or firemen's pension and relief fund or the West Virginia
47 Municipal Police Officers and Firefighters Retirement
48 System, all to be appointed by the Governor, with the advice
49 and consent of the Senate. The Governor shall choose the
50 member representing the municipal policemen's or
51 firemen's pension and relief fund or the West Virginia
52 Municipal Police Officers and Firefighters Retirement
53 System from two names submitted by the state's largest
54 organization of professional police officers and two names
55 submitted by the state's largest organization of professional

56 firefighters. Representation of the municipal police officers
57 and firefighters shall alternate after each term on the board
58 between persons having police officer and firefighter
59 affiliation so that each professional group is represented on
60 the board every other term.

61 All appointees to the board shall have recognized
62 competence or significant experience in pension
63 management or administration, actuarial analysis,
64 institutional management, or accounting. Those members
65 appointed prior to January 1, 2010, shall be considered to
66 have met these qualifications. One trustee shall be an
67 attorney experienced in finance and pension matters and one
68 trustee shall be a certified public accountant. Each member
69 of the board must complete annual fiduciary training and
70 timely complete any conflict of interest forms required to
71 serve as a trustee.

72 (c) The appointed members of the board shall serve five-
73 year terms. A member appointed pursuant to subdivision
74 (6), subsection (b) of this section ceases to be a member of
75 the board if he or she ceases to be a member of the
76 represented system. If a vacancy occurs in the appointed
77 membership, the Governor, within 60 days, shall fill the
78 vacancy by appointment for the unexpired term. No more
79 than six appointees may be of the same political party.

80 (d) The Consolidated Public Retirement Board has all
81 the powers, duties, responsibilities, and liabilities of the
82 Public Employees Retirement System established pursuant
83 to §5-10-1 *et seq.* of this code; the Teachers Retirement
84 System established pursuant to §18-7A-1 *et seq.* of this
85 code; the Teachers' Defined Contribution Retirement
86 System established pursuant to §18-7B-1 *et seq.* of this
87 code; the West Virginia State Police Death, Disability, and
88 Retirement Fund created pursuant to §15-2-1 *et seq.* of this
89 code; the West Virginia State Police Retirement System
90 created by §15-2A-1 *et seq.* of this code; the Deputy Sheriff
91 Death, Disability, and Retirement Fund created pursuant to
92 §7-14D-1 *et seq.* of this code; the Judges' Retirement

93 System created pursuant to §51-9-1 *et seq.* of this code; the
94 Emergency Medical Services Retirement System
95 established in §16-5V-1 *et seq.* of this code; and the
96 Municipal Police Officers and Firefighters Retirement
97 System created pursuant to §8-22A-1 *et seq.* of this code,
98 and their appropriate governing boards.

99 (e) The Consolidated Public Retirement Board may
100 propose rules for legislative approval, in accordance with
101 §29A-3-1 *et seq.* of this code, necessary to effectuate its
102 powers, duties, and responsibilities: *Provided*, That the
103 board may adopt any or all of the rules, previously
104 promulgated, of a retirement system which it administers.

105 (f) (1) The Consolidated Public Retirement Board shall
106 continue to transfer all funds received for the benefit of the
107 retirement systems, including, but not limited to, all
108 employer and employee contributions, to the West Virginia
109 Investment Management Board: *Provided*, That the
110 employer and employee contributions of the Teachers'
111 Defined Contribution Retirement System, established in
112 §18-7B-3 of this code, and voluntary deferred compensation
113 funds invested by the West Virginia Consolidated Public
114 Retirement Board pursuant to §5-10B-5 of this code may
115 not be transferred to the West Virginia Investment
116 Management Board.

117 (2) The board may recover from a participating
118 employer that fails to pay any amount due a retirement
119 system in a timely manner the contribution due and an
120 additional amount not to exceed interest or other earnings
121 lost as a result of the untimely payment, or a reasonable
122 minimum fee, whichever is greater, as provided by
123 legislative rule promulgated pursuant to the provisions of
124 §29A-3-1 *et seq.* of this code. Any amounts recovered shall
125 be administered in the same manner in which the amount
126 due is required to be administered.

127 (g) Notwithstanding any provision of this code or any
128 legislative rule to the contrary, all assets of the public

129 retirement plans set forth in subsection (a) of this section
130 shall be held in trust. The Consolidated Public Retirement
131 Board is a trustee for all public retirement plans, except with
132 regard to the investment of funds: *Provided*, That the
133 Consolidated Public Retirement Board is a trustee with
134 regard to the investments of the Teachers' Defined
135 Contribution Retirement System and any other assets of the
136 public retirement plans administered by the Consolidated
137 Public Retirement Board as set forth in subsection (a) of this
138 section for which no trustee has been expressly designated
139 in this code.

140 (h) The board may employ the West Virginia
141 Investment Management Board to provide investment
142 management consulting services for the investment of funds
143 in the Teachers' Defined Contribution Retirement System.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-6. Retirement; commencement of benefits.

1 (a) A member may retire with full benefits upon
2 attaining the age of 50 and completing 25 or more years of
3 service or attaining the age of 52 and completing 20 years
4 or more of service by filing with the board his or her
5 voluntary application in writing for retirement. A member
6 who is less than age 52 may retire upon completing 20 years
7 or more of service: *Provided*, That he or she will receive a
8 reduced benefit that is of equal actuarial value to the benefit
9 the member would have received if the member deferred
10 commencement of his or her accrued retirement benefit to
11 the age of 52.

12 (b) When the board retires a member with full benefits
13 under the provisions of this section, the board, by order in
14 writing, shall make a determination that the member is
15 entitled to receive an annuity equal to two and three-fourths
16 percent of his or her final average salary multiplied by the
17 number of years, and fraction of a year, of his or her service
18 at the time of retirement: *Provided*, That beginning July 1,

19 2019, the member is entitled to receive an annuity equal to
20 three percent of his or her final average salary multiplied by
21 the number of years, and fraction of a year, of his or her
22 service at the time of retirement: *Provided, however,* That
23 the amendments to this subsection enacted during the
24 regular session of the Legislature, 2019, apply to current
25 retirants. Any annuity calculated pursuant to the provisions
26 of this subsection are subject to reduction if necessary to
27 comply with the maximum benefit provisions of Section
28 415 of the Internal Revenue Code and §15-2A-6a of this
29 code. The retirant's annuity shall begin the first day of the
30 calendar month following the month in which the member's
31 application for the annuity is filed with the board on or after
32 his or her attaining age and service requirements and
33 termination of employment.

34 (c) In no event may the provisions of §5-16-13 of this
35 code be applied in determining eligibility to retire with
36 either a deferred or immediate commencement of benefit.



CHAPTER 199

(S. B. 544 - By Senators Hamilton, Carmichael (Mr. President), Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel and Boso)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to increasing salaries for members of the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

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.

24 (d) Beginning on July 1, 2019, 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.....	\$ 38,524
29	Cadet Trooper After Training.....	45,784
30	Trooper Second Year.....	46,796
31	Trooper Third Year.....	47,179
32	Senior Trooper.....	47,578
33	Trooper First Class.....	48,184
34	Corporal.....	48,790
35	Sergeant.....	53,091
36	First Sergeant.....	55,242
37	Second Lieutenant.....	57,392
38	First Lieutenant.....	59,543
39	Captain.....	61,694
40	Major.....	63,844
41	Lieutenant Colonel.....	65,995
42	ANNUAL SALARY SCHEDULE (BASE PAY)	
43	ADMINISTRATION SUPPORT SPECIALIST	
44	CLASSIFICATION	
45	I.....	46,796
46	II.....	47,578
47	III.....	48,184
48	IV.....	48,790
49	V.....	53,091
50	VI.....	55,242

51 VII 57,392

52 VIII 59,543

53 ANNUAL SALARY SCHEDULE (BASE PAY)

54 CRIMINALIST CLASSIFICATION

55 I 46,796

56 II 47,578

57 III 48,184

58 IV 48,790

59 V 53,091

60 VI 55,242

61 VII 57,392

62 VIII 59,543

63 Each member of the West Virginia State Police whose
 64 salary is fixed and specified in this annual salary schedule
 65 is entitled to the length of service increases set forth in §15-
 66 2-5(e) of this code and supplemental pay as provided in §15-
 67 2-5(g) of this code.

68 (e) Each member of the West Virginia State Police
 69 whose salary is fixed and specified pursuant to this section
 70 shall receive, and is entitled to, an increase in salary over
 71 that set forth in §15-2-5(d) of this code for grade in rank,
 72 based on length of service, including that service served
 73 before and after the effective date of this section with the
 74 West Virginia State Police as follows: Beginning on
 75 January 1, 2015, and continuing thereafter, at the end of two
 76 years of service with the West Virginia State Police, the
 77 member shall receive a salary increase of \$500 to be
 78 effective during his or her next year of service and a like

79 increase at yearly intervals thereafter, with the increases to
80 be cumulative.

81 (f) In applying the salary schedules set forth in this
82 section where salary increases are provided for length of
83 service, members of the West Virginia State Police in
84 service at the time the schedules become effective shall be
85 given credit for prior service and shall be paid the salaries
86 the same length of service entitles them to receive under the
87 provisions of this section.

88 (g) The Legislature finds and declares that because of
89 the unique duties of members of the West Virginia State
90 Police, it is not appropriate to apply the provisions of state
91 wage and hour laws to them. Accordingly, members of the
92 West Virginia State Police are excluded from the provisions
93 of state wage and hour law. This express exclusion shall not
94 be construed as any indication that the members were or
95 were not covered by the wage and hour law prior to this
96 exclusion.

97 In lieu of any overtime pay they might otherwise have
98 received under the wage and hour law, and in addition to
99 their salaries and increases for length of service, members
100 who have completed basic training and who are exempt
101 from federal Fair Labor Standards Act guidelines may
102 receive supplemental pay as provided in this section.

103 The authority of the superintendent to propose a
104 legislative rule or amendment thereto for promulgation in
105 accordance with §29A-3-1 *et seq.* of this code to establish
106 the number of hours per month which constitute the
107 standard pay period for the members of the West Virginia
108 State Police is hereby continued. The rule shall further
109 establish, on a graduated hourly basis, the criteria for receipt
110 of a portion or all of supplemental payment when hours are
111 worked in excess of the standard pay period. The
112 superintendent shall certify at least twice per month to the
113 West Virginia State Police's payroll officer the names of
114 those members who have worked in excess of the standard

115 pay period and the amount of their entitlement to
116 supplemental payment. The supplemental payment may not
117 exceed \$200 per pay period. The superintendent and civilian
118 employees of the West Virginia State Police are not eligible
119 for any supplemental payments.

120 (h) Each member of the West Virginia State Police,
121 except the superintendent and civilian employees, shall
122 execute, before entering upon the discharge of his or her
123 duties, a bond with security in the sum of \$5,000 payable to
124 the State of West Virginia, conditioned upon the faithful
125 performance of his or her duties, and the bond shall be
126 approved as to form by the Attorney General and as to
127 sufficiency by the Governor.

128 (i) In consideration for compensation paid by the West
129 Virginia State Police to its members during those members'
130 participation in the West Virginia State Police Cadet
131 Training Program pursuant to §30-29-8 of this code, the
132 West Virginia State Police may require of its members by
133 written agreement entered into with each of them in advance
134 of such participation in the program that, if a member should
135 voluntarily discontinue employment any time within one
136 year immediately following completion of the training
137 program, he or she shall be obligated to pay to the West
138 Virginia State Police a pro rata portion of such
139 compensation equal to that part of such year which the
140 member has chosen not to remain in the employ of the West
141 Virginia State Police.

142 (j) Any member of the West Virginia State Police who
143 is called to perform active duty training or inactive duty
144 training in the National Guard or any reserve component of
145 the armed forces of the United States annually shall be
146 granted, upon request, leave time not to exceed 30 calendar
147 days for the purpose of performing the active duty training
148 or inactive duty training and the time granted may not be
149 deducted from any leave accumulated as a member of the
150 West Virginia State Police.



CHAPTER 200

(S. B. 554 - By Senator Clements)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §29-18-4a of the Code of West Virginia, 1931, as amended, relating to supervision of the West Virginia State Rail Authority by Secretary of the Department of Transportation pursuant to law; and removing range of amounts from which salary is set for executive director of authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-4a. Supervision of West Virginia State Rail Authority; executive director's compensation.

1 The West Virginia State Rail Authority is under the
2 supervision of the Secretary of the Department of
3 Transportation pursuant to the provisions of §5F-1-1 of this
4 code. Notwithstanding any other provisions of this code to
5 the contrary, the salary of the Executive Director of the State
6 Rail Authority shall be set by the authority.

●

CHAPTER 201

(Com. Sub. for H. B. 2737 - By Delegates Householder and Criss)

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-1-1b, relating to providing training for State Tax Division employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. SUPERVISION.

§11-1-1b. Training of employees.

1 (a) To ensure adequate standards of public service, the
2 commissioner may provide technical and specialized
3 instruction for employees of the State Tax Division. If,
4 upon review of the personnel records of any employee of
5 the State Tax Division, the commissioner is of the opinion
6 that it would be in the best interest of the State Tax Division
7 to provide the employee with additional training or
8 instruction in the field or vocation in which the employee is
9 engaged, the commissioner may, upon approval of the
10 secretary, request that the employee obtain the additional
11 training or instruction at any place the commissioner
12 considers suitable. The commissioner is further authorized
13 to pay out of state funds, as may be available, any required
14 tuition, materials or enrollment fees for additional training
15 or instruction authorized pursuant to the provisions of this
16 section.

17 (b) The commissioner is hereby authorized to
18 promulgate rules in accordance with the provisions of

19 §29A-3-1 *et seq.* of this code setting forth at a minimum: (1)
20 the types of training and degrees or certifications that may
21 be obtained; (2) the employee classifications suitable for
22 additional training; (3) the maximum amount that can be
23 spent on any one employee's training; and (4) other matters
24 as deemed necessary to promote the development and
25 retention of a skilled workforce.



CHAPTER 202

**(H. B. 3083 - By Delegate Hanshaw (Mr. Speaker)
and Delegate Miley)**

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend and reenact §21A-1A-17 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation and adding temporary work by employees during the legislative session is excluded from the term employment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. DEFINITIONS.

§21A-1A-17. Exclusions from employment.

1 The term "employment" does not include:

2 (1) Service performed in the employ of the United States
3 or any instrumentality of the United States exempt under the
4 Constitution of the United States from the payments
5 imposed by this law, except that to the extent that the
6 Congress of the United States permits states to require any
7 instrumentalities of the United States to make payments into
8 an unemployment fund under a state unemployment

9 compensation law, all of the provisions of this law are
10 applicable to the instrumentalities and to service performed
11 for the instrumentalities in the same manner, to the same
12 extent, and on the same terms as to all other employers,
13 employing units, individuals, and services: *Provided*, That
14 if this state is not certified for any year by the Secretary of
15 Labor under 26 U.S.C. § 3404, subsection (c), the payments
16 required of the instrumentalities with respect to the year
17 shall be refunded by the commissioner from the fund in the
18 same manner and within the same period as is provided in
19 §21A-5-19 of this code with respect to payments
20 erroneously collected;

21 (2) Service performed with respect to which
22 unemployment compensation is payable under the Railroad
23 Unemployment Insurance Act and service with respect to
24 which unemployment benefits are payable under an
25 unemployment compensation system for maritime
26 employees established by an Act of Congress. The
27 Commissioner may enter into agreements with the proper
28 agency established under an Act of Congress to provide
29 reciprocal treatment to individuals who, after acquiring
30 potential rights to unemployment compensation under an
31 Act of Congress or who have, after acquiring potential
32 rights to unemployment compensation under an Act of
33 Congress, acquired rights to benefit under this chapter. Such
34 agreement shall become effective 10 days after the
35 publications which shall comply with the general rules of
36 the Department;

37 (3) Service performed by an individual in agricultural
38 labor, except as provided in §21A-1A-16(12) of this code,
39 the definition of “employment”. For purposes of this
40 subdivision, the term “agricultural labor” includes all
41 services performed:

42 (A) On a farm, in the employ of any person, in
43 connection with cultivating the soil, or in connection with
44 raising or harvesting any agricultural or horticultural
45 commodity, including the raising, shearing, feeding, caring

46 for, training and management of livestock, bees, poultry,
47 and fur-bearing animals and wildlife;

48 (B) In the employ of the owner or tenant or other
49 operator of a farm, in connection with the operation,
50 management, conservation, improvement, or maintenance
51 of the farm and its tools and equipment, or in salvaging
52 timber or clearing land of brush and other debris left by a
53 hurricane, if the major part of the service is performed on a
54 farm;

55 (C) In connection with the production or harvesting of
56 any commodity defined as an agricultural commodity in
57 section fifteen (g) of the Agricultural Marketing Act, as
58 amended, as codified in 12 U.S.C. § 1141j, subsection (g),
59 or in connection with the ginning of cotton, or in connection
60 with the operation or maintenance of ditches, canals,
61 reservoirs, or waterways, not owned or operated for profit,
62 used exclusively for supplying and storing water for
63 farming purposes;

64 (D) (i) In the employ of the operator of a farm in
65 handling, planting, drying, packing, packaging, processing,
66 freezing, grading, storing, or delivering to storage or to
67 market or to a carrier for transportation to market, in its
68 unmanufactured state, any agricultural or horticultural
69 commodity; but only if the operator produced more than one
70 half of the commodity with respect to which the service is
71 performed; or (ii) in the employ of a group of operators of
72 farms (or a cooperative organization of which the operators
73 are members) in the performance of service described in
74 subparagraph (i) of this paragraph, but only if the operators
75 produced more than one half of the commodity with respect
76 to which the service is performed; but the provisions of
77 subparagraphs (i) and (ii) of this paragraph are not
78 applicable with respect to service performed in connection
79 with commercial canning or commercial freezing or in
80 connection with any agricultural or horticultural commodity
81 after its delivery to a terminal market for distribution for
82 consumption;

83 (E) On a farm operated for profit if the service is not in
84 the course of the employer's trade or business or is domestic
85 service in a private home of the employer. As used in this
86 subdivision, the term "farm" includes stock, dairy, poultry,
87 fruit, fur-bearing animals, truck farms, plantations, ranches,
88 greenhouses, ranges, and nurseries, or other similar land
89 areas or structures used primarily for the raising of any
90 agricultural or horticultural commodities;

91 (4) Domestic service in a private home except as
92 provided in §21A-1A-16(13) of this code, the definition of
93 "employment";

94 (5) Service performed by an individual in the employ of
95 his or her son, daughter, or spouse;

96 (6) Service performed by a child under the age of 18
97 years in the employ of his or her father or mother;

98 (7) Service as an officer or member of a crew of an
99 American vessel, performed on or in connection with the
100 vessel, if the operating office, from which the operations of
101 the vessel operating on navigable waters within or without
102 the United States are ordinarily and regularly supervised,
103 managed, directed, and controlled, is without this state;

104 (8) Service performed by agents of mutual fund broker-
105 dealers or insurance companies, exclusive of industrial
106 insurance agents, or by agents of investment companies,
107 who are compensated wholly on a commission basis;

108 (9) Service performed: (A) In the employ of a church or
109 convention or association of churches, or an organization
110 which is operated primarily for religious purposes and
111 which is operated, supervised, controlled, or principally
112 supported by a church or convention or association of
113 churches; or (B) by a duly ordained, commissioned, or
114 licensed minister of a church in the exercise of his or her
115 ministry or by a member of a religious order in the exercise
116 of duties required by the order; or (C) by an individual

117 receiving rehabilitation or remunerative work in a facility
118 conducted for the purpose of carrying out a program of
119 either: (i) Rehabilitation for individuals whose earning
120 capacity is impaired by age or physical or mental deficiency
121 or injury; or (ii) providing remunerative work for
122 individuals who because of their impaired physical or
123 mental capacity cannot be readily absorbed in the
124 competitive labor market: *Provided*, That this exemption
125 does not apply to services performed by individuals if they
126 are not receiving rehabilitation or remunerative work on
127 account of their impaired capacity; or (D) as part of an
128 unemployment work-relief or work-training program
129 assisted or financed, in whole or in part, by any federal
130 agency or an agency of a state or political subdivision
131 thereof, by an individual receiving the work relief or work
132 training; or (E) by an inmate of a custodial or penal
133 institution;

134 (10) Service performed in the employ of a school,
135 college, or university, if the service is performed: (A) By a
136 student who is enrolled and is regularly attending classes at
137 the school, college, or university; or (B) by the spouse of a
138 student, if the spouse is advised, at the time the spouse
139 commences to perform the service, that: (i) The
140 employment of the spouse to perform the service is provided
141 under a program to provide financial assistance to the
142 student by the school, college, or university; and (ii) the
143 employment will not be covered by any program of
144 unemployment insurance;

145 (11) Service performed by an individual who is enrolled
146 at a nonprofit or public educational institution which
147 normally maintains a regular faculty and curriculum and
148 normally has a regularly organized body of students in
149 attendance at the place where its educational activities are
150 carried on as a student in a full-time program, taken for
151 credit at the institution, which combines academic
152 instruction with work experience, if the service is an integral
153 part of the program and the institution has so certified to the

154 employer, except that this subdivision does not apply to
155 service performed in a program established for or on behalf
156 of an employer or group of employers;

157 (12) Service performed in the employ of a hospital, if
158 the service is performed by a patient of the hospital, as
159 defined in this article;

160 (13) Service in the employ of a governmental entity
161 referred to in §21A-1A-16(9) of this code, the definition of
162 “employment”, if the service is performed by an individual
163 in the exercise of duties: (A) As an elected official; (B) as a
164 member of a legislative body, or a member of the judiciary,
165 of a state or political subdivision; (C) as an employee
166 serving on a temporary basis for the legislature during, or in
167 support of, the legislative session; (D) as a member of the
168 state National Guard or air National Guard, except as
169 provided in §21A-1A-28 of this code; (E) as an employee
170 serving on a temporary basis in case of fire, storm, snow,
171 earthquake, flood, or similar emergency; (F) in a position
172 which, under or pursuant to the laws of this state, is
173 designated as: (i) A major nontenured policymaking or
174 advisory position; or (ii) a policymaking or advisory
175 position the performance of the duties of which ordinarily
176 does not require more than eight hours per week; or (G) as
177 any election official appointed to serve during any
178 municipal, county, or state election, if the amount of
179 remuneration received by the individual during the calendar
180 year for services as an election official is less than \$1,000;

181 (14) Service performed by a bona fide partner of a
182 partnership for the partnership; and

183 (15) Service performed by a person for his or her own
184 sole proprietorship.

185 Notwithstanding the foregoing exclusions from the
186 definition of “employment”, services, except agricultural
187 labor and domestic service in a private home, are in
188 employment if with respect to the services a tax is required

189 to be paid under any federal law imposing a tax against
190 which credit may be taken for contributions required to be
191 paid into a State Unemployment Compensation Fund, or
192 which as a condition for full tax credit against the tax
193 imposed by the federal Unemployment Tax Act are required
194 to be covered under this chapter.

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CHAPTER 203

**(H. B. 3095 - By Delegates Summers, Hollen, Graves,
Anderson, Malcolm, Pack, Pethel and Evans)**

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §5-10-22l; and to
amend said code by adding thereto a new section, designated
§18-7A-26w, all relating to establishing a minimum monthly
retirement annuity for certain retirants with 25 or more years
of credited service.

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 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-22l. Minimum benefit for certain retirants.

1 (a) For purposes of this section:

2 (1) “Elected public official” means any member of the
3 Legislature or any member of the legislative body of any
4 political subdivision; and

5 (2) “Temporary legislative employee” means any
6 employee of the Clerk of the House of Delegates, the Clerk
7 of the Senate, the Legislature or a committee thereof,
8 including the Joint Committee on Government and Finance,
9 whose employment is classified as temporary and who is
10 employed to perform services required by the Clerk of the
11 House of Delegates, the Clerk of the Senate, the Legislature
12 or a committee thereof, as the case may be, for regular
13 sessions, extraordinary sessions and/or interim meetings of
14 the Legislature.

15 (b) If the retirement annuity of a retirant (or, if
16 applicable, his or her beneficiary) with at least 25 years of
17 credited service as of the effective date of this section is less
18 than \$750 per month (including any supplemental benefits
19 or incentives provided by this article), then the monthly
20 retirement benefit for the retirant (or if applicable, his or her
21 beneficiary) shall be increased to \$750 per month: *Provided*,
22 That any year of credited service while an elected public
23 official or a temporary legislative employee may not be
24 taken into account for purposes of this section.

25 (c) Notwithstanding the provisions of subsection (b) of
26 this section to the contrary, if the retirement annuity of a
27 beneficiary of a retirant who chose option B – modified joint
28 and survivor annuity as provided in §5-10-24 of this code,
29 and who had at least 25 years of credited service as of the
30 effective date of this section is less than \$375 per month
31 (including any supplemental benefits or incentives provided
32 by this article), then the monthly retirement benefit for the
33 beneficiary shall be increased to \$375 per month: *Provided*,
34 That any year of credited service while an elected public
35 official or a temporary legislative employee may not be
36 taken into account for purposes of this section.

37 (d) The payment of any minimum benefit under this
38 section is in lieu of, and not in addition to, the payments of
39 any retirement benefit or supplemental benefit or incentives
40 otherwise provided by law: *Provided*, That the minimum
41 benefit provided in this section is subject to any limitations
42 thereon under Section 415 of the Internal Revenue Code of
43 1986, as amended, and §5-10-27a of this code.

44 (e) Any minimum benefit conferred in this section is not
45 retroactive to the time of retirement and applies only to
46 members who have retired prior to the effective date of this
47 section, or, if applicable, to beneficiaries receiving benefits
48 under the retirement system prior to the effective date.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26w. Minimum benefit for certain retired members.

1 (a) If the retirement annuity of a retirant (or applicable
2 beneficiary thereof) with at least 25 years of total service is
3 less than \$750 per month (including any supplemental or
4 additional benefits provided by this article), then the
5 monthly retirement annuity for the retirant shall be
6 increased to \$750 per month: *Provided*, That any year of
7 service while an employee of an institution of higher
8 education may not be taken into account for purposes of this
9 section if his or her salary was capped under the retirement
10 system at \$4,800 per year pursuant to §18-7A-14a of this
11 code.

12 (b) Notwithstanding the provisions of subsection (a) of
13 this section to the contrary, if the retirement annuity of a
14 beneficiary of a retirant who chose option B – 50% joint and
15 survivor annuity as provided in §162-4-5.1.3 and who had
16 at least 25 years of credited service as of the effective date
17 of this section is less than \$375 per month (including any
18 supplemental benefits or incentives provided by this
19 article), then the monthly retirement benefit for the
20 beneficiary shall be increased to \$375 per month: *Provided*,

21 That any year of service while an employee of an institution
22 of higher education may not be taken into account for
23 purposes of this section if his or her salary was capped under
24 the retirement system at \$4,800 per year pursuant to §18-
25 7A-14a of this code.

26 (c) The payment of any minimum benefit under this
27 section is in lieu of, and not in addition to, the payments of
28 any retirement annuity or supplemental or additional
29 benefits otherwise provided by this article: *Provided*, That
30 the minimum benefit provided in this section is subject to
31 any limitations thereon under §415 of the Internal Revenue
32 Code of 1986, as the same may be amended, and §18-7A-
33 28a of this code.

34 (d) Any minimum benefit conferred in this section is not
35 retroactive to the time of retirement and applies only to
36 members who have retired prior to the effective date of this
37 section, or, if applicable, to beneficiaries receiving benefits
38 under the retirement system prior to the effective date.

CHAPTER 204

**(Com. Sub. for H. B. 3131 - By Delegates Ellington,
Hill, Summers, Rohrbach, Hollen, Pack, Atkinson, D.
Jeffries and Rowan)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §5-5-4a of the Code of West Virginia, as amended, all relating to employees of the Department of Health and Human Resources; providing that the Department of Health and Human Resources shall develop a special merit-based system for specified employees at state-operated acute care, long-term care, psychiatric care, clinical,

and medical facilities; providing for an effective date; providing that provisions of the West Virginia Public Employees Grievance Act apply to employees of the special merit-based system; providing that the Department of Health and Human Resources may conduct a marketplace analysis; and providing for emergency rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4a. Department of Health and Human Resources facility employee classifications.

1 (a) The Legislature finds that state-operated acute care,
2 long-term care, psychiatric care, clinical, and medical
3 facilities have extreme difficulty in recruiting and retaining
4 physicians, physician specialists, nurses, nursing directors,
5 health service workers, health service assistants, and other
6 employees who assist in the direct provision of medical care
7 to patients in those facilities.

8 (b) The Department of Health and Human Resources
9 shall develop a special merit-based system, including an
10 application and appointment procedure for physicians,
11 physician specialists, nurses, nursing directors, health
12 service workers, health service assistants, and other
13 employees who assist in the direct provision of medical care
14 to patients at state-operated acute care, long-term care,
15 psychiatric care, clinical, and medical facilities. The
16 procedure shall include classification specifications, and
17 may include compensation adjustments, retention
18 incentives, and hiring approval by the secretary. The
19 secretary shall have the full authority to evaluate applicants
20 for employment or promotion or make classification
21 determinations for positions within the special merit-based
22 system. The special merit-based system shall be approved
23 by the State Personnel Board. The pay rates and
24 employment requirements shall be put into effect no sooner
25 than January 1, 2020, and no later than July 1, 2020.

26 (c) Funding for the pay rates and employment
27 requirements shall be provided from the appropriation to the
28 Department of Health and Human Resources. The
29 provisions of this section are rehabilitative in nature and it
30 is the specific intent of the Legislature that no private cause
31 of action, either express or implied, shall arise pursuant to
32 the provisions or implementation of this section.

33 (d) The provisions of §6C-2-1 *et seq.* of this code shall
34 be applicable to the employees of the special merit-based
35 system: *Provided*, That the Division of Personnel shall not
36 be a mandatory party to any public employee grievance filed
37 by any employee in the special merit-based system.

38 (e) The department may conduct periodic wage and
39 compensation analysis of identified market rates for the
40 above positions as determined necessary by the secretary.

41 (f) The secretary may promulgate emergency rules and
42 shall propose legislative rules pursuant to the provisions of
43 §29A-3-1 *et seq.* of this code as may be necessary to
44 implement and comply with the provisions of this section.

CHAPTER 205

**(H. B. 3139 - By Delegates Criss, Ellington, Hartman,
Bates and Barrett)**

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §5-16-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11B-2-15a, all relating generally to funding of Public Employees Health Insurance Program; requiring the finance board to maintain a reserve

fund at actuarially recommended amounts of at least 10 percent of plan costs; removing requirement to transfer moneys resulting from plan savings into reserve fund; removing requirement that excess funds be transferred to West Virginia Retiree Health Benefit Trust Fund; establishing PEIA Rainy Day Fund as special, nonexpiring, interest-bearing revenue account in the State Treasury; providing funding for the Fund from appropriations, investment income and other sources; providing for the administration of the fund, including investment of funds, transfer of funds, and purposes for which the fund can be used; and authorizing the promulgation of emergency and legislative rules.

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.

§5-16-25. Reserve fund.

1 Upon the effective date of this section, the finance board
2 shall establish and maintain a reserve fund for the purposes
3 of offsetting unanticipated claim losses in any fiscal year.
4 Beginning with the fiscal year 2002 plan and for each
5 succeeding fiscal year plan, the finance board shall maintain
6 the actuarially recommended reserve in an amount no less
7 than 10 percent of the projected total plan costs for that
8 fiscal year in the reserve fund, which is to be certified by the
9 actuary and included in the final, approved financial plan
10 submitted to the Governor and Legislature in accordance
11 with the provisions of this article.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-15a. PEIA Rainy Day Fund.

1 (a) There is hereby created in the State Treasury a
2 special account, designated the PEIA Rainy Day Fund,
3 which is an interest-bearing account administered by the
4 Secretary of Revenue in accordance with the provisions of
5 this section.

6 (b) The PEIA Rainy Day Fund may consist of moneys
7 appropriated by the Legislature, income from investment of
8 moneys held in the special revenue account, and all other
9 sums available for deposit to the account, public or private.
10 Any balance remaining in the special revenue account at the
11 end of the fiscal year does not revert to the General Revenue
12 Fund but remains in the special revenue account and may be
13 used in a manner consistent with this article.

14 (c) The Secretary of Revenue, upon the written approval
15 of the Governor, may transfer moneys from the PEIA Rainy
16 Day Fund to the Public Employees Insurance Agency only
17 to (1) reduce or prevent benefit cuts, (2) reduce premium
18 increases, or (3) any combination thereof. The amount of
19 moneys transferred may be included in the calculation of
20 any plan year aggregate premium cost-sharing percentages
21 between employers and employees.

22 (d) The Secretary of Revenue may contract with the
23 West Virginia Investment Management Board, or the West
24 Virginia Board of Treasury Investments, for any services
25 with respect to fund investments which the secretary
26 considers necessary.

27 (e) The Secretary of Revenue may promulgate
28 legislative rules, and emergency rules as provided in §29A-
29 3-15 of this code, as the secretary considers necessary to
30 implement and administer the provisions of this section.

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CHAPTER 206

(Com. Sub. for S. B. 255 - By Senators Boso, Baldwin and Maroney)

[Passed February 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 14, 2019.]

AN ACT to amend and reenact §16-4C-5 of the Code of West Virginia, 1931, as amended, relating generally to the Emergency Medical Services Advisory Council; reconfiguring and increasing the membership of the council by adding three voting citizen-members; and requiring three members to be representative of professional groups.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency Medical Services Advisory Council; duties; composition; appointment; meetings; compensation and expenses.

1 (a) The Emergency Medical Services Advisory Council,
2 created and established by former §16-4C-7 of this code, is
3 continued for the purpose of developing, with the
4 commissioner, standards for emergency medical services
5 personnel and for the purpose of providing advice to the
6 Office of Emergency Medical Services and the
7 commissioner with respect to reviewing and making
8 recommendations for, and providing assistance to, the
9 establishment and maintenance of adequate emergency
10 medical services for all portions of this state.

11 (b) The council shall have the duty to advise the
12 commissioner in all matters pertaining to his or her duties

13 and functions in relation to carrying out the purposes of this
14 article.

15 (c) The council shall be composed of 18 members
16 appointed by the Governor by and with the advice and
17 consent of the Senate. The Mountain State Emergency
18 Medical Services Association shall submit to the Governor
19 a list of six names of representatives from its Association
20 and a list of three names shall be submitted to the Governor
21 of representatives of their respective organizations by the
22 County Commissioners' Association of West Virginia, the
23 West Virginia State Firemen's Association, the West
24 Virginia Hospital Association, the West Virginia Chapter of
25 the American College of Emergency Physicians, the West
26 Virginia Emergency Medical Services Administrators
27 Association, the West Virginia Emergency Medical
28 Services Coalition, the Ambulance Association of West
29 Virginia, and the state Department of Education. The
30 Governor shall appoint from the respective lists submitted
31 two persons who represent the Mountain State Emergency
32 Medical Services Association, one of whom shall be a
33 paramedic and one of whom shall be an emergency medical
34 technician-basic; and one person from the County
35 Commissioners' Association of West Virginia, the West
36 Virginia State Firemen's Association, the West Virginia
37 Hospital Association, the West Virginia Chapter of the
38 American College of Emergency Physicians, the West
39 Virginia Emergency Medical Services Administrators
40 Association, the West Virginia Emergency Medical
41 Services Coalition, the Ambulance Association of West
42 Virginia, and the state Department of Education. In
43 addition, the Governor shall appoint the following:

44 (1) One person to represent emergency medical services
45 providers operating within the state;

46 (2) One person to represent small emergency medical
47 services providers operating within this state;

48 (3) One person to represent emergency medical services
49 training officers or representatives;

50 (4) Two people to represent emergency medical services
51 supervisors or administrators; and

52 (5) Three persons to represent the general public who
53 shall serve as voting members.

54 (d) Not more than six of the members may be appointed
55 from any one congressional district.

56 (e) Each term is to be for three years, and no member
57 may serve more than four consecutive terms.

58 (f) The council shall choose its own chairman and meet
59 at the call of the commissioner at least twice a year.

60 (g) The members of the council shall receive
61 compensation and expense reimbursement in an amount not
62 to exceed the same compensation and expense
63 reimbursement as is paid to members of the Legislature for
64 their interim duties as recommended by the Citizens
65 Legislative Compensation Commission and authorized by
66 law for each day, or substantial portion thereof, engaged in
67 the performance of official duties.

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CHAPTER 207

**(Com. Sub. for S. B. 520 - By Senators Maroney,
Plymale, Stollings, Tarr, Woelfel, Takubo, Boso,
Baldwin, Hardesty and Swope)**

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §16-5T-3 and §16-5T-4 of the Code of West Virginia, 1931, as amended, all relating to drug overdoses; requiring entities report drug overdoses; requiring details for drug overdose reports; eliminating mandatory reporters; and making grammatical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.

§16-5T-3. Reporting system requirements; implementation; central repository requirement.

1 (a) The Office of Drug Control Policy shall implement
2 a program in which a central repository is established and
3 maintained that shall contain overdose information via an
4 appropriate information technology platform with secure
5 access for the purpose of making decisions regarding the
6 allocation of public health and educational resources. In
7 implementing this program, the office shall consult with all
8 affected entities, including law-enforcement agencies,
9 health care providers, emergency response providers,
10 pharmacies, and medical examiners.

11 (b) The program authorized by this section shall be
12 designed to minimize inconvenience to all entities maintaining
13 possession of the relevant information while effectuating the
14 collection and storage of the required information.

§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, within 72 hours after the
3 provider responds to the incident and via an appropriate
4 information technology platform, to the Office of Drug
5 Control Policy:

6 (1) The date and time of the overdose;

7 (2) The approximate address of where the person was
8 picked up or where the overdose took place;

9 (3) Whether an opioid antagonist was administered;

10 (4) Whether the overdose was fatal or nonfatal;

11 (5) The gender and approximate age of the person
12 receiving attention or treatment; and

13 (6) The suspected controlled substance involved in the
14 overdose.

15 (b) The following entities shall be required to report
16 information contained in §16-5T-4(a) of this code:

17 (1) Health care providers;

18 (2) Medical examiners;

19 (3) Law-enforcement agencies, including, state, county,
20 and local police departments;

21 (4) Emergency response providers; and

22 (5) Hospital emergency rooms.

23 (c) The data collected by the office pursuant to this
24 subsection shall be made available to law enforcement, local
25 health departments, and emergency medical service
26 agencies in each county.

27 (d) Entities who are required to report information to or
28 from the office pursuant to this section in good faith are not
29 subject to civil or criminal liability for making the report.

30 (e) For the purposes of this section:

31 “Information technology platform” means the
32 Washington/Baltimore High Intensity Drug Trafficking
33 Overdose Detection Mapping Application Program or other
34 program identified by the department in rule.

35 “Overdose” means an acute condition, including, but
36 not limited to, extreme physical illness, decreased level of
37 consciousness, respiratory depression, coma, or death
38 believed to be caused by abuse and misuse of prescription
39 or illicit drugs or by substances that a layperson would
40 reasonably believe to be a drug.

41 “Opioid antagonist” means a federal Food and Drug
42 Administration-approved drug for the treatment of an
43 opiate-related overdose, such as naloxone hydrochloride or
44 other substance that, when administered, negates or
45 neutralizes, in whole or in part, the pharmacological effects
46 of an opioid in the body.



CHAPTER 208

**(Com. Sub. for S. B. 537 - By Senators Boso and
Cline)**

[Passed March 8, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §16-29B-31,
relating to establishing health care standards by the Health

Care Authority; establishing a workgroup to review certain standards in this state; designating members of workgroup; providing for duties of workgroup; providing that the Health Care Authority provide staff for the workgroup; providing for public hearings; providing for the submission of a final report; establishing a termination date of the workgroup; providing a time frame to review health care standards; freezing current standards for a period of time; and establishing a time frame to complete the review.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-31. Hospice need standard review; membership; report to the Legislative Oversight Committee on Health and Human Resources.

1 (a) The West Virginia Health Care Authority shall form
2 a working group to review the provision of hospice services
3 in West Virginia. The workgroup shall be comprised of the
4 following members:

5 (1) The Chairman of the West Virginia Health Care
6 Authority or designee, who shall also be the chair of this
7 workgroup;

8 (2) The Secretary of the Department of Health and
9 Human Resources, or designee;

10 (3) The Dean of the West Virginia University School of
11 Medicine, or designee;

12 (4) The Dean of the Marshall University, Joan C.
13 Edwards School of Medicine, or designee;

14 (5) Six hospice providers chosen by the Hospice
15 Council of West Virginia:

16 (A) One of whom must be a for-profit service provider;

17 (B) Two of whom must operate a free-standing inpatient
18 hospice facility; and

19 (C) An equal number of providers selected pursuant to
20 this subsection shall reside in each congressional district;

21 (6) One member chosen by the West Virginia chapter of
22 the American Cancer Society;

23 (7) One member chosen by the Alzheimer's Association
24 of West Virginia;

25 (8) One member chosen by the West Virginia Rural
26 Health Association;

27 (9) One member chose by the West Virginia American
28 Association of Retired Persons;

29 (10) A hospital-based hospice provider chosen by the
30 West Virginia Hospital Association;

31 (11) One member chosen by the West Virginia Nurses
32 Association;

33 (12) A physician chosen by the West Virginia State
34 Medical Association with a practice treating terminal
35 diseases; and

36 (13) A physician chosen by the West Virginia
37 Osteopathic Medical Association whose practice includes
38 geriatric patients.

39 (b) The workgroup shall have the following duties:

40 (1) Establish a model for data collection to best predict
41 future the need of hospice services in West Virginia and
42 collect the necessary data;

43 (2) Review the access to hospice services in West
44 Virginia as well as future needs;

45 (3) Examine how West Virginia serves its population
46 with hospice services;

47 (4) Examine the financial condition of the current
48 delivery system;

49 (5) Recommend a need methodology to the authority for
50 the development of new hospice services; and

51 (6) Make other recommendations the workgroup deems
52 appropriate.

53 (c) The authority shall provide staff for the workgroup
54 and the workgroup shall schedule one public hearing in each
55 of the congressional districts in West Virginia as it relates
56 to the provision of hospice services in the state. The
57 workgroup shall develop and approve a final report by
58 September 30, 2019, and a copy shall be submitted to the
59 Joint Committee of Government and Finance of the
60 Legislature, the Governor, and the authority. The
61 workgroup will sunset on December 31, 2019.

62 (d) The authority shall consider modifying the hospice
63 standards based on the report's findings no later than
64 December 1, 2019: *Provided*, That prior to approving the
65 modified standards, the authority shall present its proposed
66 changes to the hospice need standards to the Legislative
67 Oversight Committee on Health and Human Resources
68 within 30 days after development of the drafts and prior to
69 submission of the final hospice need standards to the
70 Governor.

71 (e) The need standards regulating hospice services and
72 home health services shall be those that were in effect on
73 January 1, 2018, and shall remain in effect until the
74 Governor approves the new standards no sooner than
75 December 31, 2019.

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CHAPTER 209

(S. B. 593 - By Senators Maroney, Stollings and Boso)

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §16-5B-14 of the Code of West Virginia, 1931, as amended, relating to permitting a critical access hospital to become a community outpatient medical center; establishing certain conditions and requirements; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-14. The Critical Access Hospital Designation Act.

1 (a) A hospital located in an urban area (Metropolitan
2 Statistical Areas (MSA) county), can be considered rural for
3 the purposes of a designation as a critical access hospital
4 pursuant to 42 U.S.C. §1395i-4(c)(2) if it meets the
5 following criteria:

6 (1) Is enrolled as both a Medicaid and Medicare
7 provider and accepts assignment for all Medicaid and
8 Medicare patients;

9 (2) Provides emergency health care services to indigent
10 patients;

11 (3) Maintains 24-hour emergency services; and

12 (4) Is located in a county that has a rural population of
13 50 percent or greater as determined by the most recent
14 United States decennial census.

15 (b) A critical access hospital designated pursuant to this
16 section may apply to be designated as a community
17 outpatient medical center if:

18 (1) It has been designated as a critical access hospital
19 for at least one year; and

20 (2) It is designated as a critical access hospital at the
21 time of application to convert to a community outpatient
22 medical center.

23 (c) In addition to the requirements of subsection (b) of
24 this section, a community outpatient medical center shall, at
25 a minimum:

26 (1) Provide emergency medical care and observation
27 care 24 hours a day, seven days a week;

28 (2) Treat all patients regardless of insurance status; and

29 (3) Have protocols in place for the timely transfer of
30 patients who require a higher level of care.

31 (d) The Department of Health and Human Resources
32 shall propose a new rule for legislative approval in
33 accordance with the provisions of §29A-3-1 *et seq.* of this
34 code, to implement the provisions of this section.

●

CHAPTER 210

**(Com. Sub. for S. B. 613 - By Senators Maroney,
Plymale, Takubo, Jeffries, Hamilton, Stollings,
Roberts, Baldwin and Woelfel)**

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §16-19-3, §16-19-5, and §16-19-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-2-31 of said code, all relating to permitting individuals to make an anatomical gift by authorizing a statement or symbol to be imprinted on his or her hunting or fishing license; amending definition of “document of gift” to include a statement or symbol on a hunting or fishing license; adding definition; requiring the Division of Natural Resources to provide information regarding a donor’s making, amendment to, or revocation of an anatomical gift to a donor registry; requiring the Director of the Division of Natural Resources to provide information regarding the anatomical organ donation program; providing for the reimbursement of costs to the Division of Natural Resources for costs relating to the creation and administration of an anatomical gift record by the Center for Organ Recovery and Education; and absolving the Division of Natural Resources of responsibility to collect and provide records if it is not reimbursed for costs.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. ANATOMICAL GIFT ACT.

§16-19-3. Definitions.

1 As used in this article:

2 “Adult” means an individual who is at least 18 years of
3 age.

4 “Agent” means an individual:

5 (1) Authorized by a medical power of attorney to make
6 health care decisions on behalf of a prospective donor; or

7 (2) Expressly authorized by any other record signed by
8 the donor to make an anatomical gift on his or her behalf.

9 “Anatomical gift” means a donation of all or part of a
10 human body, to take effect after the donor’s death, for the
11 purpose of transplantation, therapy, research, or education.

12 “Authorized person” means a person other than the
13 donor who is authorized to make an anatomical gift of the
14 donor’s body or part by §16-19-4 or §16-19-9 of this code.

15 “Certification of death” means a written pronouncement
16 of death by an attending physician. Certification is required
17 before an attending physician can allow removal of any part
18 from the decedent’s body for transplant purposes.

19 “Decedent” means a deceased individual whose body is
20 or may be the source of an anatomical gift. The term
21 “decedent” includes a stillborn infant and, subject to
22 restrictions imposed by law other than this article, a fetus.

23 “Disinterested witness” means a witness other than the
24 spouse, child, parent, sibling, grandchild, grandparent, or
25 guardian of, or another adult who exhibited special care and
26 concern for, an individual who has made, amended,
27 revoked, or refused to make an anatomical gift. The term
28 “disinterested witness” does not include a person to whom
29 an anatomical gift may pass pursuant to §16-19-11 of this
30 code.

31 “Document of gift” means a donor card or other record
32 used to make an anatomical gift. The term includes a
33 statement or symbol on a driver’s license, identification
34 card, hunting or fishing license, or donor registry.

35 “Donor” means an individual whose body or part is the
36 subject of an anatomical gift.

37 “Donor registry” means a database that contains records
38 of anatomical gifts and amendments to, or revocations, of
39 anatomical gifts.

40 “Driver’s license” means a license or permit issued by
41 the Division of Motor Vehicles to operate a vehicle.

42 “Eye bank” means a person licensed, accredited, or
43 regulated under federal or state law to engage in the
44 recovery, screening, testing, processing, storage, or
45 distribution of human eyes or portions of human eyes.

46 “Guardian” means a person appointed by a court to
47 make decisions regarding the support, care, education,
48 health, or welfare of an individual. The term “guardian”
49 does not include guardian *ad litem*.

50 “Hunting or fishing license” means a license issued by
51 the Division of Natural Resources pursuant to §20-2-1 *et*
52 *seq.* of this code, for hunting and fishing in the state of West
53 Virginia.

54 “Hospital” means a facility licensed as a hospital under
55 the law of any state or a facility operated as a hospital by the
56 United States, a state, or a subdivision of a state.

57 “Identification card” means an identification card issued
58 by the Division of Motor Vehicles pursuant to §17B-2-1 of
59 this code.

60 “Know” means to have actual knowledge. It does not
61 include constructive notice and other forms of imputed
62 knowledge.

63 “Medical examiner” means an individual appointed
64 pursuant to §61-12-3 *et seq.* of this code to perform death
65 investigations and to establish the cause and manner of
66 death. The term “medical examiner” includes any person
67 designated by the medical examiner to perform any duties
68 required by this article.

69 “Minor” means an individual who is under 18 years of
70 age.

71 “Organ procurement organization” means a nonprofit
72 entity designated by the Secretary of the United States
73 Department of Health and Human Services as an organ
74 procurement organization pursuant to 42 U.S.C. §273(b).

75 “Parent” means another person’s natural or adoptive
76 mother or father whose parental rights have not been
77 terminated by a court of law.

78 “Part” means an organ, an eye, or tissue of a human
79 being. The term does not include the whole body.

80 “Person” means an individual, corporation, business
81 trust, estate, trust, partnership, limited liability company,
82 association, joint venture, public corporation, government
83 or governmental subdivision, agency, or instrumentality, or
84 any other legal or commercial entity.

85 “Physician” means an individual authorized to practice
86 medicine or osteopathy under the law of any state.

87 “Physician assistant” has the meaning provided in §30-
88 3E-1 of this code.

89 “Procurement organization” means an eye bank, organ
90 procurement organization, or tissue bank.

91 “Prospective donor” means an individual who is dead or
92 near death and has been determined by a procurement
93 organization to have a part that could be medically suitable
94 for transplantation, therapy, research, or education. The

95 term “prospective donor” does not include an individual
96 who has made a refusal.

97 “Reasonably available” means able to be contacted by a
98 procurement organization without undue effort and willing
99 and able to act in a timely manner consistent with existing
100 medical criteria necessary for the making of an anatomical
101 gift.

102 “Recipient” means an individual into whose body a
103 decedent’s part has been or is intended to be transplanted.

104 “Record” means information that is inscribed on a
105 tangible medium or that is stored in an electronic or other
106 medium and is retrievable in perceivable form.

107 “Revocation” means the affirmative declaration of the
108 potential donor’s withdrawal of their decision to make or
109 not make a document of gift. It does not have the same
110 meaning as a refusal but only establishes that the potential
111 donor chooses not to make an affirmative declaration of
112 their wishes.

113 “Refusal” means a record created under §16-19-7 of this
114 code that expressly states an individual’s intent to bar other
115 persons from making an anatomical gift of his or her body
116 or part.

117 “Sign” means to execute or adopt a tangible symbol or
118 attach to or logically associate with the record an electronic
119 symbol, sound or process, with the present intent to
120 authenticate or adopt a record.

121 “State” means a state of the United States, the District
122 of Columbia, Puerto Rico, the United States Virgin Islands,
123 or any territory or insular possession subject to the
124 jurisdiction of the United States.

125 “Surrogate” means an individual 18 years of age or
126 older who is reasonably available, is willing to make health
127 care decisions on behalf of an incapacitated person,

128 possesses the capacity to make health care decisions, and is
129 identified or selected by the attending physician or
130 advanced nurse practitioner in accordance with §16-30-1 *et*
131 *seq.* of this code as the person who is to make those
132 decisions in accordance with the provisions of this article.

133 “Technician” means an individual qualified to remove
134 or process parts by an organization that is licensed,
135 accredited, or regulated under federal or state law. The term
136 “technician” includes an enucleator, i.e., an individual who
137 removes or processes eyes or parts of eyes.

138 “Tissue” means a portion of the human body other than
139 an organ or an eye. The term “tissue” does not include blood
140 unless the blood is donated for the purpose of research or
141 education.

142 “Tissue bank” means a person that is licensed,
143 accredited, or regulated under federal or state law to engage
144 in the recovery, screening, testing, processing, storage, or
145 distribution of tissue.

146 “Transplant hospital” means a hospital that furnishes
147 organ transplants and other medical and surgical specialty
148 services required for the care of transplant patients.

§16-19-5. Manner of making anatomical gift before donor’s death.

1 (a) A donor may make an anatomical gift:

2 (1) By authorizing a statement or symbol to be
3 imprinted on his or her driver’s license, identification card,
4 or hunting or fishing license indicating that he or she has
5 made an anatomical gift;

6 (2) In a will;

7 (3) During a terminal illness or injury, by any form of
8 communication addressed to at least two adults, at least one
9 of whom is a disinterested witness; or

10 (4) As provided in subsection (b) of this section.

11 (b) (1) A donor or a person authorized by §16-9-4 of this
12 code may make a gift by:

13 (A) A donor card or other record signed by the donor or
14 the authorized person; or

15 (B) Authorizing a statement or symbol indicating that
16 the donor has made an anatomical gift to be included on a
17 donor registry.

18 (2) If the donor or the authorized person is physically
19 unable to sign a record, another individual may sign at the
20 direction of the donor or the authorized person if the
21 document of gift:

22 (A) Is witnessed and signed by at least two adults, at
23 least one of whom is a disinterested witness; and

24 (B) Contains a statement that it has been signed and
25 witnessed as required by paragraph (A) of this subdivision.

26 (c) Revocation, suspension, expiration, or cancellation
27 of a driver's license or identification card upon which an
28 anatomical gift is indicated does not invalidate the gift.

29 (d) An anatomical gift made by will takes effect upon
30 the donor's death regardless of whether the will is probated.
31 Invalidation of the will after the donor's death does not
32 invalidate the gift.

§16-19-19. Donor registry.

1 (a) The Division of Motor Vehicles may establish or
2 contract for the establishment of a donor registry.

3 (b) The Division of Motor Vehicles shall cooperate with
4 a person that administers any donor registry established or
5 contracted for pursuant to this section or recognized for the
6 purpose of transferring to the donor registry all relevant

7 information regarding a donor's making, amendment to, or
8 revocation of an anatomical gift.

9 (c) The Division of Natural Resources shall provide all
10 relevant information regarding a donor's making,
11 amendment to, or revocation of an anatomical gift to a donor
12 registry established or contracted for pursuant to this
13 section.

14 (d) A donor registry must:

15 (1) Allow a donor or person authorized under §16-19-4
16 of this code to include on the donor registry a statement or
17 symbol that the donor has made, amended, or revoked an
18 anatomical gift;

19 (2) Be accessible to a procurement organization to allow
20 it to obtain relevant information on the donor registry to
21 determine, at or near death of the donor or a prospective
22 donor, whether the donor or prospective donor has made,
23 amended, or revoked an anatomical gift; and

24 (3) Be accessible for purposes of subdivisions (1) and
25 (2) of this subsection 24 hours a day, seven days a week.

26 (e) Personally identifiable information on a donor
27 registry about a donor or prospective donor may not be used
28 or disclosed without the express consent of the donor,
29 prospective donor, or person that made the anatomical gift
30 for any purpose other than to determine, at or near death of
31 the donor or prospective donor, whether the donor or
32 prospective donor has made, amended, or revoked an
33 anatomical gift.

34 (f) The Director of the Division of Natural Resources
35 shall provide information regarding the existence of the
36 anatomical organ donation program, the procedures for a
37 hunting or fishing license applicant to indicate his or her
38 desire to make an anatomical gift, and having document of
39 gift affixed to his or her hunting or fishing license pursuant
40 to this article.

41 (g) The Division of Natural Resources shall be
42 reimbursed for all costs relating to the creation and
43 administration of an anatomical gift record by the Center for
44 Organ Recovery and Education: *Provided*, That the division
45 is absolved of all responsibilities to collect and provide
46 donor registrant records pursuant to this article if not
47 reimbursed according to this subsection.

48 (h) This section does not prohibit any person from
49 creating or maintaining a donor registry that is not
50 established by or under contract with the state. Any private
51 donor registry must comply with subsections (d) and (e) of
52 this section.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-31. Size and form of license and tag; contents; unlawful to alter licenses or permits; penalty.

1 (a) The size, content, and form of all licenses, tags, and
2 permits shall be prescribed by the director. The information
3 which a licensee is required to furnish shall be placed upon
4 the license by the license issuing authority before delivery
5 of such license to the licensee: *Provided*, That all hunting or
6 fishing licenses as defined in §16-19-3 of this code include
7 document of gift indicating the applicant has made an
8 anatomical gift, as defined in §16-19-3 of this code.

9 (b) It is unlawful for any person to alter, mutilate, or
10 deface any license, tag, or permit, or the entries thereon, for
11 the purpose of evading the provisions of this chapter.

12 Any person violating the provisions of this subsection is
13 guilty of a misdemeanor and, upon conviction thereof, shall
14 be fined not less than \$20 nor more than \$300; and upon a
15 second and subsequent conviction thereof, shall be fined not
16 less than \$20 nor more than \$300, or confined in jail not less
17 than 10 nor more than 100 days, or both fined and confined.

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CHAPTER 211

**(Com. Sub. for S. B. 640 - By Senators Stollings and
Maroney)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-57-1, §16-57-2, §16-57-3, and §16-57-4, all relating to the regulation of sudden cardiac arrest prevention; training and education; rulemaking; and removal from athletic activity.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 57. SUDDEN CARDIAC ARREST PREVENTION
ACT.**

§16-57-1. Purpose.

1 This article shall be known and may be cited as the
2 Sudden Cardiac Arrest Prevention Act. In the United States
3 there are more than 356,000 out-of-hospital cardiac arrests
4 annually and nearly 90 percent of them are fatal. The
5 purpose of this article is to promote education regarding
6 sudden cardiac arrest and thereby prevent sudden cardiac
7 arrest from occurring.

§16-57-2. Definitions.

1 The following words and phrases when used in this
2 article have the meanings given to them in this section
3 unless the context clearly indicates otherwise.

4 “Athletic activity” means all the following:

5 (a) Interscholastic athletics;

6 (b) An athletic contest or competition that is sponsored
7 by or associated with a school entity, including
8 cheerleading, club-sponsored sports activities, and sports
9 activities sponsored by school-affiliated organizations;

10 (c) Noncompetitive cheerleading that is sponsored by
11 school-affiliated organizations; and

12 (d) Practices, interschool practices, and scrimmages for
13 all of the activities described in this section.

14 “School” means any school under the jurisdiction of a
15 county board of education.

**§16-57-3. Applicability, educational materials, removal from
play, and training.**

1 (a) The Department of Education, working in
2 conjunction with the State Health Officer of the Department
3 of Health and Human Resources, shall develop educational
4 materials and guidelines, including a warning sign
5 information sheet, regarding sudden cardiac arrest,
6 including, but not limited to, symptoms and warning signs
7 for students of all ages and risks associated with continuing
8 to play or practice after experiencing the following
9 symptoms: Fainting or seizures during exercise,
10 unexplained shortness of breath, chest pains, dizziness,
11 racing heart, or extreme fatigue. Training materials shall be
12 developed for the use of parents, students, coaches, and
13 administrators.

14 (b) The educational materials and other relevant
15 materials shall be posted on the website of the Department
16 of Education, Department of Health and Human Resources,
17 and public schools to inform and educate parents, students,
18 and coaches participating, or desiring to participate in, an
19 athletic activity about the nature and warning signs of
20 sudden cardiac arrest.

21 (c) Prior to the start of each athletic season, a school
22 subject to this section shall hold an informational meeting
23 for students, parents, guardians, or other persons having
24 care or charge of a student regarding the warning signs of
25 sudden cardiac arrest for children of all ages.

26 (d) No student may participate in an athletic activity
27 until the student has submitted to a designated school
28 official, a form signed by the student and the parent,
29 guardian, or other person having care or charge of the
30 student stating that the student and the parent, guardian, or
31 other person having care or charge of the student have
32 received and reviewed a copy of the information developed
33 by the departments of health and education and posted on
34 their respective webpages. A completed form shall be
35 submitted each school year in which the student participates
36 in an athletic activity.

37 (e) No individual may coach an athletic activity unless
38 the individual has completed, on an annual basis, the sudden
39 cardiac arrest training course approved by the Department
40 of Education and Department of Health and Human
41 Resources.

42 (f) A student shall not be allowed to participate in an
43 athletic activity if either of the following is the case:

44 (1) The student is known to have exhibited syncope or
45 fainting at any time prior to or following an athletic activity
46 and has not been evaluated and cleared for return after
47 exhibiting syncope or fainting; or

48 (2) The student experiences syncope or fainting while
49 participating in, or immediately following, an athletic
50 activity.

51 (g) If a student is not allowed to participate in or is
52 removed from participation in an athletic activity under
53 subsection (f) of this section, the student shall not be
54 allowed to return to participation until the student is

55 evaluated and cleared for return in writing by any of the
56 following:

57 (1) A physician authorized under §30-3-1 *et seq.* and
58 §30-14-1 *et seq.* of this code;

59 (2) A certified nurse practitioner, clinical nurse
60 specialist, or certified nurse midwife; or

61 (3) A physician assistant licensed under §30-3E-1 *et*
62 *seq.* and §30-14A-1 *et seq.* of this code.

63 (h) The licensed health care professional may consult
64 with any other licensed or certified health care professionals
65 in order to determine whether a student is ready to
66 participate in the athletic activity.

67 (i) The governing body of a school shall establish
68 penalties for a coach found in violation of the requirements
69 of subsection (f) of this section.

70 (j) A school district, member of a school district, board
71 of education, school district employee or volunteer,
72 including a coach, is not liable for damages in a civil action
73 for injury, death, or loss to person or property allegedly
74 arising from providing services or performing duties under
75 this section, unless the act or omission constitutes willful or
76 wanton misconduct. This section does not eliminate, limit,
77 or reduce any other immunity or defense that a school
78 district, member of a board of education, or school district
79 employee or volunteer, including a coach, may be entitled
80 to under the law of this state.

§16-57-4. Rulemaking.

1 The Department of Education, acting in conjunction
2 with the Department of Health and Human Resources, may
3 propose rules for legislative approval in accordance with
4 §29A-3-1 *et seq.* of this code that are necessary to effectuate
5 the provisions of this article.

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CHAPTER 212

(Com. Sub. for S. B. 641 - By Senators Maroney and Takubo)

[Passed March 4, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to repeal §16-2H-3 and §16-2H-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-2H-2 of said code, relating to the Primary Care Support Program; eliminating loan fund; and creating grant fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2H. PRIMARY CARE SUPPORT PROGRAM.

§16-2H-2. Primary Care Support Program.

1 (a) There is hereby created the Primary Care Support
2 Program within the Bureau of Public Health within the
3 Department of Health and Human Resources. The program
4 shall provide technical and organizational assistance to
5 community-based primary care services.

6 (b) The Primary Care Support Program shall create and
7 administer a Primary Care Grant Fund to grant money to
8 federally qualified health centers and federally qualified
9 health center look-alikes, and secure federal medical
10 assistance percentage funding. Federally qualified health
11 center look-alikes already receiving grant funding at the
12 time this program is created shall continue to receive grant
13 funding annually. Upon approval by the secretary of the
14 department, federally qualified health centers in need of
15 immediate financial assistance may be granted funding
16 annually. All funds designated to federally qualified health

17 centers may be transferred to Medicaid for the purpose of
18 securing federal medical assistance percentage funding.

19 Additionally, the secretary may use certain portions of
20 funds within this account for activities in support of rural
21 and primary care.

22 There is hereby created a special revenue fund in the
23 State Treasury to be known as the Primary Care Support
24 Fund into which all appropriations, payments, and interest
25 to the fund created herein shall be deposited, to be held and
26 disbursed according to law.

27 (c) The Primary Care Support Program shall conduct
28 and make available upon request an annual primary care
29 report which shall consist of total West Virginia Medicaid
30 primary care expenditures as a percentage of total West
31 Virginia Medicaid expenditures.

32 (d) The Department of Health and Human Resources
33 shall promulgate rules in accordance with §29A-3-1 *et seq.*
34 of this code to implement the provisions of this article, and
35 shall approve all loans, grants, and disbursements of money
36 authorized by this article.

§16-2H-3. Preventive services and health education.

1 [Repealed.]

§16-2H-4. Advisory board.

1 [Repealed.]

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CHAPTER 213

**(Com. Sub. for H. B. 2490 - By Delegates Howell,
Pack, Hott, Hamrick, Dean, Graves, Ellington,
Staggers, Steele and Higginbotham)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating to preventing the secretary of the Department of Health and Human Resources from enforcing certain rules relating to public pools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 (a) The secretary may propose rules in accordance with
2 the provisions of §29A-3-1 *et seq.* of this code that are
3 necessary and proper to effectuate the purposes of this
4 chapter. The secretary may appoint or designate advisory
5 councils of professionals in the areas of hospitals, nursing
6 homes, barbers and beauticians, postmortem examinations,
7 mental health and intellectual disability centers and any
8 other areas necessary to advise the secretary on rules.

9 (b) The rules may include, but are not limited to, the
10 regulation of:

11 (1) Land usage endangering the public health: *Provided,*
12 That no rules may be promulgated or enforced restricting
13 the subdivision or development of any parcel of land within
14 which the individual tracts, lots or parcels exceed two acres
15 each in total surface area and which individual tracts, lots or

16 parcels have an average frontage of not less than 150 feet
17 even though the total surface area of the tract, lot or parcel
18 equals or exceeds two acres in total surface area, and which
19 tracts are sold, leased or utilized only as single-family
20 dwelling units. Notwithstanding the provisions of this
21 subsection, nothing in this section may be construed to abate
22 the authority of the department to:

23 (A) Restrict the subdivision or development of a tract
24 for any more intense or higher density occupancy than a
25 single-family dwelling unit;

26 (B) Propose or enforce rules applicable to single-family
27 dwelling units for single-family dwelling unit sanitary
28 sewerage disposal systems; or

29 (C) Restrict any subdivision or development which
30 might endanger the public health, the sanitary condition of
31 streams or sources of water supply;

32 (2) The sanitary condition of all institutions and schools,
33 whether public or private, public conveyances, dairies,
34 slaughterhouses, workshops, factories, labor camps, all
35 other places open to the general public and inviting public
36 patronage or public assembly, or tendering to the public any
37 item for human consumption and places where trades or
38 industries are conducted;

39 (3) Occupational and industrial health hazards, the
40 sanitary conditions of streams, sources of water supply,
41 sewerage facilities and plumbing systems and the
42 qualifications of personnel connected with any of those
43 facilities, without regard to whether the supplies or systems
44 are publicly or privately owned; and the design of all water
45 systems, plumbing systems, sewerage systems, sewage
46 treatment plants, excreta disposal methods, and swimming
47 pools in this state, whether publicly or privately owned;

48 (4) Safe drinking water, including:

49 (A) The maximum contaminant levels to which all
50 public water systems must conform in order to prevent
51 adverse effects on the health of individuals and, if
52 appropriate, treatment techniques that reduce the
53 contaminant or contaminants to a level which will not
54 adversely affect the health of the consumer. The rule shall
55 contain provisions to protect and prevent contamination of
56 wellheads and well fields used by public water supplies so
57 that contaminants do not reach a level that would adversely
58 affect the health of the consumer;

59 (B) The minimum requirements for: Sampling and
60 testing; system operation; public notification by a public
61 water system on being granted a variance or exemption, or
62 upon failure to comply with specific requirements of this
63 section and rules promulgated under this section; record
64 keeping; laboratory certification; as well as procedures and
65 conditions for granting variances and exemptions to public
66 water systems from state public water systems rules; and

67 (C) The requirements covering the production and
68 distribution of bottled drinking water and may establish
69 requirements governing the taste, odor, appearance and
70 other consumer acceptability parameters of drinking water;

71 (5) Food and drug standards, including cleanliness,
72 proscription of additives, proscription of sale and other
73 requirements in accordance with §16-7-1 *et seq.* of this code
74 as are necessary to protect the health of the citizens of this
75 state;

76 (6) The training and examination requirements for
77 emergency medical service attendants and emergency
78 medical care technician-paramedics; the designation of the
79 health care facilities, health care services, and the industries
80 and occupations in the state that must have emergency
81 medical service attendants and emergency medical care
82 technician-paramedics employed, and the availability,
83 communications and equipment requirements with respect
84 to emergency medical service attendants and to emergency

85 medical care technician-paramedics. Any regulation of
86 emergency medical service attendants and emergency
87 medical care technician- paramedics may not exceed the
88 provisions of §16-4C-1 *et seq.* of this code;

89 (7) The health and sanitary conditions of establishments
90 commonly referred to as bed and breakfast inns. For
91 purposes of this article, “bed and breakfast inn” means an
92 establishment providing sleeping accommodations and, at a
93 minimum, a breakfast for a fee. The secretary may not
94 require an owner of a bed and breakfast providing sleeping
95 accommodations of six or fewer rooms to install a
96 restaurant-style or commercial food service facility. The
97 secretary may not require an owner of a bed and breakfast
98 providing sleeping accommodations of more than six rooms
99 to install a restaurant-type or commercial food service
100 facility if the entire bed and breakfast inn or those rooms
101 numbering above six are used on an aggregate of two weeks
102 or less per year;

103 (8) Fees for services provided by the Bureau for Public
104 Health including, but not limited to, laboratory service fees,
105 environmental health service fees, health facility fees, and
106 permit fees;

107 (9) The collection of data on health status, the health
108 system and the costs of health care;

109 (c) The secretary shall propose a rule for legislative
110 approval in accordance with the provisions of §29A-3-1 *et*
111 *seq.* of this code for the distribution of state aid to local
112 health departments and basic public health services funds.

113 The rule shall include the following provisions:

114 Base allocation amount for each county;

115 Establishment and administration of an emergency fund
116 of no more than two percent of the total annual funds of
117 which unused amounts are to be distributed back to local
118 boards of health at the end of each fiscal year;

119 A calculation of funds utilized for state support of local
120 health departments;

121 Distribution of remaining funds on a per capita
122 weighted population approach which factors coefficients for
123 poverty, health status, population density and health
124 department interventions for each county and a coefficient
125 which encourages counties to merge in the provision of
126 public health services;

127 A hold-harmless provision to provide that each local
128 health department receives no less in state support for a
129 period of four years beginning in the 2009 budget year.

130 The Legislature finds that an emergency exists and,
131 therefore, the secretary shall file an emergency rule to
132 implement the provisions of this section pursuant to the
133 provisions §29A-3-15 of this code. The emergency rule is
134 subject to the prior approval of the Legislative Oversight
135 Commission on Health and Human Resources
136 Accountability prior to filing with the Secretary of State.

137 (d) The secretary may propose rules for legislative
138 approval that may include the regulation of other health-
139 related matters which the department is authorized to
140 supervise and for which the rule-making authority has not
141 been otherwise assigned.

142 (e) The secretary shall not review any repair or
143 modernization of equipment at a public pool facility as long
144 as such activity does not change the scope of the facility or
145 its current use and such activity does not exceed \$25,000 in
146 planned cost.

●

CHAPTER 214

**(H. B. 2525 - By Delegates Summers, Hill, Pack,
Dean, Atkinson, Wilson, Worrell, D. Jeffries, Hollen,
Butler and Rohrbach)**

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-56-1, §16-56-2, §16-56-3, §16-56-4, §16-56-5, and §16-56-6, all relating to permitting a pharmacist to dispense a tobacco cessation therapy under a standing prescription drug order.

Be it enacted by the Legislature of West Virginia:

ARTICLE 56. TOBACCO CESSATION THERAPY ACCESS ACT.

§16-56-1. Definitions.

1 As used in this article:

2 “Dispense” means the same as that term is defined in
3 §30-5-4 of this code.

4 “Patient counseling” means the same as that term is
5 defined in §30-5-4 of this code.

6 “Pharmacist” means the same as that term is defined in
7 §30-5-4 of this code.

8 “Pharmacy intern” means the same as that term is
9 defined in §30-5-4 of this code.

10 “Physician” means the same as that term is defined in
11 §30-3E-1 of this code.

12 “Tobacco cessation therapy” means a tobacco cessation
13 noncontrolled prescription medication, over-the-counter
14 medication or other professional service, that is approved by
15 the United States Food and Drug Administration for treating
16 tobacco use including all of the of various dosage forms.

§16-56-2. Voluntary participation.

1 This article does not create a duty or standard of care for
2 a person to prescribe or dispense tobacco cessation therapy.

§16-56-3. Authorization to dispense.

1 A pharmacist licensed under §30-5-1 *et seq.* of this code
2 may initiate and dispense a noncontrolled prescription
3 medication, over-the-counter medication, or other
4 professional service to a patient who is 18 years old or older;
5 pursuant to a standing prescription drug order made in
6 accordance with §16-56-4 of this code without any other
7 prescription drug order from a person licensed to prescribe
8 a tobacco cessation therapy; and in accordance with the
9 dispensing guidelines in §16-56-6 of this code.

§16-56-4. Standing prescription drug orders for tobacco cessation therapy.

1 (a) The Commissioner of the Bureau for Public Health
2 or designee shall prescribe on a statewide basis a tobacco
3 cessation therapy by one or more standing orders permitting
4 pharmacists to initiate the dispensing of noncontrolled
5 prescription medications, over-the-counter medications, or
6 other professional services to eligible individuals:

7 (b) A standing order must specify, at a minimum:

8 (1) Use of the Tobacco Cessation Therapy Protocol, that
9 has been approved by the Commissioner of the Bureau for
10 Public Health in collaboration with the Board of Pharmacy
11 and the Board of Medicine;

12 (2) The eligible individuals to whom the tobacco
13 cessation therapy may be dispensed;

14 (3) The timeline for renewing and updating the standing
15 order.

§16-56-5. Pharmacist education and training required.

1 The Board of Pharmacy shall approve a training
2 program or programs to be eligible to participate in the
3 utilization of the standing prescription drug order for
4 tobacco cessation therapy by a pharmacist.

5 Documentation shall be provided to the Board of
6 Pharmacy upon request.

§16-56-6. Guidelines for dispensing a tobacco cessation therapy.

1 (a) A pharmacist who dispenses a tobacco cessation
2 therapy under this article shall follow the Tobacco
3 Cessation Therapy Protocol, that has been approved by the
4 Commissioner of the Bureau for Public Health in
5 collaboration with the Board of Pharmacy and the Board of
6 Medicine, before dispensing the tobacco cessation therapy.
7 The protocol shall include the:

8 (1) Criteria for identifying individuals eligible to receive
9 the tobacco cessation therapy or other professional services
10 under the protocol, and referral to an appropriate prescriber
11 if the patient is high-risk or therapy is contraindicated;

12 (2) Medications authorized by the protocol;

13 (3) Procedures for initiation and monitoring of
14 therapies, including a care plan based on clinical guidelines;

15 (4) Education requirements to be provided to the person
16 receiving the medications and follow-up care;

17 (5) Documentation procedures in the pharmacy system;
18 and

19 (6) Notification of the individual's primary care
20 provider, if provided, within two business days.

21 (b) If when following the protocol it is indicated that it
22 is unsafe to dispense a tobacco cessation therapy to a
23 patient, the pharmacist:

24 (A) May not dispense a tobacco cessation therapy to the
25 patient; and

26 (B) Shall refer the patient to their primary care provider.

27 (c) The Board of Pharmacy regulates a pharmacist who
28 dispenses a tobacco cessation noncontrolled prescription
29 medication, over-the-counter medication, or other
30 professional service.

CHAPTER 215

**(Com. Sub. for H. B. 2583 - By Delegates Hill,
Ellington, Pushkin, Rohrbach, Fleischauer, Walker,
Staggers, McGeehan, Summers and Doyle)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-58-1, §16-58-2, §16-58-3, §16-58-4, §16-58-5 and §16-58-6, all relating to permitting a pharmacist to dispense a self-administered hormonal contraceptive under a standing prescription drug order; defining terms; providing certain authority to the State Health Officer; clarifying that certain federal requirements are applicable; establishing protocol to be followed; requiring the pharmacist to be trained; providing guidelines to dispensing; and clarifying that the Board of Pharmacy regulates the actions of Pharmacist acting under this article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 58. FAMILY PLANNING ACCESS ACT.**§16-58-1. Definitions.**

1 As used in this article:

2 “Dispense” means the same as that term is defined in
3 §30-5-4 of this code.

4 “Patient counseling” means the same as that term is
5 defined in §30-5-4 of this code.

6 “Pharmacist” means the same as that term is defined in
7 §30-5-4 of this code.

8 “Self-administered hormonal contraceptive” means a
9 self-administered hormonal contraceptive that is approved
10 by the United States Food and Drug Administration to
11 prevent pregnancy and does not include the class of
12 emergency contraceptives commonly known as the
13 “morning after pill” or “Plan B”.

§16-58-2. Voluntary participation.

1 This article does not create a duty or standard of care for
2 a person to prescribe or dispense a self-administered
3 hormonal contraceptive.

§16-58-3. Authorization to dispense self-administered hormonal contraceptives.

1 (a) A pharmacist licensed under §30-5-1 *et seq.* of this
2 code may dispense a self-administered hormonal
3 contraceptive: (1) pursuant to a standing prescription drug
4 order made in accordance with §16-57-4 of this code
5 without any other prescription drug order from a person
6 licensed to prescribe a self-administered hormonal
7 contraceptive; (2) in accordance with the dispensing
8 guidelines in §16-57-6 of this code; and (3) to a patient who
9 is 18 years old or older.

10 (b) All state and federal laws governing insurance
11 coverage of contraceptive drugs, devices, products, and
12 services shall apply to self-administered contraceptives
13 dispensed by a pharmacist under a standing order pursuant
14 to this section.

§16-58-4. Standing prescription drug orders for a self-administered hormonal contraceptive.

1 The state health officer may prescribe on a statewide
2 basis a self-administered hormonal contraceptive by one or
3 more standing orders in accordance with a protocol
4 consistent with the United States Medical Eligibility
5 Criteria for Contraceptive Use (MEC) Centers for Disease
6 Control and Prevention, that requires:

7 (1) Use of the self-screening risk assessment
8 questionnaire described below;

9 (2) Written and oral education;

10 (3) The timeline for renewing and updating the standing
11 order;

12 (4) Who is eligible to utilize the standing order;

13 (5) The pharmacist to make and retain a record of each
14 person to whom the self-administered hormonal
15 contraceptive is dispensed, including:

16 (A) The name of the person;

17 (B) The drug dispensed; and

18 (C) Other relevant information.

§16-58-5. Pharmacist education and training required.

1 (a) The Board of Pharmacy, in collaboration with the
2 Bureau for Public Health, shall approve a training program
3 or programs to be eligible to participate in the utilization of

4 the standing prescription drug order for self-administered
5 hormonal contraceptives by a pharmacist.

6 (b) Documentation of training shall be provided to the
7 Board of Pharmacy upon request.

**§16-58-6. Guidelines for dispensing a self-administered
hormonal contraceptive.**

1 (a) A pharmacist who dispenses a self-administered
2 hormonal contraceptive under this article:

3 (1) Shall obtain a completed self-screening risk
4 assessment questionnaire that has been approved by the
5 state health officer in collaboration with the Board of
6 Pharmacy, the Board of Osteopathic Medicine, and the
7 Board of Medicine from the patient before dispensing the
8 self-administered hormonal contraceptive;

9 (2) Shall notify the patient's primary care provider, if
10 provided;

11 (3) If when dispensing within the guidelines it is unsafe
12 to dispense a self-administered hormonal contraceptive to a
13 patient then the pharmacist:

14 (A) May not dispense a self-administered hormonal
15 contraceptive to the patient; and

16 (B) Shall refer the patient to a health care practitioner or
17 local health department;

18 (4) May not continue to dispense a self-administered
19 hormonal contraceptive to the patient for more than 12
20 months after the date of the initial prescription without
21 evidence that the patient has consulted with a health care
22 practitioner during the preceding 12 months; and

23 (5) Shall provide the patient with:

24 (A) Written and verbal information regarding:

25 (i) The importance of seeing the patient's health care
26 practitioner to obtain recommended tests and screening; and

27 (ii) The effectiveness and availability of long-acting
28 reversible contraceptives and other effective contraceptives
29 as an alternative to self-administered hormonal
30 contraceptives; and

31 (B) A copy of the record of the encounter with the
32 patient that includes:

33 (i) The patient's completed self-assessment tool; and

34 (ii) A description of the contraceptives dispensed, or the
35 basis for not dispensing a contraceptive.

36 (b) If a pharmacist dispenses a self-administered
37 hormonal contraceptive to a patient, the pharmacist shall, at
38 a minimum, provide the patient counseling regarding:

39 (1) The appropriate administration and storage of the
40 self-administered hormonal contraceptive;

41 (2) Potential side effects and risks of the self-
42 administered hormonal contraceptive;

43 (3) The need for backup contraception;

44 (4) When to seek emergency medical attention;

45 (5) The risk of contracting a sexually transmitted
46 infection or disease, and ways to reduce the risk of
47 contraction; and

48 (6) Any additional counseling outlined in the protocol
49 as prescribed in §16-57-4 of this code.

50 (c) The Board of Pharmacy regulates a pharmacist who
51 dispenses a self-administered hormonal contraceptive under
52 this article.

CHAPTER 216

**(Com. Sub. for H. B. 2607 - By Delegates Hill,
Staggers, Howell, Rowan and D. Jeffries)**

[Passed February 20, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2019.]

AN ACT to repeal §16-5C-16 and §16-5C-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5C-2, §16-5C-4, §16-5C-5, §16-5C-6, §16-5C-7, §16-5C-8, §16-5C-9, §16-5C-9a, §16-5C-10, §16-5C-11, §16-5C-12, §16-5C-12a, §16-5C-13, §16-5C-14, §16-5C-15, §16-5C-18, §16-5C-20, §16-5C-21, and §16-5C-22 of said code, all relating to the licensure of nursing homes; repealing duplicative sections of code; defining terms; clarifying rule requirements; and clarifying enforcement action and due process procedures.

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 “Department” means the Department of Health and
7 Human Resources.

8 “Director” means the director of the office of Health
9 Facility Licensure and Certification.

10 “Distance learning technologies” means computer-
11 centered technologies delivered over the internet,
12 broadcasts, recordings, instructional videos, or
13 videoconferencing.

14 “Household” means a private home or residence which
15 is separate from or unattached to a nursing home.

16 “Immediate jeopardy” means a situation in which the
17 nursing home’s noncompliance with one or more of the
18 provisions of this article or rules promulgated thereunder
19 has caused or is likely to cause serious harm, impairment or
20 death to a resident.

21 “Nursing home” or “facility” means any institution,
22 residence or place, or any part or unit thereof, however
23 named, in this state which is advertised, offered, maintained
24 or operated by the ownership or management, whether for a
25 consideration or not, for the express or implied purpose of
26 providing accommodations and care, for a period of more
27 than 24 hours, for four or more persons who are ill or
28 otherwise incapacitated and in need of extensive, ongoing
29 nursing care due to physical or mental impairment or which
30 provides services for the rehabilitation of persons who are
31 convalescing from illness or incapacitation.

32 The care or treatment in a household, whether for
33 compensation or not, of any person related by blood or
34 marriage, within the degree of consanguinity of second
35 cousin to the head of the household, or his or her spouse,
36 may not be deemed to constitute a nursing home within the
37 meaning of this article. Nothing contained in this article
38 applies to nursing homes operated by the federal
39 government; or extended care facilities operated in
40 conjunction with a hospital; or institutions operated for the
41 treatment and care of alcoholic patients; or offices of
42 physicians; or hotels, boarding homes or other similar
43 places that furnish to their guests only room and board; or
44 to homes or asylums operated by fraternal orders pursuant
45 to §35-3-1 *et seq.* of this code.

46 “Nursing care” means those procedures commonly
47 employed in providing for the physical, emotional and
48 rehabilitation needs of the ill or otherwise incapacitated
49 which require technical skills and knowledge beyond that
50 which the untrained person possesses, including, but not
51 limited to, such procedures as: Irrigations, catheterization,
52 special procedure contributing to rehabilitation, and
53 administration of medication by any method which involves
54 a level of complexity and skill in administration not
55 possessed by the untrained person.

56 “Person” means an individual and every form of
57 organization, whether incorporated or unincorporated,
58 including any partnership, corporation, trust, association, or
59 political subdivision of the state.

60 “Resident” means an individual living in a nursing
61 home.

62 “Review organization” means any committee or
63 organization engaging in peer review or quality assurance,
64 including, but not limited to, a medical audit committee, a
65 health insurance review committee, a professional health
66 service plan review committee or organization, a dental
67 review committee, a physician’s advisory committee, a
68 podiatry advisory committee, a nursing advisory committee,
69 any committee or organization established pursuant to a
70 medical assistance program, any committee or organization
71 established or required under state or federal statutes, rules
72 or regulations, and any committee established by one or
73 more state or local professional societies or institutes, to
74 gather and review information relating to the care and
75 treatment of residents for the purposes of:

76 Evaluating and improving the quality of health care
77 rendered; reducing morbidity or mortality; or establishing
78 and enforcing guidelines designed to keep within reasonable
79 bounds the cost of health care.

80 “Secretary” means the Secretary of the Department of
81 Health and Human Resources or his or her designee.

82 “Sponsor” means the person or agency legally
83 responsible for the welfare and support of a resident.

84 “Substantial compliance” means a level of compliance
85 with the rules such that no deficiencies exist or such that
86 identified deficiencies pose no greater risk to resident health
87 or safety than the potential for causing minimal harm.

88 The secretary may define in the rules any term used
89 herein which is not expressly defined.

§16-5C-4. Administrative and inspection staff.

1 The secretary may, at such time or times as he or she
2 may deem necessary, employ such administrative
3 employees, inspectors, or other persons as may be necessary
4 to properly carry out the provisions of this article. All
5 employees of the department shall be members of the state
6 civil service system and inspectors shall be trained to
7 perform their assigned duties. Such inspectors and other
8 employees as may be duly designated by the secretary shall
9 act as the secretary’s representatives and, under the
10 direction of the secretary, shall enforce the provisions of this
11 article and all duly promulgated regulations and, in the
12 discharge of official duties, shall have the right of entry into
13 any place maintained as a nursing home.

§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 secretary 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 secretary 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:

10 (A) An affirmative statement of the right of access to
11 nursing homes by members of recognized community
12 organizations and community legal services programs
13 whose purposes include rendering assistance without charge
14 to residents, consistent with the right of residents to privacy;

15 (B) A statement of the rights and responsibilities of
16 residents in nursing homes which prescribe, as a minimum,
17 such a statement of residents' rights as included in the
18 United States Department of Health and Human Services
19 regulations, in force on the effective date of this article,
20 governing participation of nursing homes in the Medicare
21 and Medicaid programs pursuant to 42 U.S.C.A. §§ 1395 *et*
22 *seq.* and 1396 *et seq.*;

23 (C) The process to be followed by applicants seeking a
24 license;

25 (D) The clinical, medical, resident, and business records
26 to be kept by the nursing home;

27 (E) The procedures and inspections for the review of
28 utilization and quality of resident care; and

29 (F) The procedures for informal dispute resolution,
30 independent informal dispute resolution, and administrative
31 due process, and when such remedies are available;

32 (2) Minimum numbers of administrators, medical
33 directors, nurses, aides and other personnel according to the
34 occupancy of the facility;

35 (3) Qualifications of the facility's administrators,
36 medical directors, nurses, aides, and other personnel;

37 (4) Safety requirements;

38 (5) Sanitation requirements;

39 (6) Personal services to be provided;

- 40 (7) Dietary services to be provided;
- 41 (8) Medical records;
- 42 (9) Social and recreational activities to be made
43 available;
- 44 (10) Pharmacy services;
- 45 (11) Nursing services;
- 46 (12) Medical services;
- 47 (13) Physical facility;
- 48 (14) Resident rights;
- 49 (15) Visitation privileges that:
- 50 (A) Permit immediate access to a resident, subject to the
51 resident's right to deny or withdraw consent at any time, by
52 immediate family or other relatives of the resident;
- 53 (B) Permit immediate access to a resident, subject to
54 reasonable restrictions and the resident's right to deny or
55 withdraw consent at any time, by others who are visiting
56 with the consent of the resident; and
- 57 (C) Permit access to other specific persons or classes of
58 persons consistent with state and federal law; and
- 59 (16) Admission, transfer and discharge rights.
- 60 (c) To ensure compliance with §29A-3-11(b)(3), the
61 secretary shall amend his or her legislative rule to exempt
62 federally certified Medicare and Medicaid nursing facilities
63 from provisions addressed in the federal regulations.
- 64 (d) The director shall permit the nonclinical instruction
65 portions of a nurse aide training program approved by the
66 Office of Health Facility Licensure and Certification to be
67 provided through distance learning technologies.

§16-5C-6. License required; application; fees; duration; renewal.

1 No person may establish, operate, maintain, offer, or
2 advertise a nursing home within this state unless and until
3 he or she obtains a valid license therefor as hereinafter
4 provided, which license remains unsuspended, unrevoked,
5 and unexpired. No public official or employee may place
6 any person in, or recommend that any person be placed in,
7 or directly or indirectly cause any person to be placed in,
8 any nursing home, as defined in §16-5C-2 of this code,
9 which is being operated without a valid license from the
10 secretary. The procedure for obtaining a license is as
11 follows:

12 (a) The applicant shall submit an application to the
13 director on a form to be prescribed by the secretary,
14 containing such information as may be necessary to show
15 that the applicant is in compliance with the standards for
16 nursing homes, as established by this article and the rules
17 lawfully promulgated hereunder. The application and any
18 exhibits thereto shall provide the following information:

19 (1) The name and address of the applicant;

20 (2) The name, address, and principal occupation:

21 (A) Of each person who, as a stockholder or otherwise,
22 has a proprietary interest of 10 percent or more in the
23 applicant;

24 (B) Of each officer and director of a corporate
25 applicant;

26 (C) Of each trustee and beneficiary of an applicant
27 which is a trust; and

28 (D) Where a corporation has a proprietary interest of 25
29 percent or more in an applicant, the name, address, and
30 principal occupation of each officer and director of the
31 corporation;

32 (3) The name and address of the owner of the premises
33 of the nursing home or proposed nursing home, if he or she
34 is a different person from the applicant, and in such case,
35 the name and address:

36 (A) Of each person who, as a stockholder or otherwise,
37 has a proprietary interest 10 percent or more in the owner;

38 (B) Of each officer and director of a corporate
39 applicant; and

40 (C) Of each trustee and applicant, the name, address,
41 and principal occupation of each officer and director of the
42 corporation;

43 (4) Where the applicant is the lessee or the assignee of
44 the nursing home or the premises of the proposed nursing
45 home, a signed copy of the lease and any assignment
46 thereof;

47 (5) The name and address of the nursing home or the
48 premises of the proposed nursing home;

49 (6) A description of the nursing home to be operated;

50 (7) The bed quota of the nursing home;

51 (8) An organizational plan for the nursing home
52 indicating the number of persons employed or to be
53 employed and the positions and duties of all employees;

54 (9) The name and address of the individual who is to
55 serve as administrator;

56 (10) Such evidence of compliance with applicable laws
57 and rules governing zoning, buildings, safety, fire
58 prevention, and sanitation as the secretary may require;

59 (11) A listing of other states in which the applicant
60 owns, operates, or manages a nursing home or long-term
61 care facility;

62 (12) Such additional information as the secretary may
63 require; and

64 (13) Assurances that the nursing home is in compliance
65 with the provisions of §16-20-1 *et seq.* of this code.

66 (b) Upon receipt and review of an application for
67 license made pursuant to §16-5C-6(a) of this code, and
68 inspection of the applicant nursing home pursuant to §16-
69 5C-9 and §16-5C-10 of this code, the secretary shall issue a
70 license if he or she finds:

71 (1) That an individual applicant, and every partner,
72 trustee, officer, director, and controlling person of an
73 applicant which is not an individual, is a person responsible
74 and suitable to operate or to direct or participate in the
75 operation of a nursing home by virtue of financial capacity,
76 appropriate business or professional experience, a record of
77 compliance with lawful orders of the department, if any, and
78 lack of revocation of a license during the previous five years
79 or consistent poor performance in other states;

80 (2) That the facility is under the supervision of an
81 administrator who is licensed pursuant to the provisions of
82 §30-25-1 *et seq.* of this code; and

83 (3) That the facility is in substantial compliance with
84 standards established pursuant to §16-5C-5 of this code, and
85 such other requirements for a license as may be established
86 by rule under this article.

87 Any license issued by the secretary shall state the
88 maximum bed capacity for which it is issued, the date the
89 license was issued, and the expiration date. Such licenses
90 shall be issued for a period not to exceed 15 months for
91 nursing homes: *Provided*, That any license in effect for
92 which timely application for renewal, together with
93 payment of the proper fee has been made to the secretary in
94 conformance with the provisions of this article and the rules

95 issued thereunder, and prior to the expiration date of the
96 license, shall continue in effect until:

97 (A) Six months following the expiration date of the
98 license; or

99 (B) The date of the revocation or suspension of the
100 license pursuant to the provisions of this article; or

101 (C) The date of issuance of a new license, whichever
102 date first occurs.

103 Each license shall be issued only for the premises and
104 persons named in the application and is not transferable or
105 assignable: *Provided*, That in the case of the transfer of
106 ownership of a facility with an unexpired license, the
107 application by the proposed new owner shall be filed with
108 the secretary no later than 30 days before the proposed date
109 of transfer. Upon receipt of proof of the transfer of
110 ownership, the application shall have the effect of a license
111 for three months. The secretary shall issue or deny a license
112 within three months of the receipt of the proof of the transfer
113 of ownership. Every license shall be posted in a conspicuous
114 place in the nursing home for which it is issued so as to be
115 accessible to and in plain view of all residents of and visitors
116 to the nursing home.

117 (c) A license is renewable, conditioned upon the
118 licensee filing timely application for the extension of the
119 term of the license accompanied by the fee, and contingent
120 upon evidence of compliance with the provisions of this
121 article and rules promulgated hereunder. Any application
122 for renewal of a license shall include a report by the licensee
123 in such form and containing such information as shall be
124 prescribed by the secretary, including a statement of any
125 changes in the name, address, management, or ownership
126 information on file with the secretary. All holders of facility
127 licenses as of the effective date of this article shall include,
128 in the first application for renewal filed thereafter, such

129 information as is required for initial applicants under the
130 provisions of §16-5C-6(a) of this code.

131 (d) In the case of an application for a renewal license,
132 if all requirements of §16-5C-5 of this code are not met, the
133 secretary may at his or her discretion issue a provisional
134 license, provided that care given in the nursing home is
135 adequate for resident needs and the nursing home has
136 demonstrated improvement and evidences potential for
137 substantial compliance within the term of the license:
138 *Provided*, That a provisional license may not be issued for
139 a period greater than six months, may not be renewed, and
140 may not be issued to any nursing home that is a poor
141 performer.

142 (e) A nonrefundable application fee in the amount of
143 \$200 for an original nursing home license shall be paid at
144 the time application is made for the license. Direct costs of
145 initial licensure inspections or inspections for changes in
146 licensed bed capacity shall be borne by the applicant and
147 shall be received by the secretary prior to the issuance of an
148 initial or amended license. The license fee for renewal of a
149 license shall be at the rate of \$15 per bed per year for nursing
150 homes, except the annual rate per bed may be assessed for
151 licenses issued for less than 15 months. Annually, the
152 secretary may adjust the licensure fees for inflation based
153 upon the increase in the consumer price index during the last
154 12 months. All such license fees shall be due and payable to
155 the secretary, annually, and in the manner set forth in the
156 rules promulgated hereunder. The fee and application shall
157 be submitted to the secretary who shall retain both the
158 application and fee pending final action on the application.
159 All fees received by the secretary under the provisions of
160 this article shall be deposited in accordance with §16-1-13
161 of this code.

§16-5C-7. Cost disclosure; surety for resident funds.

1 (a) Each nursing home shall disclose in writing to all
2 residents at the time of admission a complete and accurate

3 list of all costs which may be incurred by them; and shall
4 notify the residents 30 days in advance of changes in costs.
5 The nursing home shall make available copies of the list in
6 the nursing home's business office for inspection. Residents
7 may not be liable for any cost not so disclosed.

8 (b) If the nursing home handles any money for residents
9 within the facility, the licensee or his or her authorized
10 representative shall either: (1) Give a bond; or (2) obtain and
11 maintain commercial insurance with a company licensed in
12 this state in an amount consistent with this subsection and
13 with the surety as the secretary shall approve. The bond or
14 insurance shall be upon condition that the licensee shall hold
15 separately and in trust all residents' funds deposited with the
16 licensee; shall administer the funds on behalf of the resident
17 in the manner directed by the depositor; shall render a true
18 and complete account to the depositor and the secretary
19 when requested, and at least quarterly to the resident; and
20 upon termination of the deposit, shall account for all funds
21 received, expended, and held on hand. The licensee shall file
22 a bond or obtain insurance in a sum at least 1.25 times the
23 average amount of funds deposited with the nursing home
24 during the nursing home's previous fiscal year.

25 This insurance policy shall specifically designate the
26 resident as the beneficiary or payee reimbursement of lost
27 funds. Regardless of the type of coverage established by the
28 facility, the facility shall reimburse, within 30 days, the
29 resident for any losses directly and seek reimbursement
30 through the bond or insurance itself. Whenever the secretary
31 determines that the amount of any bond or insurance
32 required pursuant to this subsection is insufficient to
33 adequately protect the money of residents which is being
34 handled, or whenever the amount of any such bond or
35 insurance is impaired by any recovery against the bond or
36 insurance, the secretary may require the licensee to file an
37 additional bond or insurance in such amount as necessary to
38 adequately protect the money of residents being handled.

39 The provisions of this subsection do not apply if the
40 licensee handles less than \$35 per resident per month in the
41 aggregate. Nursing homes certified to accept payment by
42 Medicare and Medicaid must meet the requirements for
43 surety bonds as listed in the applicable federal regulations.

§16-5C-8. Investigation of complaints.

1 (a) The secretary shall establish rules for prompt
2 investigation of all complaints of alleged violations by
3 nursing homes of applicable requirements of state law or
4 rules, except for such complaints that the secretary
5 determines are willfully intended to harass a licensee or are
6 without any reasonable basis. Such procedures shall include
7 provisions for ensuring the confidentiality of the
8 complainant and for promptly informing the complainant and
9 the nursing home involved of the results of the
10 investigation.

11 (b) If, after its investigation, the secretary determines
12 that the complaint has merit, the secretary shall take
13 appropriate disciplinary action and shall advise any injured
14 party of the possibility of a civil remedy.

15 (1) A nursing home or licensee adversely affected by
16 an order or citation of a deficient practice issued pursuant to
17 this section may request the independent informal dispute
18 resolution process contained in §16-5C-12a of this code.

19 (2) No later than 20 working days following the last day
20 of a complaint investigation, the secretary shall transmit to
21 the nursing home a statement of deficiencies committed by
22 the facility. Notification of the availability of the
23 independent informal dispute resolution process and an
24 explanation of the independent informal dispute resolution
25 process shall be included in the transmittal.

26 (c) No nursing home may discharge or in any manner
27 discriminate against any resident, legal representative, or
28 employee for the reason that the resident, legal
29 representative, or employee has filed a complaint or

30 participated in any proceeding specified in this article.
31 Violation of this prohibition by any nursing home
32 constitutes ground for the suspension or revocation of the
33 license of the nursing home as provided in §16-5C-11 and
34 §16-5C-12 of this code. Any type of discriminatory
35 treatment of a resident, legal representative, or employee by
36 whom, or upon whose behalf, a complaint has been
37 submitted to the secretary, or any proceeding instituted
38 under this article, within 120 days of the filing of the
39 complaint or the institution of such action, shall raise a
40 rebuttable presumption that such action was taken by the
41 nursing home in retaliation for such complaint or action.

§16-5C-9. Inspections.

1 The secretary and any duly designated employee or
2 agent shall have the right to enter upon and into the premises
3 of any nursing home at any time for which a license has been
4 issued, for which an application for license has been filed
5 with the secretary, or which the secretary has reason to
6 believe is being operated or maintained as a nursing home
7 without a license. If entry is refused by the owner or person
8 in charge of the nursing home, the secretary may apply to
9 the circuit court of the county in which the nursing home is
10 located or the Circuit Court of Kanawha County for a
11 warrant authorizing inspection to conduct the following
12 inspections:

13 (1) An initial inspection prior to the issuance of a
14 license pursuant to §16-5C-6 of this code;

15 (2) A license inspection for a nursing home, which shall
16 be conducted at least once every 15 months, if the nursing
17 home has not applied for and received an exemption from
18 the requirement as provided for in this section;

19 (3) The secretary, by the secretary's authorized
20 employees or agents, shall conduct at least one inspection
21 prior to issuance of a license pursuant to §16-5C-6 of this
22 code, and shall conduct periodic unannounced inspections

23 thereafter, to determine compliance by the nursing home
24 with applicable rules promulgated thereunder. All facilities
25 shall comply with regulations of the State Fire Commission.
26 The State Fire Marshal, by his or her employees or
27 authorized agents, shall make all fire, safety, and like
28 inspections. The secretary may provide for such other
29 inspections as the secretary may deem necessary to carry out
30 the intent and purpose of this article. Any nursing home
31 aggrieved by a determination or assessment made pursuant
32 to this section, shall have the right to an administrative
33 appeal as set forth in §16-5C-12 of this code;

34 (4) A complaint inspection based on a complaint
35 received by the secretary. If, after investigation of a
36 complaint, the secretary determines that the complaint is
37 substantiated, the secretary may invoke any applicable
38 remedies available pursuant to §16-5C-11 of this code.

§16-5C-9a. Exemptions.

1 (a) The secretary may grant an exemption from a
2 license inspection if a nursing home was found to be in
3 substantial compliance with the provisions of this chapter at
4 its most recent inspection and there have been no
5 substantiated complaints thereafter. The secretary may not
6 grant more than one exemption in any two-year period.

7 (b) The secretary may grant an exemption to the extent
8 allowable by federal law from a standard survey, only if the
9 nursing home was found to be in substantial compliance
10 with certification participation requirements at its previous
11 standard inspection and there have been no substantiated
12 complaints thereafter.

13 (c) The secretary may grant an exemption from periodic
14 license inspections if a nursing home receives accreditation
15 by an accrediting body approved by the secretary and
16 submits a complete copy of the accreditation report. The
17 accrediting body shall identify quality of care measures that
18 assure continued quality care of residents. The secretary

19 may not grant more than one exemption in any two-year
20 period.

21 (d) If a complaint is substantiated, the secretary has the
22 authority to immediately remove the exemption.

**§16-5C-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 §16-5C-
2 8 and §16-5C-9 of this code shall be in writing and filed
3 with the secretary and shall list all deficiencies in the
4 nursing home's compliance with the provisions of this
5 article and the rules adopted hereunder.

6 (1) No later than 10 working days following the last day
7 of the inspection, the director shall transmit to the nursing
8 home a copy of such report and shall specify a time within
9 which the nursing home shall submit a plan for correction
10 of such deficiencies.

11 (2) Additionally, notification of the availability of the
12 independent informal dispute resolution process and an
13 explanation of the independent informal dispute resolution
14 process shall be included in the transmittal.

15 (3) A nursing home adversely affected by an order or
16 citation of a deficient practice issued pursuant to this section
17 may request the independent informal dispute resolution
18 process contained in §16-5C-12a of this code.

19 (4) The plan submitted by the nursing home shall be
20 approved, rejected, or modified by the director.

21 (5) The inspectors or the nursing home shall allow
22 audio taping of the exit conference with the expense to be
23 paid by the requesting party.

24 (b) With regard to a nursing home with deficiencies and
25 upon its failure to submit a plan of correction which is

26 approved by the director, or to correct any deficiency within
27 the time specified in an approved plan of correction, the
28 secretary may assess civil penalties as hereinafter provided
29 or may initiate any other legal or disciplinary action as
30 provided by this article: *Provided*, That any action by the
31 secretary shall be stayed until federal proceedings arising
32 from the same deficiencies are concluded.

33 (c) Nothing in this section may be construed to prohibit
34 the secretary from enforcing a rule, administratively or in
35 court, without first affording formal opportunity to make
36 correction under this section, where, in the opinion of the
37 secretary, the violation of the rule jeopardizes the health or
38 safety of residents, or where the violation of the rule is the
39 second or subsequent such violation occurring during a
40 period of 12 full months.

41 (d) Civil penalties assessed against nursing home shall
42 not be less than \$50 nor more than \$8,000: *Provided*, That
43 the secretary may not assess a penalty under state licensure
44 for the same deficiency or violation cited under federal law
45 and may not assess a penalty against a nursing home if the
46 nursing home corrects the deficiency within 20 days of
47 receipt of written notice of the deficiency unless it is a repeat
48 deficiency or the nursing home is a poor performer.

49 (e) In determining whether to assess a penalty, and the
50 amount of penalty to be assessed, the secretary shall
51 consider:

52 (1) How serious the noncompliance is in relation to
53 direct resident care and safety;

54 (2) The number of residents the noncompliance is likely
55 to affect;

56 (3) Whether the noncompliance was noncompliance
57 during a previous inspection;

58 (4) The opportunity the nursing home has had to correct
59 the noncompliance; and

60 (5) Any additional factors that may be relevant.

61 (f) The range of civil penalties shall be as follows:

62 (1) For a deficiency which presents immediate jeopardy
63 to the health, safety, or welfare of one or more residents, the
64 secretary may impose a civil penalty of not less than \$3,000
65 nor more than \$8,000;

66 (2) For a deficiency which actually harms one or more
67 residents, the secretary may impose a civil penalty of not
68 less than \$1,000 nor more than \$3,000;

69 (3) For a deficiency which has the potential to harm one
70 or more residents, the secretary may impose a civil penalty
71 of not less than \$50 nor more than \$1,000;

72 (4) For a repeated deficiency, the secretary may impose
73 a civil penalty of up to 150 percent of the penalties provided
74 in §16-5C-10(f)(1) through §16-5C-10(f)(3) of this code;
75 and

76 (5) If no plan of correction is submitted as established
77 in this rule, a penalty may be assessed in the amount of \$100
78 a day unless a reasonable explanation has been provided and
79 accepted by the secretary.

80 (g) The secretary shall assess a civil penalty of not more
81 than \$1,000 against an individual who willfully and
82 knowingly certifies a material and false statement in a
83 resident assessment. Such penalty shall be imposed with
84 respect to each such resident assessment. The secretary shall
85 impose a civil penalty of not more than \$5,000 against an
86 individual who willfully and knowingly causes another
87 individual to certify a material and false statement in a
88 resident assessment. Such penalty shall be imposed with
89 respect to each such resident assessment.

90 (h) The secretary shall assess a civil penalty of not more
91 than \$2,000 against any individual who notifies, or causes
92 to be notified, a nursing home of the time or date on which

93 an inspection is scheduled to be conducted under this article
94 or under 42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*

95 (i) If the secretary assesses a penalty under this section,
96 the secretary shall cause delivery of notice of such penalty
97 by personal service or by certified mail. Said notice shall
98 state the amount of the penalty, the action or circumstance
99 for which the penalty is assessed, the requirement that the
100 action or circumstance violates, and the basis upon which
101 the secretary assessed the penalty and selected the amount
102 of the penalty.

103 (j) The secretary shall, in a civil judicial proceeding,
104 recover any unpaid assessment which has not been
105 contested under §16-5C-12 of this code within 30 days of
106 receipt of notice of such assessment, or which has been
107 affirmed under the provisions of that section and not
108 appealed within 30 days of receipt of the Board of Review's
109 final order, or which has been affirmed on judicial review,
110 as provided in §16-5C-13 of this code. All money collected
111 by assessments of civil penalties or interest shall be paid into
112 a special resident benefit account and shall be applied by the
113 secretary for:

114 (1) The protection of the health or property of facility
115 residents;

116 (2) Long-term care educational activities;

117 (3) The costs arising from the relocation of residents to
118 other nursing homes when no other funds are available; and

119 (4) In an emergency situation in which there are no
120 other funds available, the operation of a facility pending
121 correction of deficiencies or closure.

122 (k) The opportunity for a hearing on an action taken
123 under this section shall be as provided in §16-5C-12 of this
124 code.

§16-5C-11. Ban on admissions; closure; transfer of residents; appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements.

1 (a) The secretary may reduce the bed quota of the
2 nursing home or impose a ban on new admissions, where he
3 or she finds upon inspection of the nursing home that the
4 licensee is not providing adequate care under the nursing
5 home's existing bed quota, and that reduction in quota or
6 ban on new admissions, or both, would place the licensee in
7 a position to render adequate care. A reduction in bed quota
8 or a ban on new admissions, or both, may remain in effect
9 until the nursing home is determined by the secretary to be
10 in substantial compliance with the rules. In addition, the
11 secretary shall determine that the facility has the
12 management capability to ensure continued substantial
13 compliance with all applicable requirements. The secretary
14 shall evaluate the continuation of the admissions ban or
15 reduction in bed quota on a continuing basis, and may make
16 a partial lifting of the admissions ban or reduction in bed
17 quota consistent with the purposes of this section. If the
18 residents of the facility are in immediate jeopardy of their
19 health, safety, welfare, or rights, the secretary may seek an
20 order to transfer residents out of the nursing home as
21 provided for in §16-5C-11(d) of this code. Any notice to a
22 licensee of reduction in bed quota or a ban on new
23 admissions shall include the terms of such order, the reasons
24 therefor, and a date set for compliance.

25 (b) The secretary may deny, limit, suspend, or revoke a
26 license issued under this article or take other action as set
27 forth in this section, if he or she finds upon inspection that
28 there has been a substantial failure to comply with the
29 provisions of this article or the standards or rules
30 promulgated pursuant hereto.

31 (c) The suspension, expiration, forfeiture, or
32 cancellation by operation of law or order of the secretary of
33 a license issued by the director, or the withdrawal of an

34 application for a license after it has been filed with the
35 secretary, may not deprive the secretary of the secretary's
36 authority to institute or continue a disciplinary proceeding,
37 or a proceeding for the denial of a license application,
38 against the licensee or applicant upon any ground provided
39 by law or to enter an order denying the license application,
40 suspending, or revoking the license, or otherwise taking
41 disciplinary action on any such ground.

42 (d) In addition to other remedies provided in this article,
43 upon petition from the secretary, a circuit court in the county
44 in which a facility is located, or in Kanawha County if
45 emergency circumstances occur, may determine that a
46 nursing home's deficiencies under this article, or under 42
47 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*, if applicable,
48 constitute an emergency immediately jeopardizing the
49 health, safety, welfare, or rights of its residents, and issue an
50 order to:

51 (1) Close the nursing home;

52 (2) Transfer residents in the nursing home to other
53 nursing homes; or

54 (3) Appoint temporary management to oversee the
55 operation of the facility and to assure the health, safety,
56 welfare, and rights of the nursing home's residents, where
57 there is a need for temporary management while:

58 (A) There is an orderly closure of the facility; or

59 (B) Improvements are made in order to bring the
60 nursing home into compliance with all the applicable
61 requirements of this article and, if applicable, 42 U.S.C.A.
62 §§ 1395 *et seq.* and 1396 *et seq.*

63 If the secretary petitions a circuit court for the closure
64 of a nursing home, the transfer of residents, or the
65 appointment of temporary management, the circuit court
66 shall hold a hearing no later than seven days thereafter, at
67 which time the secretary and the licensee or operator of the

68 nursing home may participate and present evidence. The
69 burden of proof is on the secretary.

70 A circuit court may divest the licensee or operator of
71 possession and control of a nursing home in favor of
72 temporary management. The temporary management shall
73 be responsible to the court and shall have such powers and
74 duties as the court may grant to direct all acts necessary or
75 appropriate to conserve the property and promote the health,
76 safety, welfare, and rights of the residents of the nursing
77 home, including, but not limited to, the replacement of
78 management and staff, the hiring of consultants, the making
79 of any necessary expenditures to close the nursing home, or
80 to repair or improve the nursing home so as to return it to
81 compliance with applicable requirements, and the power to
82 receive, conserve, and expend funds, including Medicare,
83 Medicaid, and other payments on behalf of the licensee or
84 operator of the nursing home. Priority shall be given to
85 expenditures for current direct resident care or the transfer
86 of residents. Expenditures other than normal operating
87 expenses totaling more than \$20,000 shall be approved by
88 the circuit court.

89 The person charged with temporary management shall
90 be an officer of the court, is not liable for conditions at the
91 nursing home which existed or originated prior to his or her
92 appointment, and is not personally liable, except for his or
93 her own gross negligence and intentional acts which result
94 in injuries to persons or damage to property at the nursing
95 home during his or her temporary management. All
96 compensation and per diem costs of the temporary manager
97 shall be paid by the nursing home. The costs for the
98 temporary manager for any 30-day period may not exceed
99 the 75th percentile of the allowable administrator's salary
100 as reported on the most recent cost report for the nursing
101 home's peer group as determined by the secretary. The
102 temporary manager shall bill the nursing home for
103 compensation and per diem costs. Within 15 days of receipt
104 of the bill, the nursing home shall pay the bill or contest the

105 costs for which it was billed to the court. Such costs shall be
106 recoverable through recoupment from future
107 reimbursement from the state Medicaid agency in the same
108 fashion as a benefits overpayment.

109 The temporary management shall promptly employ at
110 least one person who is licensed as a nursing home
111 administrator in West Virginia.

112 A temporary management established for the purpose of
113 making improvements in order to bring a nursing home into
114 compliance with applicable requirements may not be
115 terminated until the court has determined that the nursing
116 home has the management capability to ensure continued
117 compliance with all applicable requirements, except if the
118 court has not made such determination within six months of
119 the establishment of the temporary management, the
120 temporary management terminates by operation of law at
121 that time, and the nursing home shall be closed. After the
122 termination of the temporary management, the person who
123 was responsible for the temporary management shall make
124 an accounting to the court, and after deducting from receipts
125 the costs of the temporary management, expenditures, civil
126 penalties, and interest no longer subject to appeal, in that
127 order, any excess shall be paid to the licensee or operator of
128 the nursing home.

129 (e) The assessments for penalties and for costs of actions
130 taken under this article shall have interest assessed at five
131 percent per annum beginning 30 days after receipt of notice
132 of such assessment or 30 days after receipt of the Board of
133 Review's final order following a hearing, whichever is later.
134 All such assessments against a nursing home that are unpaid
135 shall be added to the nursing home's licensure fee and may
136 be filed as a lien against the property of the licensee or
137 operator of the nursing home. Funds received from such
138 assessments shall be deposited as funds received in §16-5C-
139 10 of this code.

140 (f) The opportunity for a hearing on an action by the
141 secretary taken under this section shall be as provided in
142 §16-5C-12 of this code.

§16-5C-12. License denial, limitation, suspension, or revocation.

1 (a) The secretary shall deny, limit, suspend, or revoke
2 a license issued if the provisions of this article or if the rules
3 promulgated pursuant to this article are violated. The
4 secretary may revoke a nursing home's license and prohibit
5 all physicians and licensed disciplines associated with that
6 nursing home from practicing at the nursing home location
7 based upon an annual, periodic, complaint, verification, or
8 other inspection and evaluation.

9 (b) Before any such license is denied, limited,
10 suspended, or revoked, however, written notice shall be
11 given to the licensee, stating the grounds for such denial,
12 limitation, suspension, or revocation.

13 (c) An applicant or licensee has 10 working days after
14 receipt of the order denying, limiting, suspending, or
15 revoking a license to request a formal hearing contesting the
16 denial, limitation, suspension, or revocation of a license
17 under this article. If a formal hearing is requested, the
18 applicant or licensee and the secretary shall proceed in
19 accordance with the provisions of §29A-5-1 *et seq.* of this
20 code.

21 (d) If a license is denied or revoked as herein provided,
22 a new application for license shall be considered by the
23 secretary if, when, and after the conditions upon which the
24 denial or revocation was based have been corrected and
25 evidence of this fact has been furnished. A new license shall
26 then be granted after proper inspection, if applicable, has
27 been made and all provisions of this article and rules
28 promulgated pursuant to this article have been satisfied.

29 (e) If the license of a nursing home is denied, limited,
30 suspended, or revoked, the administrator or owner or lessor
31 of the nursing home property shall cease to operate the

32 facility as a nursing home as of the effective date of the
33 denial, limitation, suspension, or revocation. The owner or
34 lessor of the nursing home property is responsible for
35 removing all signs and symbols identifying the premises as
36 a nursing home within 30 days. Any administrative appeal
37 of such denial, limitation, suspension, or revocation shall
38 not stay the denial, limitation, suspension, or revocation.

39 (f) Upon the effective date of the denial, limitation,
40 suspension, or revocation, the administrator of the nursing
41 home shall advise the secretary and the Board of Pharmacy
42 of the disposition of all medications located on the premises.
43 The disposition is subject to the supervision and approval of
44 the secretary. Medications that are purchased or held by a
45 nursing home that is not licensed may be deemed
46 adulterated.

47 (g) The period of suspension for the license of a nursing
48 home shall be prescribed by the secretary but may not
49 exceed one year.

§16-5C-12a. Independent informal dispute resolution.

1 (a) A facility or licensee adversely affected by an order
2 or citation of a deficient practice issued pursuant to this
3 article or by a citation issued for a deficient practice
4 pursuant to federal law may request the independent
5 informal dispute resolution process. A facility may contest
6 a cited deficiency as contrary to law or unwarranted by the
7 facts or both.

8 (b) The secretary shall contract with up to three
9 independent review organizations to conduct an
10 independent informal dispute resolution process for
11 facilities. The independent review organization shall be
12 accredited by the Utilization Review Accreditation
13 Commission.

14 (c) The independent informal dispute resolution process
15 is not a formal evidentiary proceeding and utilizing the

16 independent informal dispute resolution process does not
17 waive the facility's right to a formal hearing.

18 (d) The independent informal dispute resolution
19 process consists of the following:

20 (1) No later than 10 working days following the last day
21 of the survey or inspection, or no later than 20 working days
22 following the last day of a complaint investigation, the
23 secretary shall transmit to the facility a statement of
24 deficiencies committed by the facility. Notification of the
25 availability of the independent informal dispute resolution
26 process and an explanation of the independent informal
27 dispute resolution process shall be included in the
28 transmittal;

29 (2) When the facility returns its plan to correct the cited
30 deficiencies to the secretary, the facility may request in
31 writing the independent informal dispute resolution process
32 to refute the cited deficiencies;

33 (3) Within five working days of receipt of the written
34 request for the independent informal dispute resolution
35 process made by a facility, the secretary shall refer the
36 request to an independent review organization from the list
37 of certified independent review organizations approved by
38 the state. The secretary shall vary the selection of the
39 independent review organization on a rotating basis. The
40 secretary shall acknowledge in writing to the facility that the
41 request for independent review has been received and
42 forwarded to an independent review organization for
43 review. The notice shall include the name and address of the
44 independent review organization.

45 (4) Within 10 working days of receipt of the written
46 request for the independent informal dispute resolution
47 process made by a facility, the independent review
48 organization shall hold an independent informal dispute
49 resolution conference unless additional time is requested by
50 the facility. Before the independent informal dispute

51 resolution conference, the facility may submit additional
52 information.

53 (5) The facility may not be accompanied by counsel
54 during the independent informal dispute resolution
55 conference. The manner in which the independent informal
56 dispute resolution conference is held is at the discretion of
57 the facility, but is limited to:

58 (A) A desk review of written information submitted by
59 the facility;

60 (B) A telephonic conference; or

61 (C) A face-to-face conference held at the facility or a
62 mutually agreed upon location.

63 (6) If the independent review organization determines
64 the need for additional information, clarification, or
65 discussion after conclusion of the independent informal
66 dispute resolution conference, the director and the facility
67 shall present the requested information.

68 (7) Within 10 calendar days of the independent
69 informal dispute resolution conference, the independent
70 review organization shall provide and make a
71 determination, based upon the facts and findings presented,
72 and shall transmit a written decision containing the rationale
73 for its determination to the facility and the director.

74 (8) If the secretary disagrees with the determination, the
75 secretary may reject the determination made by the
76 independent review organization and shall issue an order
77 setting forth the rationale for the reversal of the independent
78 review organization's decision to the facility within 10
79 calendar days of receiving the independent review
80 organization's determination.

81 (9) If the secretary accepts the determination, the
82 secretary shall issue an order affirming the independent
83 review organization's determination within 10 calendar

84 days of receiving the independent review organization's
85 determination.

86 (10) If the independent review organization determines
87 that the original statement of deficiencies should be changed
88 as a result of the independent informal dispute resolution
89 process and the secretary accepts the determination, the
90 secretary shall transmit a revised statement of deficiencies
91 to the facility within 10 calendar days of the independent
92 review organization's determination.

93 (11) Within 10 calendar days of receipt of the
94 secretary's order and the revised statement of deficiencies,
95 the facility shall submit a revised plan to correct any
96 remaining deficiencies to the secretary.

97 (e) A facility has 10 calendar days after receipt of the
98 secretary's order to request a formal hearing for any
99 deficient practice cited under this article. If the facility
100 requests a formal hearing, the secretary and the facility shall
101 proceed in accordance with the provisions of §29A-5-1 *et*
102 *seq.* of this code.

103 (f) Under the following circumstances, the facility is
104 responsible for certain costs of the independent informal
105 dispute resolution review, which shall be remitted to the
106 secretary within 60 days of the informal hearing order:

107 (1) If the facility requests a face-to-face conference, the
108 facility shall pay any costs incurred by the independent
109 review organization that exceed the cost of a telephonic
110 conference, regardless of which part ultimately prevails.

111 (2) If the independent review organization's decision
112 supports the originally written contested deficiency or
113 adverse action taken by the director, the facility shall
114 reimburse the secretary for the cost charged by the
115 independent review organization. If the independent review
116 organization's decision supports some of the originally
117 written contested deficiencies, but not all of them, the

118 facility shall reimburse the secretary for the cost charged by
119 the independent review organization on a pro rata basis.

§16-5C-13. Judicial Review.

1 (a) Any applicant or licensee who is dissatisfied with
2 the decision of the formal hearing as a result of the hearing
3 provided for in §16-5C-12 of this code may, within 30 days
4 after receiving notice of the decision, petition the Circuit
5 Court of Kanawha County, in term or in vacation, for
6 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 secretary may appeal from the court's decision
10 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.

§16-5C-14. Legal counsel and services of the department.

1 (a) Legal counsel and services for the department in all
2 administrative hearings may be provided by the Attorney
3 General or a staff attorney and all proceedings in any circuit
4 court and the Supreme Court of Appeals shall be provided
5 by the Attorney General, or his or her assistants, or an
6 attorney employed by the department in proceedings in any
7 circuit court, by the prosecuting attorney of the county as
8 well, all without additional compensation.

9 (b) The Governor may appoint counsel for the
10 department, who shall perform such legal services in
11 representing the interests of residents in nursing homes in
12 matters under the jurisdiction of the secretary as the
13 Governor shall direct. It shall be the duty of such counsel to
14 appear for the residents in all cases where they are not
15 represented by counsel. The compensation of such counsel
16 shall be fixed by the Governor.

§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

1 (a) Whoever establishes, maintains, or is engaged in
2 establishing or maintaining a nursing home without a
3 license granted under §16-5C-6, or who prevents, interferes
4 with or impedes in any way the lawful enforcement of this
5 article is guilty of a misdemeanor and, upon conviction
6 thereof, shall be punished for the first offense by a fine of
7 not more than \$100, or by confinement in jail for a period
8 of not more than 90 days, or by both fine and confinement,
9 at the discretion of the court. For each subsequent offense,
10 the fine may be increased to not more than \$250, with
11 confinement in jail for a period of not more than 90 days, or
12 by both fine and confinement, at the discretion of the court.
13 Each day of a continuing violation after conviction is
14 considered a separate offense.

15 (b) The secretary may in his or her discretion bring an
16 action to enforce compliance with this article or any rule or
17 order hereunder whenever it appears to the secretary that
18 any person has engaged in, or is engaging in, an act or
19 practice in violation of this article or any rule or order
20 hereunder, or whenever it appears to the secretary that any
21 person has aided, abetted or caused, or is aiding, abetting or
22 causing, such an act or practice. Upon application by the
23 secretary, the circuit court of the county in which the
24 conduct has occurred or is occurring, or if emergency
25 circumstances occur the circuit court of Kanawha County,
26 has jurisdiction to grant without bond a permanent or
27 temporary injunction, decree or restraining order.

28 Whenever the secretary has refused to grant or renew a
29 license, or has revoked a license required by law to operate
30 or conduct a nursing home, or has ordered a person to refrain
31 from conduct violating the rules of the secretary, and the
32 person has appealed the action of the secretary, the court
33 may, during pendency of the appeal, issue a restraining
34 order or injunction upon proof that the operation of the
35 nursing home or its failure to comply with the order of the

36 secretary adversely affects the well being or safety of the
37 residents of the nursing home. Should a person who is
38 refused a license or the renewal of a license to operate or
39 conduct a nursing home or whose license to operate is
40 revoked or who has been ordered to refrain from conduct or
41 activity which violates the rules of the secretary fails to
42 appeal or should the appeal be decided favorably to the
43 secretary, then the court shall issue a permanent injunction
44 upon proof that the person is operating or conducting a
45 nursing home without a license as required by law, or has
46 continued to violate the rules of the secretary.

47 (c) Any nursing home that deprives a resident of any
48 right or benefit created or established for the well-being of
49 this resident by the terms of any contract, by any state statute
50 or rule, or by any applicable federal statute or regulation,
51 shall be liable to the resident for injuries suffered as a result
52 of such deprivation. Upon a finding that a resident has been
53 deprived of such a right or benefit, and that the resident has
54 been injured as a result of such deprivation, and unless there
55 is a finding that the nursing home exercised all care
56 reasonably necessary to prevent and limit the deprivation
57 and injury to the resident, compensatory damages shall be
58 assessed in an amount sufficient to compensate the resident
59 for such injury. In addition, where the deprivation of the
60 right or benefit is found to have been willful or in reckless
61 disregard of the lawful rights of the resident, punitive
62 damages may be assessed. A resident may also maintain an
63 action pursuant to this section for any other type of relief,
64 including injunctive and declaratory relief, permitted by
65 law. Exhaustion of any available administrative remedies is
66 not required prior to commencement of suit under this
67 subsection.

68 (d) The amount of damages recovered by a resident, in
69 an action brought pursuant to this section, is exempt for
70 purposes of determining initial or continuing eligibility for
71 medical assistance under §9-4-1 *et seq.* of this code, and
72 may neither be taken into consideration, nor required to be

73 applied toward the payment or part payment of the cost of
74 medical care or services available under that article.

75 (e) Any waiver by a resident or his or her legal
76 representative of the right to commence an action under this
77 section, whether oral or in writing, is void as contrary to
78 public policy.

79 (f) The penalties and remedies provided in this section
80 are cumulative and are in addition to all other penalties and
81 remedies provided by law.

82 (g) Nothing in this section or any other section of the
83 code shall limit the protections afforded nursing homes or
84 their health care providers under §55-7b-1 *et seq.* of this
85 code. Nursing homes and their health care providers shall
86 be treated in the same manner as any other health care
87 facility or health care provider under §55-7b-1 *et seq.* of this
88 code. The terms “health care facility” and “health care
89 provider” as used in this subsection shall have the same
90 meaning as set forth in §55-7b-2(f) and (g) of this code.

91 (h) The proper construction of this section and the
92 limitations and provisions of §55-7b-1 *et seq.* of this code
93 shall be determined by principles of statutory construction.

§16-5C-16. Availability of reports and records.

1 [Repealed.]

§16-5C-17. Licenses and rules in force.

1 [Repealed.]

§16-5C-18. Separate accounts for residents’ personal funds; consent for use; records; penalties.

1 (a) Each nursing home subject to the provisions of this
2 article shall hold in a separate account and in trust each
3 resident’s personal funds deposited with the nursing home.

4 (b) No person may use or cause to be used for any
5 purpose the personal funds of any resident admitted to any
6 such nursing home unless consent for the use thereof has
7 been obtained from the resident or from a committee or
8 guardian or relative.

9 (c) Each nursing home shall maintain a true and
10 complete record of all receipts for any disbursements from
11 the personal funds account of each resident in the nursing
12 home, including the purpose and payee of each
13 disbursement, and shall render a true account of such record
14 to the resident or his or her representative upon demand and
15 upon termination of the resident's stay in the nursing home.

16 (d) Any person or corporation who violates any
17 subsection of this section is guilty of a misdemeanor and,
18 upon conviction thereof, shall be fined not more than
19 \$1,000, or imprisoned in jail not more than one year, or both
20 fined and imprisoned.

21 (e) Reports provided to review organizations are
22 confidential unless inaccessibility of information interferes
23 with the secretary's ability to perform his or her oversight
24 function as mandated by federal regulations and this section.

25 (f) Notwithstanding §16-5C-18(b) of this code or any
26 other provision of this code, upon the death of a resident,
27 any funds remaining in his or her personal account shall be
28 made payable to the person or probate jurisdiction
29 administering the estate of said resident: *Provided*, That if
30 after 30 days there has been no qualification over the
31 decedent resident's estate, those funds are presumed
32 abandoned and are reportable to the State Treasurer
33 pursuant to the West Virginia Uniform Unclaimed Property
34 Act, §36-8-1 *et seq.* of this code.

§16-5C-20. Hospice palliative care required to be offered.

1 (a) When the health status of a nursing home facility
2 resident declines to the state of terminal illness or when the

3 resident receives a physician's order for "comfort measures
4 only", the facility shall notify the resident with information
5 about the option of receiving hospice palliative care. If a
6 nursing home resident is incapacitated, the facility shall also
7 notify any person who has been given the authority of a
8 guardian, a medical power of attorney, or health care
9 surrogate over the resident, information stating that the
10 resident has the option of receiving hospice palliative care.

11 (b) The facility shall document that it has notified the
12 resident, and any person who has been given a medical
13 power of attorney or health care surrogate over the resident,
14 information about the option of hospice palliative care and
15 maintain the documentation so that the secretary may
16 inspect the documentation, to verify the facility has
17 complied with this section.

§16-5C-21. Employment restrictions.

1 All personnel of a nursing home by virtue of ownership,
2 employment, engagement, or agreement with a provider or
3 contractor shall be subject to the provisions of the West
4 Virginia Clearance for Access: Registry and Employment
5 Screening Act, §16-49-1 *et seq.* of this code and the rules
6 promulgated pursuant thereto.

§16-5C-22. Jury trial waiver to be a separate document.

1 (a) Every written agreement containing a waiver of a
2 right to a trial by jury that is entered into between a nursing
3 home and a person for the nursing care of a resident, must
4 have as a separate and stand alone document any waiver of
5 a right to a trial by jury.

6 (b) Nothing in this section may be construed to require
7 a court of competent jurisdiction to determine that the entire
8 agreement or any portion thereof is enforceable,
9 unenforceable, conscionable, or unconscionable.

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CHAPTER 217

**(Com. Sub. for H. B. 2612 - By Delegates Hill, Wilson,
Howell, Rowan, Fleischauer and Walker)**

[Passed February 23, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 6, 2019.]

AN ACT to amend and reenact §16-1-9c of the Code of West Virginia, 1931, as amended, to authorize that the Secretary of the Department of Health and Human Resources to propose rules related to source water protection plans; and staggering the timeframes of source water protection plan reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9c. Required update or completion of source water protection plans.

1 (a) An existing public water utility that draws and treats
2 water from a surface water supply source or a surface water
3 influenced groundwater supply source shall submit to the
4 commissioner an updated or completed source water
5 protection plan for each of its public water system plants
6 with such intakes to protect its public water supplies from
7 contamination. Every effort shall be made to inform and
8 engage the public, local governments, local emergency
9 planners, local health departments, and affected residents at
10 all levels of the development of the protection plan.

11 (b) The completed or updated plan for each affected
12 plant, at a minimum, shall include the following:

13 (1) A contingency plan that documents each public
14 water utility's planned response to contamination of its

15 public surface water supply source or its public surface
16 water influenced groundwater supply source;

17 (2) An examination and analysis of the public water
18 system's ability to isolate or divert contaminated waters
19 from its surface water intake or groundwater supply and the
20 amount of raw water storage capacity for the public water
21 system's plant;

22 (3) An examination and analysis of the public water
23 system's existing ability to switch to an alternative water
24 source or intake in the event of contamination of its primary
25 water source;

26 (4) An analysis and examination of the public water
27 system's existing ability to close its water intake in the event
28 the system is advised that its primary water source has
29 become contaminated due to a spill or release into a stream
30 and the duration of time it can keep that water intake closed
31 without creating a public health emergency;

32 (5) The following operational information for each plant
33 receiving water supplies from a surface water source:

34 (A) The average number of hours the plant operates
35 each day, and the maximum and minimum number of hours
36 of operation in one day at that plant during the past year;
37 and

38 (B) The average quantities of water treated and
39 produced by the plant per day, and the maximum and
40 minimum quantities of water treated and produced at that
41 plant in one day during the past year;

42 (6) An analysis and examination of the public water
43 system's existing available storage capacity on its system,
44 how its available storage capacity compares to the public
45 water system's normal daily usage and whether the public
46 water system's existing available storage capacity can be
47 effectively utilized to minimize the threat of contamination
48 to its system;

49 (7) The calculated level of unaccounted for water
50 experienced by the public water system for each surface
51 water intake, determined by comparing the measured
52 quantities of water which are actually received and used by
53 customers served by that water plant to the total quantities
54 of water treated at the water plant over the past year. If the
55 calculated ratio of those two figures is less than 85 percent,
56 the public water system is to describe all of the measures it
57 is actively taking to reduce the level of water loss
58 experienced on its system;

59 (8) A list of the potential sources of significant
60 contamination contained within the zone of critical concern
61 as provided by the Department of Environmental
62 Protection, the Bureau for Public Health and the Division of
63 Homeland Security and Emergency Management. The exact
64 location of the contaminants within the zone of critical
65 concern is not subject to public disclosure in response to a
66 Freedom of Information Act request under §29B-1-1 *et seq.*
67 of this code. However, the location, characteristics and
68 approximate quantities of potential sources of significant
69 contamination within the zone of critical concern shall be
70 made known to one or more designees of the public water
71 utility, and shall be maintained in a confidential manner by
72 the public water utility. Disclosure is permitted on any
73 location, characteristics and approximate quantities of
74 potential sources of significant contamination within the
75 zone of critical concern to the extent they are in the public
76 domain through a state or federal agency. In the event of a
77 chemical spill, release or related emergency, information
78 pertaining to any spill or release of contaminant shall be
79 immediately disseminated to any emergency responders
80 responding to the site of a spill or release, and the general
81 public shall be promptly notified in the event of a chemical
82 spill, release or related emergency;

83 (9) If the public water utility's water supply plant is
84 served by a single-source intake to a surface water source of
85 supply or a surface water influenced source of supply, the

86 submitted plan shall also include an examination and
87 analysis of the technical and economic feasibility of each of
88 the following options to provide continued safe and reliable
89 public water service in the event its primary source of
90 supply is detrimentally affected by contamination, release,
91 spill event or other reason:

92 (A) Constructing or establishing a secondary or backup
93 intake which would draw water supplies from a
94 substantially different location or water source;

95 (B) Constructing additional raw water storage capacity
96 or treated water storage capacity or both, to provide at least
97 two days of system storage, based on the plant's maximum
98 level of production experienced within the past year;

99 (C) Creating or constructing interconnections between
100 the public water system with other plants on the public water
101 utility system or another public water system, to allow the
102 public water utility to receive its water from a different
103 source of supply during a period its primary water supply
104 becomes unavailable or unreliable due to contamination,
105 release, spill event or other circumstance;

106 (D) Any other alternative which is available to the
107 public water utility to secure safe and reliable alternative
108 supplies during a period its primary source of supply is
109 unavailable or negatively impacted for an extended period;
110 and

111 (E) If one or more alternatives set forth in paragraphs
112 (A) through (D), inclusive, of this subdivision is determined
113 to be technologically or economically feasible, the public
114 water utility shall submit an analysis of the comparative
115 costs, risks and benefits of implementing each of the
116 described alternatives;

117 (10) A management plan that identifies specific
118 activities that will be pursued by the public water utility, in
119 cooperation and in concert with the Bureau for Public

120 Health, local health departments, local emergency
121 responders, local emergency planning committee, and other
122 state, county, or local agencies and organizations to protect
123 its source water supply from contamination, including, but
124 not limited to, notification to and coordination with state
125 and local government agencies whenever the use of its water
126 supply is inadvisable or impaired, to conduct periodic
127 surveys of the system, the adoption of best management
128 practices, the purchase of property or development rights,
129 conducting public education or the adoption of other
130 management techniques recommended by the
131 commissioner or included in the source water protection
132 plan;

133 (11) A communications plan that documents the manner
134 in which the public water utility, working in concert with
135 state and local emergency response agencies, shall notify
136 the local health agencies and the public of the initial spill or
137 contamination event and provide updated information
138 related to any contamination or impairment of the source
139 water supply or the system's drinking water supply, with an
140 initial notification to the public to occur, in any event, no
141 later than 30 minutes after the public water system becomes
142 aware of the spill, release or potential contamination of the
143 public water system;

144 (12) A complete and comprehensive list of the potential
145 sources of significant contamination contained within the
146 zone of critical concern, based upon information which is
147 directly provided or can otherwise be requested and
148 obtained from the Department of Environmental Protection,
149 the Bureau for Public Health, the Division of Homeland
150 Security, and Emergency Management and other resources;
151 and

152 (13) An examination of the technical and economic
153 feasibility of implementing an early warning monitoring
154 system.

155 (c) A public water utility's public water system with a
156 primary surface water source of supply or a surface water
157 influenced groundwater source of supply shall submit, prior
158 to the commencement of its operations, a source water
159 protection plan satisfying the requirements of subsection (b)
160 of this section.

161 (d) The commissioner shall review a plan submitted
162 pursuant to this section and provide a copy to the Secretary
163 of the Department of Environmental Protection. Thereafter,
164 within 180 days of receiving a plan for approval, the
165 commissioner may approve, reject, or modify the plan as
166 may be necessary and reasonable to satisfy the purposes of
167 this article. The commissioner shall consult with the local
168 public health officer and conduct at least one public hearing
169 when reviewing the plan. Failure by a public water system
170 to comply with a plan approved pursuant to this section is a
171 violation of this article.

172 (e) The commissioner may request a public water utility
173 to conduct one or more studies to determine the actual risk
174 and consequences related to any potential source of
175 significant contamination identified by the plan, or as
176 otherwise made known to the commissioner.

177 (f) Any public water utility required to file a complete
178 or updated plan in accordance with the provisions of this
179 section shall submit an updated source water protection plan
180 at least every three years or when there is a substantial
181 change in the potential sources of significant contamination
182 within the identified zone of critical concern.

183 (g) The commissioner's authority in reviewing and
184 monitoring compliance with a source water protection plan
185 may be transferred by the bureau to a nationally accredited
186 local board of public health.

187 (h) The secretary is authorized to propose legislative
188 rules for promulgation pursuant to §29A-3-1 *et seq.* of this
189 code to implement the provisions of this section. The rules

190 shall include a staggered schedule by hydrologic regions for
191 the submission of source water protection plans by public
192 water utilities. The first report submitted pursuant to a
193 staggered schedule is exempt from the reporting interval set
194 forth in §16-1-9c(f) of this code. Subsequent reports shall
195 be submitted pursuant to the provisions of §16-1-9c(f) of
196 this code.



CHAPTER 218

(Com. Sub. for H. B. 2768 - By Delegate Rohrbach)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §16-54-1, §16-54-3, §16-54-4, §16-54-5, §16-54-6, §16-54-7, and §16-54-8, of the Code of West Virginia, 1931, as amended, all relating to reducing the use of certain prescription drugs; defining terms; clarifying types of examinations; requiring certain information in a narcotics contract; clarifying that the drug being regulated is a Schedule II opioid drug; providing exceptions; and requiring coverage for certain procedures to treat chronic pain.

Be it enacted by the Legislature of West Virginia:

ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-1. Definitions.

- 1 As used in this section:
- 2 “Acute pain” means a time limited pain caused by a
- 3 specific disease or injury.

4 “Chronic pain” means a noncancer, nonend of life pain
5 lasting more than three months or longer than the duration
6 of normal tissue healing.

7 “Health care practitioner” or “practitioner” means:

8 (1) A physician authorized pursuant to the provisions of
9 §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code;

10 (2) A podiatrist licensed pursuant to the provisions of
11 §30-3-1 *et seq.* of this code;

12 (3) A physician assistant with prescriptive authority as
13 set forth in §30-3E-3 of this code;

14 (4) An advanced practice registered nurse with
15 prescriptive authority as set forth in §30-7-15a of this code;

16 (5) A dentist licensed pursuant to the provisions of §30-
17 4-1 *et seq.* of this code;

18 (6) An optometrist licensed pursuant to the provisions
19 of §30-8-1 *et seq.* of this code;

20 (7) A physical therapist licensed pursuant to the
21 provisions of §30-20-1 *et seq.* of this code;

22 (8) An occupational therapist licensed pursuant to the
23 provisions of §30-28-1 *et seq.* of this code;

24 (9) An osteopathic physician licensed pursuant to the
25 provisions of §30-14-1 *et seq.* of this code; and

26 (10) A chiropractor licensed pursuant to the provisions
27 of §30-16-1 *et seq.* of this code.

28 “Insurance provider” means an entity that is regulated
29 under the provisions of §33-15-1 *et seq.*, §33-16-1 *et seq.*,
30 §33-24-1 *et seq.*, §33-25-1 *et seq.* and §33-25A-1 *et seq.* of
31 this code.

32 “Office” means the Office of Drug Control Policy.

33 “Pain clinic” means the same as that term is defined in
34 §16-5H-2 of this code.

35 “Pain specialist” means a practitioner who is board
36 certified in pain management or a related field.

37 “Prescribe” means the advisement of a physician or
38 other licensed practitioner to a patient for a course of
39 treatment. It can include but is not limited to medication,
40 services, supplies, equipment, procedures, diagnostic tests,
41 or screening as permitted by the physician or other licensed
42 practitioner’s scope of practice.

43 “Referral” means the recommendation by a person to
44 another person for the purpose of initiating care by a health
45 care practitioner.

46 “Schedule II opioid drug” means an opioid drug listed
47 in §60A-2-206 of this code.

48 “Surgical procedure” means a medical procedure
49 involving an incision with instruments performed to repair
50 damage or arrest disease in a living body.

§16-54-3. Opioid prescription notifications.

1 Prior to issuing a prescription for a Schedule II opioid
2 drug, a practitioner shall:

3 (1) Advise the patient regarding the quantity of the
4 Schedule II opioid drug and a patient’s option to fill the
5 prescription in a lesser quantity; and

6 (2) Inform the patient of the risks associated with the
7 Schedule II opioid drug prescribed.

§16-54-4. Opioid prescription limitations.

1 (a) When issuing a prescription for a Schedule II opioid
2 drug to an adult patient seeking treatment in an emergency
3 room for outpatient use, a health care practitioner may not
4 issue a prescription for more than a four-day supply:

5 *Provided*, That a prescription for a Schedule II opioid drug
6 issued to an adult patient in an emergency room for
7 outpatient use is not considered to be an initial Schedule II
8 opioid prescription.

9 (b) When issuing a prescription for a Schedule II opioid
10 drug to an adult patient seeking treatment in an urgent care
11 facility setting for outpatient use, a health care practitioner
12 may not issue a prescription for more than a four-day
13 supply: *Provided*, That an additional dosing for up to no
14 more than a seven-day supply may be permitted, but only if
15 the medical rationale for more than a four-day supply is
16 documented in the medical record.

17 (c) A health care practitioner may not issue an initial
18 Schedule II opioid drug prescription to a minor for more
19 than a three-day supply and shall discuss with the parent or
20 guardian of the minor the risks associated with Schedule II
21 opioid drug use and the reasons why the prescription is
22 necessary.

23 (d) A dentist or an optometrist may not issue a Schedule
24 II opioid drug prescription for more than a three-day supply.

25 (e) A practitioner, other than a dentist or an optometrist,
26 may not issue an initial Schedule II opioid drug prescription
27 for more than a seven-day supply. The prescription shall be
28 for the lowest effective dose which in the medical
29 judgement of the practitioner would be the best course of
30 treatment for this patient and his or her condition.

31 (f) Prior to issuing an initial Schedule II opioid drug
32 prescription, a practitioner shall:

33 (1) Take and document the results of a thorough medical
34 history, including the patient's experience with nonopioid
35 medication, nonpharmacological pain management
36 approaches, and substance abuse history;

37 (2) Conduct, as appropriate, and document the results of
38 a physical examination. The physical exam should be

39 relevant to the specific diagnosis and course of treatment,
40 and should assess whether the course of treatment would be
41 safe and effective for the patient.

42 (3) Develop a treatment plan, with particular attention
43 focused on determining the cause of the patient's pain; and

44 (4) Access relevant prescription monitoring information
45 under the Controlled Substances Monitoring Program
46 Database.

47 (g) Notwithstanding any provision of this code or
48 legislative rule to the contrary, no medication listed as a
49 Schedule II opioid drug as set forth in §60A-2-206 of this
50 code, may be prescribed by a practitioner for greater than a
51 30-day supply: *Provided*, That two additional prescriptions,
52 each for a 30-day period for a total of a 90-day supply, may
53 be prescribed if the practitioner accesses the West Virginia
54 Controlled Substances Monitoring Program Database as set
55 forth in §60A-9-1 *et seq.* of this code: *Provided, however*,
56 That the limitations in this section do not apply to cancer
57 patients, patients receiving hospice care from a licensed
58 hospice provider, patients receiving palliative care, a patient
59 who is a resident of a long-term care facility, or a patient
60 receiving medications that are being prescribed for use in
61 the treatment of substance abuse or opioid dependence.

62 (h) A practitioner is required to conduct and document
63 the results of a physical examination every 90 days for any
64 patient for whom he or she continues to treat with any
65 Schedule II opioid drug as set forth in §60A-2-206 of this
66 code. The physical examination should be relevant to the
67 specific diagnosis and course of treatment, and should
68 assess whether continuing the course of treatment would be
69 safe and effective for the patient.

70 (i) A veterinarian licensed pursuant to the provisions of
71 §30-10-1 *et seq.* of this code may not issue an initial
72 Schedule II opioid drug prescription for more than a seven-
73 day supply. The prescription shall be for the lowest effective

74 dose which in the medical judgment of the veterinarian
75 would be the best course of treatment for the patient and his
76 or her condition.

77 (j) In conjunction with the issuance of the third
78 prescription for a Schedule II opioid drug, the patient shall
79 execute a narcotics contract with the prescribing
80 practitioner. The contract shall be made a part of the
81 patient's medical record. The narcotics contract is required
82 to provide at a minimum that:

83 (1) The patient agrees only to obtain scheduled
84 medications from this particular prescribing practitioner;

85 (2) The patient agrees he or she will only fill those
86 prescriptions at a single pharmacy which includes a
87 pharmacy with more than one location;

88 (3) The patient agrees to notify the prescribing
89 practitioner within 72 hours of any emergency where he or
90 she is prescribed scheduled medication;

91 (4) If the patient fails to honor the provisions of the
92 narcotics contract, the prescribing practitioner may either
93 terminate the provider-patient relationship or continue to
94 treat the patient without prescribing a Schedule II opioid
95 drug for the patient. Should the practitioner decide to
96 terminate the relationship, he or she is required to do so
97 pursuant to the provisions of this code and any rules
98 promulgated hereunder. Termination of the relationship for
99 the patient's failure to honor the provisions of the contract
100 is not subject to any disciplinary action by the practitioner's
101 licensing board; and

102 (5) If another physician is approved to prescribe to the
103 patient.

104 (k) A pharmacist is not responsible for enforcing the
105 provisions of this section and the Board of Pharmacy may
106 not discipline a licensee if he or she fills a prescription in
107 violation of the provisions of this section.

§16-54-5. Subsequent prescriptions; limitations.

1 (a) After issuing the initial Schedule II opioid drug
2 prescription as set forth in §16-54-4 of this code, the
3 practitioner, after consultation with the patient, may issue a
4 subsequent prescription for a Schedule II opioid drug to the
5 patient if:

6 (1) The subsequent prescription would not be deemed
7 an initial prescription pursuant to §16-54-4 of this code;

8 (2) The practitioner determines the prescription is
9 necessary and appropriate to the patient's treatment needs
10 and documents the rationale for the issuance of the
11 subsequent prescription; and

12 (3) The practitioner determines that issuance of the
13 subsequent prescription does not present an undue risk of
14 abuse, addiction, or diversion and documents that
15 determination.

16 (b) Prior to issuing the subsequent Schedule II opioid
17 drug prescription of the course of treatment, a practitioner
18 shall discuss with the patient, or the patient's parent or
19 guardian if the patient is under 18 years of age, the risks
20 associated with the Schedule II opioid drugs being
21 prescribed. This discussion shall include:

22 (1) The risks of addiction and overdose associated with
23 Schedule II opioid drugs and the dangers of taking Schedule
24 II opioid drugs with alcohol, benzodiazepines, and other
25 central nervous system depressants;

26 (2) The reasons why the prescription is necessary;

27 (3) Alternative treatments that may be available; and

28 (4) Risks associated with the use of the Schedule II
29 opioid drug being prescribed, specifically that Schedule II
30 opioid drugs are highly addictive, even when taken as
31 prescribed, that there is a risk of developing a physical or

32 psychological dependence on the Schedule II opioid drug,
33 and that the risks of taking more opioids than prescribed, or
34 mixing sedatives, benzodiazepines, or alcohol with opioids,
35 can result in fatal respiratory depression.

36 (c) The discussion as set forth in §16-54-5(b) of this
37 code shall be included in a notation in the patient's medical
38 record.

§16-54-6. Ongoing treatment; referral to pain clinic or pain specialist.

1 (a) At the time of the issuance of the third prescription
2 for a Schedule II opioid drug the practitioner shall consider
3 referring the patient to a pain clinic or a pain specialist. The
4 practitioner shall discuss the benefits of seeking treatment
5 through a pain clinic or a pain specialist and provide him or
6 her with an understanding of any risks associated by
7 choosing not to pursue that as an option.

8 (b) If the patient declines to seek treatment from a pain
9 clinic or a pain specialist and opts to remain a patient of the
10 practitioner, and the practitioner continues to prescribe a
11 Schedule II opioid drug as provided in this code, the
12 practitioner shall:

13 (1) Note in the patient's medical records that the patient
14 knowingly declined treatment from a pain clinic or pain
15 specialist;

16 (2) Review, at a minimum of every three months, the
17 course of treatment, any new information about the etiology
18 of the pain, and the patient's progress toward treatment
19 objectives and document the results of that review;

20 (3) Assess the patient prior to every renewal to
21 determine whether the patient is experiencing problems
22 associated with physical and psychological dependence and
23 document the results of that assessment; and

24 (4) Periodically make reasonable efforts, unless
25 clinically contraindicated, to either stop the use of the
26 controlled substance, decrease the dosage, try other drugs or
27 treatment modalities in an effort to reduce the potential for
28 abuse or the development of physical or psychological
29 dependence, and document with specificity the efforts
30 undertaken.

§16-54-7. Exceptions.

1 (a) This article does not apply to a patient who is
2 currently in active treatment for cancer, receiving hospice
3 care from a licensed hospice provider or palliative care
4 provider, or is a resident of a long-term care facility.

5 (b) This article does not apply to a patient being
6 prescribed, or ordered, any medication in an inpatient
7 setting at a hospital.

8 (c) Notwithstanding the limitations on the prescribing of
9 a Schedule II opioid drug contained in §16-54-4 of this
10 code, a practitioner may prescribe an initial seven-day
11 supply of a Schedule II opioid drug to a post-surgery patient
12 immediately following a surgical procedure. Based upon the
13 medical judgment of the practitioner, a subsequent
14 prescription may be prescribed by the practitioner pursuant
15 to the provisions of this code. Nothing in this section
16 authorizes a practitioner to prescribe any medication which
17 he or she is not permitted to prescribe pursuant to their
18 practice act.

19 (d) A practitioner who acquires a patient after January
20 1, 2018, who is currently being prescribed a Schedule II
21 opioid drug from another practitioner is required to access
22 the Controlled Substances Monitoring Program Database as
23 set forth in §60A-9-1 *et seq.* of this code. The practitioner
24 shall otherwise treat the patient as set forth in this code.

25 (e) This article does not apply to an existing
26 practitioner-patient relationship established before January
27 1, 2018, where there is an established and current opioid

28 treatment plan which is reflected in the patient's medical
29 records.

§16-54-8. Treatment of pain.

1 (a) When a patient seeks treatment, a health care
2 practitioner shall refer or prescribe to the patient any of the
3 following treatment alternatives, as is appropriate based on
4 the practitioner's clinical judgment and the availability of
5 the treatment, before starting a patient on a Schedule II
6 opioid drug: physical therapy, occupational therapy,
7 acupuncture, massage therapy, osteopathic manipulation,
8 chronic pain management program, and chiropractic
9 services, as defined in §30-16-3 of this code.

10 (b) Nothing in this section should be construed to
11 require that all of the treatment alternatives set forth in §16-
12 54-8(a) of this code are required to be exhausted prior to the
13 patient's receiving a prescription for a Schedule II opioid
14 drug.

15 (c) At a minimum, an insurance provider who offers an
16 insurance product in this state, the Bureau for Medical
17 Services, and the Public Employees Insurance Agency shall
18 provide coverage for 20 visits per event of physical therapy,
19 occupational therapy, osteopathic manipulation, a chronic
20 pain management program, and chiropractic services, as
21 defined in §30-16-3 of this code, when ordered or
22 prescribed by a health care practitioner.

23 (d) A person may seek physical therapy, occupational
24 therapy, osteopathic manipulation, a chronic pain
25 management program, and chiropractic services, as defined
26 in §30-16-3 of this code, prior to seeking treatment from any
27 other health care practitioner. The licensed health care
28 practitioner providing services pursuant to this section may
29 prescribe within their scope of practice as defined in §16-
30 54-1 of this code. A health care practitioner referral
31 although permitted is not required as a condition of
32 coverage by the Bureau for Medical Services the Public

33 Employees Insurance Agency, and any insurance provider
34 who offers an insurance product in this state. Any
35 deductible, coinsurance, or copay required for any of these
36 services may not be greater than the deductible,
37 coinsurance, or copay required for a primary care visit.

38 (e) Nothing in this section precludes a practitioner from
39 simultaneously prescribing a Schedule II opioid drug and
40 prescribing or recommending any of the procedures set
41 forth in §16-54-8(a) of this code.



CHAPTER 219

**(Com. Sub. for H. B. 2848 - By Delegates Ellington,
Summers, Nelson and Byrd)
[By Request of the State Treasurer]**

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12j; and to amend and reenact §16-48-3 and §16-48-6 of said code, all relating to the West Virginia ABLE Act accounts and the moneys deposited therein; adding and clarifying definitions to conform to federal law; adding an attorney in fact and a parent to the persons authorized to create or manage a West Virginia ABLE accounts as permitted by federal law; amending the age of eligible individuals to conform to federal law; clarifying that a guardian may manage an ABLE account regardless of the amount of a designated beneficiary's assets and that the Department of Health and Human Resources may not manage an ABLE account; adding a federal employer identification number to the items required in an application; authorizing the maximum account value to be the value established by the state of the program manager contracting with the Treasurer; clarifying that moneys in a West Virginia ABLE account or a

qualified withdrawal are to be disregarded when determining eligibility for or the amount of public assistance unless required by federal law, moneys in an account or a qualified withdrawal are not subject to claims by the Department of Health and Human Resources unless required by federal law, and on the death of a designated beneficiary moneys in an account are transferred to the estate of the designated beneficiary unless prohibited by federal law; and authorizes contributions to West Virginia ABLE accounts to be subtracted from federal adjusted gross income for purposes of West Virginia personal income taxes and the recapture of amounts subtracted if account funds are used for purposes other than a qualified disability expense; and making various technical revisions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12j. Modifications to federal adjusted income.

1 (a) In addition to amounts authorized to be subtracted
2 from federal adjusted gross income pursuant to §11-21-
3 12(c) of this code, any contributions to an account created
4 pursuant to the West Virginia ABLE Act in §16-48-1 *et seq.*
5 of this code is also an authorized modification reducing
6 federal adjusted gross income, but only to the extent the
7 amount is not allowable as a deduction when arriving at the
8 taxpayer's federal adjusted gross income for the taxable
9 year in which the payment is made. This modification is
10 available regardless of the type of return form filed and shall
11 not reduce taxable income below zero. The taxpayer may
12 also elect to carry forward the modification over a period
13 not to exceed five taxable years, beginning in the taxable
14 year in which the payment was made.

15 (b) In addition to the amounts authorized to be added to
16 federal adjusted gross income pursuant to §11-21-12(b) of
17 this code, unless already included in federal adjusted gross

18 income for the taxable year, there shall be added to federal
19 adjusted gross income any amount previously deducted
20 from federal adjusted gross income under this section for
21 amounts deposited into an account created pursuant to the
22 West Virginia ABLE Act in §16-48-1 *et seq.* of this code
23 and subsequently withdrawn from the account for purposes
24 other than a qualified disability expense authorized by the
25 ABLE Act.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 48. WEST VIRGINIA ABLE ACT.

§16-48-3. Definitions.

1 (a) “ABLE Act” means the federal legislation codified
2 in Section 529A of the Internal Revenue Code of 1986, 26
3 U.S.C. § 529A, and related treasury regulations, as amended
4 from time to time. Any references in this article to Section
5 529A include related treasury regulations.

6 (b) “Account” or “ABLE savings account” means an
7 individual savings account established in accordance with
8 the provisions of this article.

9 (c) “Account owner” means designated beneficiary as
10 defined in the ABLE Act.

11 (d) “Attorney in fact” means a person named in a power
12 of attorney with the authority to open and manage an
13 account.

14 (e) “Conservator” means a person appointed by the
15 court pursuant to §44A-1-1 *et seq.* of this code.

16 (f) “Designated beneficiary” means a West Virginia
17 resident who owns the account and who was an eligible
18 individual when the account was established or who
19 succeeded the former designated beneficiary.

20 (g) “Eligible individual” means an individual who is
21 entitled to benefits based on blindness or disability under 42

22 U.S.C. § 401 *et seq.* or 42 U.S.C. § 1381 *et seq.*, as amended,
23 and such blindness or disability occurred before the date on
24 which the individual attained the age specified in the ABLE
25 Act, or an individual who filed a disability certification, to
26 the satisfaction of the secretary, with the secretary for such
27 taxable year.

28 (h) “Financial organization” means an organization
29 authorized to do business in the State of West Virginia and
30 is:

31 (1) Licensed or chartered by the Insurance
32 Commissioner;

33 (2) Licensed or chartered by the Commissioner of the
34 Division of Financial Institutions;

35 (3) Chartered by an agency of the federal government;
36 or

37 (4) Subject to the jurisdiction and regulation of the
38 securities and exchange commission of the federal
39 government.

40 (i) “Guardian” means a person appointed by the court
41 pursuant to §44A-1-1 *et seq.* of this code.

42 (j) “Management contract” means the contract executed
43 by the Treasurer and a financial organization selected to act
44 as a depository and manager of the program.

45 (k) “Member of the family” has the meaning contained
46 in the ABLE Act.

47 (l) “Nonqualified withdrawal” means a withdrawal from
48 an account which is not:

49 (1) A qualified withdrawal; or

50 (2) A rollover distribution.

51 (m) “Program” means the West Virginia ABLE Act
52 savings program established pursuant to this article.

53 (n) “Program manager” means a financial organization
54 selected by the Treasurer to act as a depository and manager
55 of the program.

56 (o) “Qualified disability expense” means any qualified
57 disability expense included in the ABLE Act.

58 (p) “Qualified withdrawal” means a withdrawal from an
59 account to pay the qualified disability expenses of the
60 designated beneficiary of the account.

61 (q) “Rollover distribution” means a rollover distribution
62 as defined in the ABLE Act.

63 (r) “Savings agreement” means an agreement between
64 the program manager or the Treasurer and the account
65 owner.

66 (s) “Secretary” means the secretary of the United States
67 Treasury.

68 (t) “Treasurer” means the State Treasurer.

**§16-48-6. Establishment of ABLE savings account by
designated beneficiary, parent, conservator, guardian or
attorney in fact.**

1 (a) Any ABLE savings accounts established pursuant to
2 the provisions of this article shall be opened and managed
3 by a designated beneficiary, or a parent, conservator,
4 guardian or attorney in fact of a designated beneficiary who
5 lacks capacity to enter into a contract and each beneficiary
6 may have only one account. In the absence of a conservator,
7 a guardian may manage an ABLE account regardless of the
8 amount of a designated beneficiary’s personal assets. The
9 Department of Health and Human Resources may not
10 manage an ABLE account. The Treasurer may establish a
11 nonrefundable application fee. An application for such

12 account shall be in the form prescribed by the Treasurer and
13 contain:

14 (1) The name, address and social security number of the
15 designated beneficiary;

16 (2) The name, address and social security number or
17 federal employer identification number of the person or
18 entity opening or managing the ABLE account on behalf of
19 the designated beneficiary;

20 (3) A certification relating to no excess contributions;
21 and

22 (4) Any additional information as the Treasurer may
23 require.

24 (b) Any person may make contributions to an ABLE
25 savings account after the account is opened, subject to the
26 limitations imposed by the ABLE Act.

27 (c) Contributions to ABLE savings accounts may only
28 be made in cash. The Treasurer or program manager shall
29 reject or promptly withdraw:

30 (1) Contributions in excess of the limits established
31 pursuant to subsection (b); or

32 (2) The total contributions if the:

33 (A) Value of the account is equal to or greater than the
34 account maximum established by the Treasurer. Such
35 account maximum must be equal to the account maximum
36 for postsecondary education savings accounts established
37 pursuant to §18-30-1 *et seq.* of this code; or

38 (B) The designated beneficiary is not an eligible
39 individual in the current calendar year.

40 (d) (1) An account owner may:

41 (A) Change the designated beneficiary of an account to
42 an eligible individual who is a member of the family of the
43 prior designated beneficiary in accordance with procedures
44 established by the Treasurer; and

45 (B) Transfer all or a portion of an account to another
46 ABLE savings account, the designated beneficiary of which
47 is a member of the family as defined in the ABLE Act.

48 (2) No account owner may use an interest in an account
49 as security for a loan. Any pledge of an interest in an
50 account is of no force and effect.

51 (e) (1) Distributions may be made from the account for
52 payment of any qualified disability expense for the
53 designated beneficiary of the account made in accordance
54 with the provisions of this article.

55 (2) Any distribution from an account to any individual
56 or for the benefit of any individual during a calendar year
57 shall be reported to the federal Internal Revenue Service and
58 each account owner, the designated beneficiary or the
59 distributee to the extent required by state or federal law.

60 (3) Statements shall be provided to each account owner
61 at least four times each year within 30 days after the end of
62 the three-month period to which a statement relates. The
63 statement shall identify the contributions made during the
64 preceding three-month period, the total contributions made
65 to the account through the end of the period, the value of the
66 account at the end of such period, distributions made during
67 such period and any other information that the Treasurer
68 requires to be reported to the account owner.

69 (4) Statements and information relating to accounts
70 shall be prepared and filed to the extent required by this
71 article and any other state or federal law.

72 (f) (1) The program shall provide separate accounting
73 for each designated beneficiary. An annual fee may be

74 imposed upon the account owner for the maintenance of an
75 account.

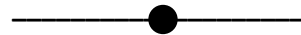
76 (2) Moneys in an ABLE savings account or a qualified
77 withdrawal:

78 (A) Are exempt from attachment, execution or
79 garnishment;

80 (B) Are disregarded for the purposes of determining
81 eligibility for or the amount of a public assistance program,
82 unless required by federal law;

83 (C) Are not subject to claims by the West Virginia
84 Department of Health and Human Resources unless
85 required by federal law; and

86 (D) On the death of the designated beneficiary, shall be
87 transferred to the estate of the designed beneficiary, unless
88 prohibited by federal law.



CHAPTER 220

**(Com. Sub. for H. B. 2945 - By Delegates Miley,
Caputo, Lavender-Bowe, Householder, Nelson and
Bates)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-2-17, relating to temporary food service permits issued by a local or county health departments for selling non-potentially hazardous foods; providing that permits and fees shall be valid for one year; providing a definition of non-potentially hazardous foods; providing that permits and fees shall be valid beyond

the boundaries of the county issuing the permit; providing limitations upon an issued permit to assure compliance; providing that vendors must provide notice to local health departments more than 14 days prior to an event; providing that permits must be visibly posted at the event; and requiring the Secretary to review and modernize legislative rules regarding local boards of health fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-17. Event permit fees good for a year, reciprocity from other state health departments.

1 (a) A temporary food service permit issued by a local or
2 county health department to an in-state vendor in their
3 county of residence for preparing and selling non-
4 potentially hazardous foods at a festival, scheduled event,
5 or similar activity which is valid for any time period less
6 than annual and any permit fee paid shall be valid for an
7 entire calendar year for the vendor regardless of the length
8 of time for which the first permit is issued and regardless of
9 the number of subsequent festivals, events or activities for
10 which the vendor requires the same permit. Non-potentially
11 hazardous foods mean food that does not require time or
12 temperature control for safety to limit pathogenic
13 microorganism growth or toxin formation.

14 (b) The permit shall also be valid in the counties that
15 border the vendor's county of residence or 25 air miles,
16 whichever is greater. No health department within these
17 defined areas may charge a permit fee to any in-state vendor
18 that has received a temporary food service permit to prepare
19 and sell non-potentially hazardous foods by the other in-
20 state health department during the same calendar year for
21 the same type of activity, but may place conditions and
22 limitations upon an issued permit to assure compliance with
23 that health departments rules and standards for the type of
24 permit being issued. Each vendor must provide notice to the

25 local health department with jurisdiction at least 14 days
26 prior to the start of the festival, event or activity. The permit
27 must be visibly posted at the festival, event, or activity or
28 the permit is not valid.

29 (c) The Secretary shall review and modernize legislative
30 rules regarding local boards of health fees located in 64 CSR
31 30 in the next filing period.

CHAPTER 221

(H. B. 3132 - By Delegate Rohrbach)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §16-5Y-4 of the Code of West Virginia, 1931, as amended, relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment from complying with the legislative rule and exempting licensed behavioral health centers providing office-based medication-assisted treatment from registration requirements but requiring them to attest and provide information to the Office of Health Facilities Licensure and Certification.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-4. Office-based, medication-assisted treatment programs to obtain registration; application; fees and inspections.

1 (a) No person, partnership, association, or corporation
2 may operate an office-based, medication-assisted treatment

3 program without first obtaining a registration from the
4 secretary in accordance with the provisions of this article
5 and the rules lawfully promulgated pursuant to this article.

6 (b) Any person, partnership, association, or corporation
7 desiring a registration to operate an office-based,
8 medication-assisted treatment program in this state shall file
9 with the Office of Health Facility Licensure and
10 Certification an application in such form and with such
11 information as the secretary shall prescribe and furnish
12 accompanied by an application fee.

13 (c) The Director of the Office of Health Facility
14 Licensure and Certification or his or her designee shall
15 inspect and review all documentation submitted with the
16 application. The director shall then provide a
17 recommendation to the secretary whether to approve or
18 deny the application for registration. The secretary shall
19 issue a registration if the facility is in compliance with the
20 provisions of this article and with the rules lawfully
21 promulgated pursuant to this article.

22 (d) A registration shall be issued in one of three
23 categories:

24 (1) An initial 12-month registration shall be issued to an
25 office-based, medication-assisted treatment program
26 establishing a new program or service for which there is
27 insufficient consumer participation to demonstrate
28 substantial compliance with this article and with all rules
29 promulgated pursuant to this article;

30 (2) A provisional registration shall be issued when an
31 office-based, medication-assisted treatment program seeks
32 a renewal registration, or is an existing program as of the
33 effective date of this article and is seeking an initial
34 registration, and the office-based, medication-assisted
35 treatment program is not in substantial compliance with this
36 article and with all rules promulgated pursuant to this
37 article, but does not pose a significant risk to the rights,

38 health, and safety of a consumer. It shall expire not more
39 than six months from the date of issuance, and may not be
40 consecutively reissued; or

41 (3) A renewal registration shall be issued when an
42 office-based, medication-assisted treatment program is in
43 substantial compliance with this article and with all rules
44 promulgated pursuant to this article. A renewal registration
45 shall expire not more than one year from the date of
46 issuance.

47 (e) At least 60 days prior to the registration expiration
48 date, an application for renewal shall be submitted by the
49 office-based, medication-assisted treatment program to the
50 secretary on forms furnished by the secretary. A
51 registration shall be renewed if the secretary determines that
52 the applicant is in compliance with this article and with all
53 rules promulgated pursuant to this article. A registration
54 issued to one program location pursuant to this article is not
55 transferrable or assignable. Any change of ownership of a
56 registered office-based, medication-assisted treatment
57 program requires submission of a new application. The
58 office-based, medication-assisted treatment program shall
59 notify the secretary of any change in ownership within 10
60 days of the change and must submit a new application
61 within the time frame prescribed by the secretary.

62 (f) Any person, partnership, association, or corporation
63 seeking to obtain or renew a registration for an office-based,
64 medication-assisted treatment program in this state must
65 submit to the secretary the following documentation:

66 (1) Full operating name of the program as advertised;

67 (2) Legal name of the program as registered with the
68 West Virginia Secretary of State;

69 (3) Physical address of the program;

70 (4) Preferred mailing address for the program;

71 (5) Email address to be used as the primary contact for
72 the program;

73 (6) Federal Employer Identification Number assigned to
74 the program;

75 (7) All business licenses issued to the program by this
76 state, the state Tax Department, the Secretary of State, and
77 all other applicable business entities;

78 (8) Brief description of all services provided by the
79 program;

80 (9) Hours of operation;

81 (10) Legal Registered Owner Name – name of the
82 person registered as the legal owner of the program. If more
83 than one legal owner (i.e., partnership, corporation, etc.) list
84 each legal owner separately, indicating the percentage of
85 ownership;

86 (11) Medical director's full name, medical license
87 number, Drug Enforcement Administration registration
88 number, and a listing of all current certifications;

89 (12) For each physician, counselor, or social worker of
90 the program, provide the following:

91 (A) Employee's role and occupation within the
92 program;

93 (B) Full legal name;

94 (C) Medical license, if applicable;

95 (D) Drug Enforcement Administration registration
96 number, if applicable;

97 (E) Drug Enforcement Administration identification
98 number to prescribe buprenorphine for addiction, if
99 applicable; and

100 (F) Number of hours worked at program per week;

101 (13) Name and location address of all programs owned
102 or operated by the applicant;

103 (14) Notarized signature of applicant;

104 (15) Check or money order for registration fee;

105 (16) Verification of education and training for all
106 physicians, counselors, and social workers practicing at or
107 used by referral by the program such as fellowships,
108 additional education, accreditations, board certifications,
109 and other certifications; and

110 (17) Board of Pharmacy Controlled Substance
111 Prescriber Report for each prescriber practicing at the
112 program for the three months preceding the date of
113 application.

114 (g) Upon satisfaction that an applicant has met all of the
115 requirements of this article, the secretary shall issue a
116 registration to operate an office-based, medication-assisted
117 treatment program. An entity that obtains this registration
118 may possess, have custody or control of, and dispense drugs
119 indicated and approved by the United States Food and Drug
120 Administration for the treatment of substance use disorders.

121 (h) The office-based, medication-assisted treatment
122 program shall display the current registration in a prominent
123 location where services are provided and in clear view of all
124 patients.

125 (i) The secretary or his or her designee shall perform
126 complaint and verification inspections on all office-based,
127 medication-assisted treatment programs that are subject to
128 this article and all rules adopted pursuant to this article to
129 ensure continued compliance.

130 (j) Any person, partnership, association, or corporation
131 operating an office-based, medication-assisted treatment

132 program shall be permitted to continue operation until the
133 effective date of the new rules promulgated pursuant to this
134 article. At that time a person, partnership, association, or
135 corporation shall file for registration within six months
136 pursuant to the licensing procedures and requirements of
137 this section and the new rules promulgated hereunder. The
138 existing procedures of the person, partnership, association,
139 or corporation shall remain effective until receipt of the
140 registration.

141 (k) A person, partnership, association, or corporation
142 providing office-based, medication-assisted treatment to no
143 more than 30 patients of their practice or program is exempt
144 from the registration requirement contained in §16-5Y-4(a)
145 of this code: *Provided*, That it:

146 (1) Attests to the Office of Health Facility Licensure and
147 Certification on a form prescribed by the secretary that the
148 person, partnership, association, or corporation requires
149 counselling and drug screens, has implemented diversion
150 control measures, has completed medical education training
151 on addiction treatment encompassing all forms of
152 medication-assisted treatment, will provide patient numbers
153 upon request, and will provide any other information
154 required by the secretary related to patient health and safety;
155 and

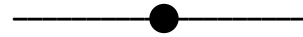
156 (2) Is prohibited from establishing an office-based,
157 medication-assisted treatment at any other location or
158 facility after the submission of an attestation submitted
159 pursuant to §16-5Y-4(k)(2) of this code. This subdivision
160 includes any person, partnership, association, or corporation
161 that has an ownership interest in a partnership, association,
162 or corporation or other corporate entity providing office-
163 based, medication-assisted treatment.

164 (l) A licensed behavioral health center, pursuant to
165 Behavioral Health Center Licensure, 64 CSR 11, providing
166 office-based medication-assisted treatment is exempt from

167 the registration requirement contained in §16-5Y-4(a) of
168 this code: *Provided*, That it:

169 (1) Attests to the Office of Health Facility Licensure
170 and Certification on a form prescribed by the secretary that
171 the person, partnership, association, or corporation requires
172 counseling and drugs screens, has implemented diversion
173 control measures, will provide patient numbers upon
174 request, and will provide any other information required by
175 the secretary related to patient health and safety; and

176 (2) Must notify the Office of Health Facility Licensure
177 and Certification prior to establishing or terminating an
178 office-based medication-assisted treatment program at any
179 other licensed behavioral health center location after the
180 submission of an attestation submitted pursuant to §16-5Y-
181 4(l)(1) of this code.



CHAPTER 222

**(Com. Sub. for S. B. 345 - By Senators Carmichael
(Mr. President) and Prezioso)**

[Passed March 9, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; to amend and reenact §12-4-14 of said code; to amend said code by adding thereto a new section, designated §12-4-14c; and to amend and reenact §29-3-5f and §29-3-8 of said code, all relating generally to accounting and reporting of state grants, distributions, and studies; authorizing commingling of certain funds; imposing authority, duties, and consequences relating to volunteer and part-volunteer fire companies and departments as to state grants and distributions; imposing authority, duties, and

consequences relating to other recipients of state grants; modifying liability for criminal penalties; imposing authority and duties on Legislative Auditor, State Auditor, and State Fire Marshal; clarifying the responsibility for proposing legislative rules; removing requirement for report by State Fire Marshal; and updating outdated language.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

***§8-15-8b. Authorized expenditures of revenues from the Municipal Pensions and Protection Fund and the Fire Protection Fund; deductions for unauthorized expenditures; record retention.**

1 (a) Money received from the state for volunteer and
2 part-volunteer fire companies and departments, pursuant to
3 §33-3-14d, §33-3-33, and §33-12C-7 of this code, may not
4 be commingled with moneys received from any other
5 source, except money received as a grant from the Fire
6 Service Equipment and Training Fund as provided in §29-
7 3-5f of this code. Distributions from the Municipal Pensions
8 and Protection Fund and the Fire Protection Fund allocated
9 to volunteer and part-volunteer fire companies and
10 departments may be expended only for the following:

11 (1) Personal protective equipment, including protective
12 head gear, bunker coats, pants, boots, combination of
13 bunker pants and boots, coats, and gloves;

14 (2) Equipment for compliance with the national fire
15 protection standard or automotive fire apparatus, NFPA-1901;

16 (3) Compliance with insurance service office
17 recommendations relating to fire departments;

*NOTE: This section was also amended by H. B. 2439, which passed prior to this act.

18 (4) Rescue equipment, communications equipment, and
19 ambulance equipment: *Provided*, That no moneys received
20 from the Municipal Pensions and Protection Fund or the
21 Fire Protection Fund may be used for equipment for
22 personal vehicles owned or operated by volunteer or part-
23 volunteer fire company or department members;

24 (5) Capital improvements reasonably required for
25 effective and efficient fire protection service and
26 maintenance of the capital improvements;

27 (6) Retirement of debts;

28 (7) Payment of utility bills;

29 (8) Payment of the cost of immunizations, including any
30 laboratory work incident to the immunizations, for
31 firefighters against hepatitis-b and other blood-borne
32 pathogens: *Provided*, That the vaccine shall be purchased
33 through the state immunization program or from the lowest-
34 cost vendor available: *Provided, however*, That volunteer
35 and part-volunteer fire companies and departments shall
36 seek to obtain no-cost administration of the vaccinations
37 through local boards of health: *Provided further*, That in the
38 event any volunteer or part-volunteer fire company or
39 department is unable to obtain no-cost administration of the
40 vaccinations through a local board of health, the company
41 or department shall seek to obtain the lowest cost available
42 for the administration of the vaccinations from a licensed
43 health care provider;

44 (9) Any filing fee required to be paid to the Legislative
45 Auditor's Office under §12-4-14 of this code relating to
46 sworn statements of annual expenditures submitted by
47 volunteer or part- volunteer fire companies or departments
48 that receive state funds or grants;

49 (10) Property/casualty insurance premiums for
50 protection and indemnification against loss or damage or
51 liability;

52 (11) Operating expenses reasonably required in the
53 normal course of providing effective and efficient fire
54 protection service, which include, but are not limited to,
55 gasoline, bank fees, postage, and accounting costs;

56 (12) Dues paid to national, state, and county
57 associations;

58 (13) Workers' compensation premiums;

59 (14) Life insurance premiums to provide a benefit not to
60 exceed \$20,000 for firefighters; and

61 (15) Educational and training supplies and fire
62 prevention promotional materials, not to exceed \$500 per
63 year.

64 (b) If a volunteer or part-volunteer fire company or
65 department spends any amount of money received from the
66 Municipal Pensions and Protection Fund or the Fire
67 Protection Fund for an item, service, or purpose not
68 authorized by this section, that amount, when determined by
69 an official audit, review, or investigation, shall be deducted
70 from future distributions to the volunteer fire company or
71 part-volunteer fire department.

72 (c) If a volunteer or part-volunteer fire company or
73 department purchases goods or services authorized by this
74 section, but then returns the goods or cancels the services
75 for a refund, then any money refunded shall be deposited
76 back into the same, dedicated bank account used for the
77 deposit of distributions from the Municipal Pensions and
78 Protection Fund and the Fire Protection Fund.

79 (d) Each volunteer or part-volunteer fire company and
80 department shall retain, for five calendar years, all invoices,
81 receipts, and payment records for the goods and services
82 paid with money received from the state for volunteer and
83 part-volunteer fire companies and departments, pursuant to
84 §33-3-14d, §33-3-33, and §33-12C-7 of this code and

85 money received as a grant from the Fire Service Equipment
86 and Training Fund as provided in §29-3-5f of this code.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.

***§12-4-14. Accountability of grantees receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.**

1 (a) For the purposes of this section:

2 (1) “Grantor” means a state spending unit awarding a
3 state grant.

4 (2) “Grantee” means any entity receiving a state grant,
5 including a state spending unit, local government,
6 corporation, partnership, association, individual, or other
7 legal entity.

8 (3) “Report” means an engagement, such as an agreed-
9 upon procedures engagement or other attestation
10 engagement, performed and prepared by a certified public
11 accountant to test whether state grants were spent as
12 intended. The term “report” does not mean a full-scope
13 audit or review of the person receiving state funds.

14 (4) “State grant” means funding provided by a state
15 spending unit, regardless of the original source of the funds,
16 to a grantee upon application for a specific purpose. The
17 term “state grant” does not include: (A) Payments for goods
18 and services purchased by a state spending unit; (B)
19 compensation to state employees and public officials; (C)
20 reimbursements to state employees and public officials for
21 travel or incidental expenses; (D) grants of student aid; (E)
22 government transfer payments; (F) direct benefits provided
23 under state insurance and welfare programs; (G) funds
24 reimbursed to a person for expenditures made for qualified

*NOTE: This section was also amended by H. B. 2439, which passed prior to this act.

25 purposes when receipts for the expenditures are required
26 prior to receiving the funds; (H) retirement benefits; and (I)
27 federal pass-through funds that are subject to the federal
28 Single Audit Act Amendments of 1996, 31 U.S.C. § 7501,
29 *et seq.* The term “state grant” does not include formula
30 distributions to volunteer and part-volunteer fire
31 departments and fire companies made pursuant to §33-3-
32 14d, §33-3-33, §33-12C-7 of this code and does not include
33 money received from the Fire Service Equipment and
34 Training Fund as provided in §29-3-5f of this code.

35 (b) (1) Any grantee who receives one or more state
36 grants in the amount of \$50,000 or more in the aggregate in
37 a state’s fiscal year shall file with the grantor a report of the
38 disbursement of the state grant funds. When the grantor
39 causes an audit, by an independent certified public
40 accountant, to be conducted of the grant funds, the audit is
41 performed using generally accepted government auditing
42 standards, and a copy of the audit is available for public
43 inspection, no report is required to be filed under this
44 section. An audit performed that complies with Office of
45 Management and Budget circular A-133, and submitted
46 within the period provided in this section may be substituted
47 for the report.

48 (2) Any grantee who receives a state grant in an amount
49 less than \$50,000 or who is not required to file a report
50 because an audit has been conducted or substituted as
51 provided by subdivision (1) of this subsection shall file with
52 the grantor a sworn statement of expenditures made under
53 the grant.

54 (3) Reports and sworn statements of expenditures
55 required by this subsection shall be filed within two years
56 of the end of the grantee’s fiscal year in which the
57 disbursement of state grant funds by the grantor was made.
58 The report shall be made by an independent certified public
59 accountant at the cost of the grantee. State grant funds may
60 be used to pay for the report if the applicable grant
61 provisions allow. The scope of the report is limited to

62 showing that the state grant funds were spent for the
63 purposes intended when the grant was made.

64 (c)(1) Any grantee failing to file a required report or
65 sworn statement of expenditures within the two-year period
66 provided in subdivision (3), subsection (b) of this section
67 for state grant funds is barred from subsequently receiving
68 state grants until the grantee has filed the report or sworn
69 statement of expenditures and is otherwise in compliance
70 with the provisions of this section.

71 (2) Any grantor of a state grant shall report any grantee
72 failing to file a required report or sworn statement of
73 expenditures within the required period provided in this
74 section to the Legislative Auditor for purposes of debarment
75 from receiving state grants.

76 (d) (1) The state agency administering the state grant
77 shall notify the grantee of the reporting requirements set
78 forth in this section.

79 (2) All grantors awarding state grants shall, prior to
80 awarding a state grant, take reasonable actions to verify that
81 the grantee is not barred from receiving state grants pursuant
82 to this section. The verification process shall, at a minimum,
83 include:

84 (A) A requirement that the grantee seeking the state
85 grant provide a sworn statement from an authorized
86 representative that the grantee has filed all reports and
87 sworn statements of expenditures for state grants received
88 as required under this section; and

89 (B) Confirmation from the Legislative Auditor by the
90 grantor that the grantee has not been identified as one who
91 has failed to file a report or sworn statement of expenditures
92 under this section. Confirmation may be accomplished by
93 accessing the computerized database provided in subsection
94 (e) of this section.

95 (3) If any report or sworn statement of expenditures
96 submitted pursuant to the requirements of this section
97 provides evidence of a reportable condition or violation, the
98 grantor shall provide a copy of the report or sworn statement
99 of expenditures to the Legislative Auditor within 30 days of
100 receipt by the grantor.

101 (4) The grantor shall maintain copies of reports and
102 sworn statements of expenditures required by this section
103 and make the reports or sworn statements of expenditures
104 available for public inspection, as well as for use in audits
105 and performance reviews of the grantor.

106 (5) The Secretary of the Department of Administration
107 has authority to promulgate procedural and interpretive
108 rules and propose legislative rules for promulgation in
109 accordance with the provisions of §29A-3-1 *et seq.* of this
110 code to assist in implementing the provisions of this section.

111 (e)(1) Any state agency administering a state grant shall,
112 in the manner designated by the Legislative Auditor, notify
113 the Legislative Auditor of the maximum amount of funds to
114 be disbursed, the identity of the grantee authorized to
115 receive the funds, the grantee's fiscal year and federal
116 employer identification number, and the purpose and nature
117 of the state grant within 30 days of making the state grant or
118 authorizing the disbursement of the funds, whichever is
119 later.

120 (2) The State Treasurer shall provide the Legislative
121 Auditor the information concerning formula distributions to
122 volunteer and part-volunteer fire departments, made
123 pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this
124 code, the Legislative Auditor requests, and in the manner
125 designated by the Legislative Auditor.

126 (3) The Legislative Auditor shall maintain a list
127 identifying grantees who have failed to file reports and
128 sworn statements required by this section. The list may be

129 in the form of a computerized database that may be accessed
130 by state agencies over the Internet.

131 (f) An audit of state grant funds may be authorized at
132 any time by the Joint Committee on Government and
133 Finance to be conducted by the Legislative Auditor at no
134 cost to the grantee.

135 (g) Any report submitted pursuant to the provisions of
136 this section may be filed electronically in accordance with
137 the provisions of §39A-1-1 *et seq.* of this code.

138 (h) Any grantee who files a fraudulent sworn statement
139 of expenditures under subsection (b) of the section, a
140 fraudulent sworn statement under subsection (d) of this
141 section, or a fraudulent report under this section is guilty of
142 a felony and, upon conviction thereof, shall be fined not less
143 than \$1,000 nor more than \$5,000 or imprisoned in a state
144 correctional facility for not less than one year nor more than
145 five years, or both fined and imprisoned.

§12-4-14c. Accountability of volunteer and part-volunteer fire companies or departments receiving state funds for equipment and training; review or audit of expenditures; withholding of state funds for delinquency or misuse; notifications.

1 (a) *Definitions.* — For the purposes of this section:

2 “Equipment and training grant” means a grant of money
3 to a volunteer fire company or a part-volunteer fire
4 department from the Fire Service Equipment and Training
5 Fund created in §29-3-5f of this code;

6 “Formula distribution” means a distribution of money
7 to volunteer and part-volunteer fire companies or
8 departments made pursuant to §33-3-14d, §33-3-33, and
9 §33-12C-7 of this code; and

10 “State funds account” means a bank account established
11 by a volunteer or part-volunteer fire company or department

12 and maintained for the exclusive use and accounting of
13 money from formula distributions and equipment and
14 training grants.

15 (b) *Filing required documentation.* — Every volunteer
16 and part-volunteer fire company or department seeking to
17 receive formula distributions or an equipment and training
18 grant shall file copies of bank statements and check images
19 from the company's or department's state funds account for
20 the previous calendar year with the Legislative Auditor on
21 or before February 1 of each year.

22 (c) *Reviews and audits.* — The Legislative Auditor is
23 authorized to conduct regular reviews or audits of deposits
24 and expenditures from formula distribution and equipment
25 and training grant funds by volunteer and part-volunteer fire
26 companies or departments. The Legislative Auditor may
27 assign an employee or employees to perform audits or
28 reviews at his or her direction. The State Treasurer shall
29 provide the Legislative Auditor information, in the manner
30 designated by the Legislative Auditor, concerning formula
31 distributions and equipment and training grants paid to
32 volunteer or part-volunteer fire companies and departments.
33 The volunteer or part-volunteer fire company or department
34 shall cooperate with the Legislative Auditor, the Legislative
35 Auditor's employees, and the State Auditor in performing
36 their duties under the laws of this state.

37 (d) *State Auditor.* — Whenever the State Auditor
38 performs an audit of a volunteer or part-volunteer fire
39 company or department for any purpose, the Auditor shall
40 also conduct an audit of other state funds received by the
41 company or department pursuant to §33-3-14d, §33-3-33,
42 and §33-12C-7 of this code. The Auditor shall send a copy
43 of the audit to the Legislative Auditor. The Legislative
44 Auditor may accept an audit performed by the Auditor in
45 lieu of performing an audit under this section.

46 (e) *Withholding of funds.* — The Treasurer is authorized
47 to withhold payment of a formula distribution or an

48 equipment and training grant from a volunteer or part-
49 volunteer fire company or department, when properly
50 notified by the Legislative Auditor pursuant to this section,
51 of any of the following conditions:

52 (1) Failure to file, in a timely manner, copies of bank
53 statements and check images with the Legislative Auditor;

54 (2) Failure to cooperate with a review or audit
55 conducted by the Legislative Auditor;

56 (3) Misapplication of state funds; or

57 (4) Failure to file a report or a sworn statement of
58 expenditures as required by §12-4-14 of this code for a state
59 grant other than an equipment and training grant.

60 (f) *Delinquency in filing.* — If, after February 1, a
61 volunteer or part-volunteer fire company or department has
62 failed to file the required bank statements and check images
63 with the Legislative Auditor, the Legislative Auditor shall
64 notify the delinquent company or department at two
65 separate times in writing of the delinquency and of possible
66 forfeiture of its Fire Service Equipment and Training Fund
67 distribution for the year. If the required bank statements and
68 check images are not filed with the Legislative Auditor by
69 March 31, unless the time period is extended by the
70 Legislative Auditor, the Legislative Auditor shall then
71 notify the Treasurer who shall withhold payment of any
72 amount that would otherwise be distributed to the company
73 or department. Prior to each subsequent quarterly
74 disbursement of funds by the Treasurer, the Legislative
75 Auditor shall notify each delinquent company or department
76 twice per each quarter in which the company or department
77 is delinquent. The Legislative Auditor may choose the
78 method or methods of notification most likely to be received
79 by the delinquent company or department.

80 (g) *Noncooperation.* — If, in the course of an audit or
81 review by the Legislative Auditor, a volunteer or part-

82 volunteer fire company or department fails to provide
83 documentation of its accounts and expenditures in response
84 to a request of the Legislative Auditor, the Legislative
85 Auditor shall notify the State Treasurer who shall withhold
86 payment of any amount that would otherwise be distributed
87 to the company or department under the provisions of §33-
88 3-14d, §33-3-33, and §33-12C-7 of this code until the
89 Legislative Auditor informs the State Treasurer that the
90 company or department has cooperated with the review or
91 audit.

92 (h) *Reporting of other grants.* — Nothing in this section
93 alters the duties and responsibilities of a volunteer or part-
94 volunteer fire company or department imposed under §12-
95 4-14 of this code if that company or department has received
96 funds from any state grant program other than from the Fire
97 Service Equipment and Training Fund. If the Legislative
98 Auditor is notified by a grantor that a volunteer or part-
99 volunteer fire company or department has failed to file a
100 report or a sworn statement of expenditures for a state grant
101 it received, the Legislative Auditor shall notify the State
102 Treasurer who shall withhold further distributions to the
103 company or department in the manner provided in this
104 section.

105 (i) *Escrow and forfeiture of moneys withheld.* — The
106 Volunteer Fire Department Audit Account previously
107 created in the Treasury is hereby continued. When the State
108 Treasurer receives notice to withhold the distribution of
109 money to a volunteer or part-volunteer fire company or
110 department pursuant to this section, the Treasurer shall
111 instead deposit the amounts withheld into the Volunteer Fire
112 Department Audit Account. If the Treasurer receives notice
113 that the volunteer or part-volunteer fire company or
114 department has come into compliance in less than one year
115 from the date of deposit into this special revenue account,
116 then the Treasurer shall release and distribute the withheld
117 amounts to the company or department, except that any
118 interest that has accrued thereon shall be credited to the

119 general revenue of the state. If, after one year from payment
120 of the amount withheld into the special revenue account, the
121 Legislative Auditor informs the State Treasurer of
122 continued noncooperation by the company or department,
123 the delinquent company or department forfeits the amounts
124 withheld and the State Treasurer shall pay the amounts
125 withheld into Fire Service Equipment and Training Fund
126 created in §29-3-5f of this code.

127 (j) *Misuse of state money.* — If the Legislative Auditor
128 determines that a volunteer or part-volunteer fire company
129 or department has used formula distribution money for
130 purposes not authorized by §8-15-8b of this code or has used
131 equipment and training grant money for purposes not
132 authorized by the grant program, the Legislative Auditor
133 shall give a written notice of noncompliance to the company
134 or department. If a volunteer or part-volunteer fire company
135 or department disagrees or disputes the finding, the
136 company or department may contest the finding by
137 submitting a written objection to the Legislative Auditor
138 within five working days of receipt of the Legislative
139 Auditor's finding. The department or company shall then
140 have 60 days from the date of the Legislative Auditor's
141 finding to provide documentation to substantiate that the
142 expenditures were made for authorized purposes. If the
143 volunteer or part-volunteer fire company or department
144 does not dispute the findings of the Legislative Auditor or if
145 the company or department is not able to substantiate an
146 authorized purpose for the expenditure, the Legislative
147 Auditor shall notify the Treasurer of the amount of
148 misapplied money and the Treasurer shall deduct that
149 amount from future distributions to that company or
150 department until the full amount of unauthorized
151 expenditure is offset.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

***§29-3-5f. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant; reports of ineligibility to State Fire Marshal.**

1 (a) There is hereby created in the Treasury a special
2 revenue fund to be known as the Fire Service Equipment
3 and Training Fund. Expenditures from the fund by the State
4 Fire Marshal are authorized from collections. The fund may
5 only be used for the purpose of providing grants to equip
6 volunteer and part-volunteer fire companies and
7 departments and their members, and to 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.

12 (b) The State Fire Marshal shall establish a grant
13 program for equipment and training for volunteer and part-
14 volunteer fire companies and departments. Such grant
15 program shall be open to all volunteer and part-volunteer
16 fire companies and departments. In making grants pursuant
17 to this section, the State Fire Marshal shall consider:

18 (1) The number of emergency and nonemergency calls
19 responded to by the company or department;

20 (2) The activities and responses of the company or
21 department;

22 (3) The revenues received by the company or
23 department from federal, state, county, municipal, local, and
24 other sources; and

25 (4) The company's or department's assets,
26 expenditures, and other liabilities, including whether the fire
27 company or department has availed itself of available
28 statewide contracts.

29 (c) The State Fire Marshal shall propose legislative rules
30 for promulgation in accordance with §29A-3-1 *et seq.* of

*NOTE: This section was also amended by H. B. 2439, which passed prior to this act.

31 this code to implement the grant program established
32 pursuant to this section.

33 (d) The Legislative Auditor shall notify the State Fire
34 Marshal of any volunteer or part-volunteer fire company or
35 department that is ineligible to receive grant funds due to
36 the company's or department's failure to file required bank
37 statements or financial reports or failure to comply with an
38 audit or review by the Legislative Auditor. A volunteer or
39 part-volunteer fire company or department reported by the
40 Legislative Auditor shall be ineligible to receive funds
41 under this section until the Legislative Auditor notifies the
42 State Fire Marshal that the company or department has
43 come into compliance.

§29-3-8. Comprehensive report by State Fire Marshal.

1 On or before July 1, 2019, the State Fire Marshal shall
2 study, prepare, and submit a report to the Joint Committee
3 on Government and Finance regarding reciprocity of
4 firefighter and fire officer certification with other states.
5 Such report shall include recommendations regarding ways
6 to increase availability of reciprocal certification, including
7 any necessary changes to state code or regulation necessary
8 to facilitate additional reciprocity.

●

CHAPTER 223

**(Com. Sub. for H. B. 2439 - By Delegates Maynard,
Azinger, Cooper, Jennings, Lovejoy, Miller,
Sponaugle and Sypolt)**

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; to amend and reenact §12-4-14 of said code; to amend said code by adding thereto a new section, designated §12-4-14b; and to amend and reenact §29-3-5f of said code, all relating to fire service equipment and training funds for volunteer and part-volunteer fire companies and departments; authorizing fire departments to file bank statements and check images instead of sworn statements of expenditures; prohibiting the commingling of funds; requiring retention of payment records; defining terms; changing deadline dates; authorizing forfeiture and redistribution of funds of delinquent fire departments; prohibiting the conversion of funds through returns or refunds of goods or services; providing for deductions from quarterly distributions to offset improper expenditures by a fire company or department; clarifying the responsibility for proposing legislative rules; requiring written notifications of delinquencies and misapplications of funds; providing a procedure to contest findings of Legislative Auditor; removing certain criminal penalties; and updating outdated language.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

***§8-15-8b. Authorized expenditures of revenues from the Municipal Pensions and Protection Fund and the Fire Protection Fund; deductions for unauthorized expenditures; record retention.**

1 (a) Money received from the state for volunteer and
2 part-volunteer fire companies and departments, pursuant to
3 §33-3-14d, §33-3-33, and §33-12C-7 of this code, may not
4 be commingled with moneys received from any other
5 source, except money received as a grant from the Fire
6 Service Equipment and Training Fund as provided in §29-
7 3-5f of this code. Distributions from the Municipal Pensions
8 and Protection Fund and the Fire Protection Fund allocated
9 to volunteer and part-volunteer fire companies and
10 departments may be expended only for the following:

11 (1) Personal protective equipment, including protective
12 head gear, bunker coats, pants, boots, combination of
13 bunker pants and boots, coats, and gloves;

14 (2) Equipment for compliance with the national fire
15 protection standard or automotive fire apparatus, NFPA-
16 1901;

17 (3) Compliance with insurance service office
18 recommendations relating to fire departments;

19 (4) Rescue equipment, communications equipment, and
20 ambulance equipment: *Provided*, That no moneys received
21 from the Municipal Pensions and Protection Fund or the
22 Fire Protection Fund may be used for equipment for
23 personal vehicles owned or operated by volunteer fire
24 company or department members;

25 (5) Capital improvements reasonably required for
26 effective and efficient fire protection service and
27 maintenance of the capital improvements;

28 (6) Retirement of debts;

*NOTE: This section was also amended by S. B. 345, which passed subsequent to this act.

- 29 (7) Payment of utility bills;
- 30 (8) Payment of the cost of immunizations, including any
31 laboratory work incident to the immunizations, for
32 firefighters against hepatitis-b and other blood-borne
33 pathogens: *Provided*, That the vaccine shall be purchased
34 through the state immunization program or from the lowest-
35 cost vendor available: *Provided, however*, That volunteer
36 and part-volunteer fire companies and departments shall
37 seek to obtain no-cost administration of the vaccinations
38 through local boards of health: *Provided further*, That in the
39 event any volunteer or part-volunteer fire company or
40 department is unable to obtain no-cost administration of the
41 vaccinations through a local board of health, the company
42 or department shall seek to obtain the lowest cost available
43 for the administration of the vaccinations from a licensed
44 health care provider;
- 45 (9) Any filing fee required to be paid to the Legislative
46 Auditor's Office under §12-4-14 of this code relating to
47 sworn statements of annual expenditures submitted by
48 volunteer or part- volunteer fire companies or departments
49 that receive state funds or grants;
- 50 (10) Property/casualty insurance premiums for
51 protection and indemnification against loss or damage or
52 liability;
- 53 (11) Operating expenses reasonably required in the
54 normal course of providing effective and efficient fire
55 protection service, which include, but are not limited to,
56 gasoline, bank fees, postage, and accounting costs;
- 57 (12) Dues paid to national, state, and county
58 associations;
- 59 (13) Workers' compensation premiums;
- 60 (14) Life insurance premiums to provide a benefit not to
61 exceed \$20,000 for firefighters; and
- 62 (15) Educational and training supplies and fire prevention
63 promotional materials, not to exceed \$500 per year.

64 (b) If any volunteer fire company or part-volunteer fire
65 department spends any amount of money received from the
66 Municipal Pensions and Protection Fund or the Fire
67 Protection Fund for an item, service, or purpose not
68 authorized by this section, that amount, when determined by
69 an official audit, review, or investigation, shall be deducted
70 from future distributions to the volunteer fire company or
71 part-volunteer fire department.

72 (c) If any volunteer fire company or part-volunteer fire
73 department purchases goods or services authorized by this
74 section, but then returns the goods or cancels the services
75 for a refund, then any money refunded shall be deposited
76 back into the same, dedicated bank account used for the
77 deposit of distributions from the Municipal Pensions and
78 Protection Fund and the Fire Protection Fund.

79 (d) A volunteer fire company or part-volunteer fire
80 department shall retain, for five calendar years, all invoices,
81 receipts, and payment records for the goods and services
82 paid with money received from the state for volunteer and
83 part-volunteer fire companies and departments, pursuant to
84 §33-3-14d, §33-3-33, and §33-12C-7 of this code and
85 money received as a grant from the Fire Service Equipment
86 and Training Fund as provided in §29-3-5f of this code.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.

***§12-4-14. Accountability of grantees receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.**

1 (a) For the purposes of this section:

2 (1) "Grantor" means a state spending unit awarding a
3 state grant.

*NOTE: This section was also amended by S. B. 345, which passed subsequent to this act.

4 (2) “Grantee” means any entity receiving a state grant,
5 including a state spending unit, local government,
6 corporation, partnership, association, individual, or other
7 legal entity.

8 (3) “Report” means an engagement, such as an agreed-
9 upon procedures engagement or other attestation
10 engagement, performed and prepared by a certified public
11 accountant to test whether state grants were spent as
12 intended. The term “report” does not mean a full-scope
13 audit or review of the person receiving state funds.

14 (4) “State grant” means funding provided by a state
15 spending unit, regardless of the original source of the funds,
16 to a grantee upon application for a specific purpose. The
17 term “state grant” does not include: (A) Payments for goods
18 and services purchased by a state spending unit; (B)
19 compensation to state employees and public officials; (C)
20 reimbursements to state employees and public officials for
21 travel or incidental expenses; (D) grants of student aid; (E)
22 government transfer payments; (F) direct benefits provided
23 under state insurance and welfare programs; (G) funds
24 reimbursed to a person for expenditures made for qualified
25 purposes when receipts for the expenditures are required
26 prior to receiving the funds; (H) retirement benefits; and (I)
27 federal pass-through funds that are subject to the federal
28 Single Audit Act Amendments of 1996, 31 U.S.C. § 7501,
29 *et seq.* The term “state grant” does not include formula
30 distributions to volunteer and part-volunteer fire
31 departments and fire companies made pursuant to §33-3-
32 14d, §33-3-33, §33-12C-7 of this code and does not include
33 money received from the Fire Service Equipment and
34 Training Fund as provided in §29-3-5f of this code.

35 (b) (1) Any grantee who receives one or more state
36 grants in the amount of \$50,000 or more in the aggregate in
37 a state’s fiscal year shall file with the grantor a report of the
38 disbursement of the state grant funds. When the grantor
39 causes an audit, by an independent certified public
40 accountant, to be conducted of the grant funds, the audit is

41 performed using generally accepted government auditing
42 standards, and a copy of the audit is available for public
43 inspection, no report is required to be filed under this
44 section. An audit performed that complies with Office of
45 Management and Budget circular A-133, and submitted
46 within the period provided in this section may be substituted
47 for the report.

48 (2) Any grantee who receives a state grant in an amount
49 less than \$50,000 or who is not required to file a report
50 because an audit has been conducted or substituted as
51 provided by subdivision (1) of this subsection shall file with
52 the grantor a sworn statement of expenditures made under
53 the grant.

54 (3) Reports and sworn statements of expenditures
55 required by this subsection shall be filed within two years
56 of the end of the grantee's fiscal year in which the
57 disbursement of state grant funds by the grantor was made.
58 The report shall be made by an independent certified public
59 accountant at the cost of the grantee. State grant funds may
60 be used to pay for the report if the applicable grant
61 provisions allow. The scope of the report is limited to
62 showing that the state grant funds were spent for the
63 purposes intended when the grant was made.

64 (c)(1) Any grantee failing to file a required report or
65 sworn statement of expenditures within the two-year period
66 provided in subdivision (3), subsection (b) of this section
67 for state grant funds is barred from subsequently receiving
68 state grants until the grantee has filed the report or sworn
69 statement of expenditures and is otherwise in compliance
70 with the provisions of this section.

71 (2) Any grantor of a state grant shall report any grantee
72 failing to file a required report or sworn statement of
73 expenditures within the required period provided in this
74 section to the Legislative Auditor for purposes of debarment
75 from receiving state grants.

76 (d) (1) The state agency administering the state grant
77 shall notify the grantee of the reporting requirements set
78 forth in this section.

79 (2) All grantors awarding state grants shall, prior to
80 awarding a state grant, take reasonable actions to verify that
81 the grantee is not barred from receiving state grants pursuant
82 to this section. The verification process shall, at a minimum,
83 include:

84 (A) A requirement that the grantee seeking the state
85 grant provide a sworn statement from an authorized
86 representative that the grantee has filed all reports and
87 sworn statements of expenditures for state grants received
88 as required under this section; and

89 (B) Confirmation from the Legislative Auditor by the
90 grantor that the grantee has not been identified as one who
91 has failed to file a report or sworn statement of expenditures
92 under this section. Confirmation may be accomplished by
93 accessing the computerized database provided in subsection
94 (e) of this section.

95 (3) If any report or sworn statement of expenditures
96 submitted pursuant to the requirements of this section
97 provides evidence of a reportable condition or violation, the
98 grantor shall provide a copy of the report or sworn statement
99 of expenditures to the Legislative Auditor within 30 days of
100 receipt by the grantor.

101 (4) The grantor shall maintain copies of reports and
102 sworn statements of expenditures required by this section
103 and make the reports or sworn statements of expenditures
104 available for public inspection, as well as for use in audits
105 and performance reviews of the grantor.

106 (5) The Secretary of the Department of Administration
107 has authority to promulgate procedural and interpretive
108 rules and propose legislative rules for promulgation in

109 accordance with the provisions of §29A-3-1 *et seq.* of this
110 code to assist in implementing the provisions of this section.

111 (e)(1) Any state agency administering a state grant shall,
112 in the manner designated by the Legislative Auditor, notify
113 the Legislative Auditor of the maximum amount of funds to
114 be disbursed, the identity of the grantee authorized to
115 receive the funds, the grantee's fiscal year and federal
116 employer identification number, and the purpose and nature
117 of the state grant within 30 days of making the state grant or
118 authorizing the disbursement of the funds, whichever is
119 later.

120 (2) The State Treasurer shall provide the Legislative
121 Auditor the information concerning formula distributions to
122 volunteer and part-volunteer fire departments, made
123 pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this
124 code, the Legislative Auditor requests, and in the manner
125 designated by the Legislative Auditor.

126 (3) The Legislative Auditor shall maintain a list
127 identifying grantees who have failed to file reports and
128 sworn statements required by this section. The list may be
129 in the form of a computerized database that may be accessed
130 by state agencies over the Internet.

131 (f) An audit of state grant funds may be authorized at
132 any time by the Joint Committee on Government and
133 Finance to be conducted by the Legislative Auditor at no
134 cost to the grantee.

135 (g) Any report submitted pursuant to the provisions of
136 this section may be filed electronically in accordance with
137 the provisions of §39A-1-1 *et seq.* of this code.

138 (h) Any grantee who files a fraudulent sworn statement
139 of expenditures under subsection (b) of the section, a
140 fraudulent sworn statement under subsection (d) of this
141 section, or a fraudulent report under this section is guilty of
142 a felony and, upon conviction thereof, shall be fined not less

143 than \$1,000 nor more than \$5,000 or imprisoned in a state
144 correctional facility for not less than one year nor more than
145 five years, or both fined and imprisoned.

§12-4-14b. Accountability of volunteer and part-volunteer fire companies or departments receiving state funds for equipment and training; review or audit of expenditures; withholding of state funds for delinquency or misuse; notifications.

1 (a) *Definitions.* — For the purposes of this section:

2 “Equipment and training grant” means a grant of money
3 to a volunteer fire company or a part-volunteer fire
4 department from the Fire Service Equipment and Training
5 Fund created in §29-3-5f of this code;

6 “Formula distribution” means a distribution of money
7 to volunteer and part-volunteer fire companies or
8 departments made pursuant to §33-3-14d, §33-3-33, and
9 §33-12C-7 of this code; and

10 “State funds account” means a bank account established
11 by a volunteer fire company or a part-volunteer fire
12 department and maintained for the exclusive use and
13 accounting of money from formula distributions and
14 equipment and training grants.

15 (b) *Filing required documentation.* — Every volunteer
16 and part-volunteer fire company or department seeking to
17 receive formula distributions or an equipment and training
18 grant shall file copies of bank statements and check images
19 from the company’s or department’s state funds account for
20 the previous calendar year with the Legislative Auditor on
21 or before February 1 of each year.

22 (c) *Reviews and audits.* — The Legislative Auditor is
23 authorized to conduct regular reviews or audits of deposits
24 and expenditures from formula distribution and equipment
25 and training grant funds by volunteer and part-volunteer fire
26 companies or departments. The Legislative Auditor may

27 assign an employee or employees to perform audits or
28 reviews at his or her direction. The State Treasurer shall
29 provide the Legislative Auditor information, in the manner
30 designated by the Legislative Auditor, concerning formula
31 distributions and equipment and training grants paid to
32 volunteer and part-volunteer fire departments. The
33 volunteer fire company or part-volunteer fire department
34 shall cooperate with the Legislative Auditor, the Legislative
35 Auditor's employees, and the State Auditor in performing
36 their duties under the laws of this state.

37 (d) *State Auditor.* — Whenever the State Auditor
38 performs an audit of a volunteer fire department for any
39 purpose, the Auditor shall also conduct an audit of other
40 state funds received by the fire department pursuant to §33-
41 3-14d, §33-3-33, and §33-12C-7 of this code. The Auditor
42 shall send a copy of the audit to the Legislative Auditor. The
43 Legislative Auditor may accept an audit performed by the
44 Auditor in lieu of performing an audit under this section.

45 (e) *Withholding of funds.* — The Treasurer is authorized
46 to withhold payment of a formula distribution or an
47 equipment and training grant from a volunteer or part-
48 volunteer fire company or department, when properly
49 notified by the Legislative Auditor pursuant to this section,
50 of any of the following conditions:

51 (1) Failure to file, in a timely manner, copies of bank
52 statements and check images with the Legislative Auditor;

53 (2) Failure to cooperate with a review or audit
54 conducted by the Legislative Auditor;

55 (3) Misapplication of state funds; or

56 (4) Failure to file a report or a sworn statement of
57 expenditures as required by §12-4-14 of this code for a state
58 grant other than an equipment and training grant.

59 (f) *Delinquency in filing.* — If, after February 1, a
60 volunteer or part-volunteer fire company or department has

61 failed to file the required bank statements and check images
62 with the Legislative Auditor, the Legislative Auditor shall
63 notify the delinquent company or department at two
64 separate times in writing of the delinquency and of possible
65 forfeiture of its Fire Service Equipment and Training Fund
66 distribution for the year. If the required bank statements and
67 check images are not filed with the Legislative Auditor by
68 March 31, unless the time period is extended by the
69 Legislative Auditor, the Legislative Auditor shall then
70 notify the Treasurer who shall withhold payment of any
71 amount that would otherwise be distributed to the fire
72 company or fire department. Prior to each subsequent
73 quarterly disbursement of funds by the Treasurer, the
74 Legislative Auditor shall notify each delinquent company or
75 department twice per each quarter in which the company or
76 department is delinquent. The Legislative Auditor may
77 choose the method or methods of notification most likely to
78 be received by the delinquent company or department.

79 (g) *Noncooperation.* — If, in the course of an audit or
80 review by the Legislative Auditor, a volunteer or part-
81 volunteer fire company or department fails to provide
82 documentation of its accounts and expenditures in response
83 to a request of the Legislative Auditor, the Legislative
84 Auditor shall notify the State Treasurer who shall withhold
85 payment of any amount that would otherwise be distributed
86 to the fire department under the provisions of §33-3-14d,
87 §33-3-33, and §33-12C-7 of this code until the Legislative
88 Auditor informs the State Treasurer that the fire department
89 has cooperated with the review or audit.

90 (h) *Reporting of other grants.* — Nothing in this section
91 alters the duties and responsibilities of a volunteer or part-
92 volunteer fire company or department imposed under §12-
93 4-14 of this code if that company or department has received
94 funds from any state grant program other than from the Fire
95 Service Equipment and Training Fund. If the Legislative
96 Auditor is notified by a grantor that a fire company or
97 department has failed to file a report or a sworn statement

98 of expenditures for a state grant it received, the Legislative
99 Auditor shall notify the State Treasurer who shall withhold
100 further distributions to the company or department in the
101 manner provided in this section.

102 (i) *Escrow and forfeiture of moneys withheld.* — The
103 Volunteer Fire Department Audit Account previously
104 created in the Treasury is hereby continued. When the State
105 Treasurer receives notice to withhold the distribution of
106 money to a volunteer or part-volunteer fire company or
107 department pursuant to this section, the Treasurer shall
108 instead deposit the amounts withheld into the Volunteer Fire
109 Department Audit Account. If the Treasurer receives notice
110 that the volunteer or part-volunteer fire company or
111 department has come into compliance in less than one year
112 from the date of deposit into this special revenue account,
113 then the Treasurer shall release and distribute the withheld
114 amounts to the fire company or department, except that any
115 interest that has accrued thereon shall be credited to the
116 general revenue of the state. If, after one year from payment
117 of the amount withheld into the special revenue account, the
118 Legislative Auditor informs the State Treasurer of
119 continued noncooperation by the fire department, the
120 delinquent fire company or fire department forfeits the
121 amounts withheld and the State Treasurer shall pay the
122 amounts withheld into Fire Service Equipment and Training
123 Fund created in §29-3-5f of this code.

124 (j) *Misuse of state money.* — If the Legislative Auditor
125 determines that a volunteer or part-volunteer fire
126 department or company has used formula distribution
127 money for purposes not authorized by §8-15-8b of this code
128 or has used equipment and training grant money for
129 purposes not authorized by the grant program, the
130 Legislative Auditor shall give a written notice of
131 noncompliance to the department or company. If a volunteer
132 or part-volunteer fire department or company disagrees or
133 disputes the finding, the fire department or company may
134 contest the finding by submitting a written objection to the

135 Legislative Auditor within five working days of receipt of
136 the Legislative Auditor's finding. The fire department or
137 company shall then have 60 days from the date of the
138 Legislative Auditor's finding to provide documentation to
139 substantiate that the expenditures were made for authorized
140 purposes. If the volunteer or part-volunteer fire department
141 or company does not dispute the findings of the Legislative
142 Auditor or if the volunteer or part-volunteer fire department
143 or company is not able to substantiate an authorized purpose
144 for the expenditure, the Legislative Auditor shall notify the
145 Treasurer of the amount of misapplied money and the
146 Treasurer shall deduct that amount from future distributions
147 to that fire company or department until the full amount of
148 unauthorized expenditure is offset.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

***§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 Treasury a special
2 revenue fund to be known as the Fire Service Equipment
3 and Training Fund. Expenditures from the fund by the State
4 Fire Marshal are authorized from collections. The fund may
5 only be used for the purpose of providing grants to equip
6 volunteer and part-volunteer fire companies and
7 departments and their members, and to 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.

12 (b) The State Fire Marshal shall establish a grant
13 program for equipment and training for volunteer and part-
14 volunteer fire companies and departments. Such grant
15 program shall be open to all volunteer and part-volunteer

*NOTE: This section was also amended by S. B. 345, which passed subsequent to this act.

16 fire companies and departments. In making grants pursuant
17 to this section, the State Fire Marshal shall consider:

18 (1) The number of emergency and nonemergency calls
19 responded to by the department;

20 (2) The activities and responses of the department;

21 (3) The revenues received by the department from
22 federal, state, county, municipal, local, and other sources;
23 and

24 (4) The department's assets, expenditures, and other
25 liabilities, including whether the fire company or
26 department has availed itself of available statewide
27 contracts.

28 (c) The State Fire Marshal shall propose legislative rules
29 for promulgation in accordance with §29A-3-1 *et seq.* of
30 this code to implement the grant program established
31 pursuant to this section.

32 (d) The Legislative Auditor shall notify the State Fire
33 Marshal of any volunteer or part-volunteer fire company or
34 department that is ineligible to receive grant funds due to
35 the department's failure to file required bank statements or
36 financial reports or failure to comply with an audit or review
37 by the Legislative Auditor. A fire company or fire
38 department reported by the Legislative Auditor shall be
39 ineligible to receive funds under this section until the
40 Legislative Auditor notifies the State Fire Marshal that the
41 company or department has come into compliance.

●

CHAPTER 224

(Com. Sub. for S. B. 237 - By Senators Jeffries, Cline and Baldwin)

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-3D-1, §15-3D-2, §15-3D-3, §15-3D-4, §15-3D-5, §15-3D-6, §15-3D-7, and §15-3D-8, all relating generally to missing and unidentified persons investigations; establishing a short title; declaring legislative findings; defining terms; detailing actions that must be taken by law-enforcement agencies following the receipt of a missing persons complaint and during a missing persons investigation; detailing actions that must be taken by medical examiners and law-enforcement agencies related to identification of human remains; requiring the timely notification to family members of identification of human remains; requiring submission of information to certain national and state databases; and creating a misdemeanor offense of knowingly and willfully filing a false missing persons report with a law-enforcement agency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3D. MISSING PERSONS ACT.

§15-3D-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 Missing Persons Act.

§15-3D-2. Findings.

- 1 The Legislature finds that:

2 (1) The ability of law-enforcement agencies to rapidly
3 respond in the hours following the discovery that an
4 individual is missing is a crucial factor in the likelihood that
5 the person will ultimately be located and recovered. The
6 prompt communication of detailed information to the public
7 through emergency broadcast systems and media outlets,
8 including through social media platforms and missing
9 persons databases, can be one of the most effective tools in
10 a missing persons investigation.

11 (2) A number of national and state-level databases are
12 available to allow law-enforcement agencies and medical
13 examiners to electronically share key information with other
14 law-enforcement agencies and the public related to the
15 investigation of a missing person or unidentified human
16 remains.

17 (3) In light of technological developments, it is
18 imperative that all law-enforcement agencies in West
19 Virginia follow certain minimum procedures for responding
20 to missing persons complaints and submit key information
21 to national and state-level databases in a timely manner.

§15-3D-3. Definitions.

1 For the purposes of this article:

2 (1) “CODIS” means the Federal Bureau of
3 Investigation’s Combined DNA Index System, which
4 allows for the storage and exchange of DNA records
5 submitted by federal, state, and local forensic DNA
6 laboratories. The term “CODIS” includes the National DNA
7 Index System or NDIS, administered and operated by the
8 Federal Bureau of Investigation.

9 (2) “Complainant” means a person who contacts law
10 enforcement to report that a person is missing.

11 (3) “Electronic communication device” means a cellular
12 telephone, personal digital assistant, electronic device with
13 mobile data access, laptop computer, pager, broadband

14 personal communication device, two-way messaging
15 device, electronic game, or portable computing device.

16 (4) “Juvenile” means any person under 21 years of age.

17 (5) “Law-enforcement agency” means any duly
18 authorized state, county, or municipal organization
19 employing one or more persons whose responsibility is the
20 enforcement of laws of the state or any county or
21 municipality thereof.

22 (6) “Lead law-enforcement agency” means the law-
23 enforcement agency that initially receives a missing persons
24 complaint or, after the fulfillment of all requirements of this
25 article related to the initial receipt of a missing persons
26 complaint and transmission of information to required
27 databases, the law-enforcement agency with the primary
28 responsibility for investigating a missing or unidentified
29 persons complaint.

30 (7) “Missing person” means any person who is reported
31 missing to a law-enforcement agency.

32 (8) “NamUs” means the database of the National
33 Missing and Unidentified Persons System.

34 (9) “NCIC” means the database of the National Crime
35 Information Center, the nationwide, online computer
36 telecommunications system maintained by the Federal
37 Bureau of Investigation to assist authorized agencies in
38 criminal justice and related law-enforcement objectives.

39 (10) “NCMEC” means the database of the National
40 Center for Missing and Exploited Children.

41 (11) “Unidentified person” means any person, living or
42 deceased, who has not been identified through investigation
43 for over 30 days.

44 (12) “Violent Criminal Apprehension Program” or
45 “ViCAP” is a unit of the Federal Bureau of Investigation

46 responsible for the analysis of serial violent and sexual
47 crimes.

48 (13) “WEAPON system” means the West Virginia
49 Automated Police Network.

§15-3D-4. Missing persons complaints; law-enforcement procedures.

1 (a) *Complaint requirements.* — A person may file a
2 missing persons complaint with any law-enforcement
3 agency having jurisdiction. The law-enforcement agency
4 shall attempt to collect the following information from a
5 complainant:

6 (1) The missing person’s name;

7 (2) The missing person’s date of birth;

8 (3) The missing person’s address;

9 (4) The missing person’s identifying characteristics,
10 including, but not limited to: Birthmarks, moles, tattoos,
11 scars, height, weight, gender, race, current hair color,
12 natural hair color, eye color, prosthetics, surgical implants,
13 cosmetic implants, physical anomalies, and blood type;

14 (5) A description of the clothing the missing person was
15 believed to have been wearing when he or she went missing
16 and any items that might be with the missing person, such
17 as jewelry, accessories, shoes, or any other distinguishing
18 garments or items;

19 (6) The date of the last known contact with the missing
20 person;

21 (7) The missing person’s driver’s license and Social
22 Security number, or any other numbers related to other
23 forms of identification;

24 (8) A recent photograph of the missing person;

25 (9) Information related to the missing person's
26 electronic communication devices or electronic accounts,
27 such as cell phone numbers, social networking login
28 information, and email addresses and login information;

29 (10) Any circumstances that the complainant believes
30 may explain why the person is missing;

31 (11) The name and location of the missing person's
32 school or employer;

33 (12) The name and location of the missing person's
34 dentist or primary care physician;

35 (13) A description of the missing person's possible
36 means of transportation, including make, model, color,
37 license, and identification number of a vehicle;

38 (14) Any identifying information related to a known or
39 possible abductor, or the person last seen with the missing
40 person, including the person's name, physical description,
41 date of birth, identifying physical marks, a description of the
42 person's possible means of transportation, including the
43 make, model, color, license, and identification number of
44 the person's vehicle, and any known associates;

45 (15) The name of the complainant and his or her
46 relationship to the missing person; and

47 (16) Any additional information considered relevant by
48 either the complainant or the law-enforcement agency.

49 (b) *High-risk determination; requirements.* —

50 (1) Upon initial receipt of a missing persons report, the
51 lead law-enforcement agency shall immediately assess
52 whether facts or circumstances indicate that the person
53 meets any of the following risk indicators, which, if
54 applicable, will be entered into NCIC:

55 (A) The person is or was likely involved in a natural
56 disaster;

57 (B) The person is a juvenile, or was a juvenile when he
58 or she went missing;

59 (C) The person is likely endangered;

60 (D) The person has mental or physical disabilities;

61 (E) The disappearance is believed to have been the
62 result of abduction or kidnapping, or was otherwise
63 involuntary;

64 (F) The person is under the age of 21 and declared
65 emancipated by the laws of his or her state of residence; and

66 (G) None of the criteria in paragraphs (A) through (E),
67 inclusive, of this subdivision apply, but additional facts
68 support a reasonable concern for the person's safety.

69 (2) If, upon assessment, the lead law-enforcement
70 agency determines that the missing person meets one of the
71 classifications in subdivision (1) of this subsection, the lead
72 law-enforcement agency shall:

73 (A) Immediately notify the terminal operator
74 responsible for WEAPON system entries for the law-
75 enforcement agency and provide the operator with all
76 relevant information collected from the missing persons
77 complainant as soon as possible. The terminal operator will
78 enter all information into the WEAPON system and submit
79 the information to the West Virginia State Police
80 communications section. If the law-enforcement agency
81 does not have an agreement with a local terminal agency,
82 then the law-enforcement agency will contact the West
83 Virginia State Police terminal agency for that particular area
84 and request that the West Virginia State Police enter the
85 information into the WEAPON system. Once the missing
86 persons complaint has been entered into the WEAPON
87 system, the West Virginia State Police communications

88 section shall immediately notify all law-enforcement
89 agencies within the state and surrounding region by means
90 of the WEAPON system with all information that will
91 promote efforts to promptly locate and safely recover the
92 missing person. Local law-enforcement agencies that
93 receive the notification of a missing persons complaint shall
94 notify all officers to be on the lookout for the missing person
95 or a suspected abductor; and

96 (B) Immediately, and no later than two hours, after the
97 determination that a juvenile is missing, take appropriate
98 steps to ensure that the case is entered into the NCIC
99 database with a photograph and other applicable
100 information related to that missing person.

101 (c) *General requirements.* —

102 (1) The lead law-enforcement agency shall take
103 appropriate steps to ensure that all relevant information
104 related to a missing persons complaint is submitted in a
105 timely manner to the WEAPON system, and as applicable,
106 NCIC, CODIS, NDIS, NamUs, and NCMEC. Any
107 information that the West Virginia State Police obtains from
108 these databases must be provided to the lead
109 law-enforcement agency and to other law-enforcement
110 agencies who may come in contact with or be involved in
111 the investigation or location of a missing person.

112 (2) The lead law-enforcement agency or the West
113 Virginia State Police shall submit any available DNA
114 profiles that may aid in a missing persons investigation and
115 that have not already been submitted by a medical examiner
116 into appropriate DNA databases, including, but not limited
117 to, NamUs.

118 (d) *Removal upon location of person.* — Upon the
119 determination that the person is no longer missing, the lead
120 law-enforcement agency or the West Virginia State Police
121 shall immediately remove or request the removal of all

122 records of the missing person from all missing persons
123 databases.

§15-3D-5. Missing persons investigation requirements.

1 (a) A law-enforcement agency may not delay an
2 investigation of a missing persons complaint on the basis of
3 a written or unwritten policy requiring that a certain period
4 of time pass after any event, including the receipt of a
5 complaint, before an investigation may commence.

6 (b) A law-enforcement agency may not refuse to accept
7 a missing person report over which it has investigatory
8 jurisdiction.

9 (c) A law-enforcement agency is not required to obtain
10 written authorization before publicly releasing any
11 photograph that would aid in the location or recovery of a
12 missing person.

13 (d) A lead law-enforcement agency shall notify the
14 complainant, a family member, or other person in a position
15 to assist in efforts to locate the missing person of the
16 following:

17 (1) Whether additional information or materials would
18 aid in the location of the missing person, such as
19 information related to credit or debit cards the missing
20 person may have access to, other banking information, or
21 phone or computer records;

22 (2) That any DNA samples requested for the missing
23 persons investigation are requested on a voluntary basis, to
24 be used solely to help locate or identify the missing person
25 and will not be used for any other purpose; and

26 (3) Any general information about the handling of the
27 investigation and the investigation's progress, unless
28 disclosure would adversely affect the ability to locate or
29 protect the missing person, or to apprehend or prosecute any
30 person criminally involved in the person's disappearance.

31 (e) A law-enforcement agency may provide
32 informational materials through publications, or other
33 means, regarding publicly available resources for obtaining
34 or sharing missing persons information.

35 (f) Lead law-enforcement agencies shall make use of all
36 available and applicable tools, resources, and technologies
37 to resolve a missing persons investigation, including but not
38 limited to:

39 (1) Assistance from other law-enforcement agencies,
40 whether at a local, state, or federal level;

41 (2) Nonprofit search and rescue organizations, which
42 may provide trained animal searches, use of specialized
43 equipment, or man trackers;

44 (3) Cell phone triangularization and tracking services;

45 (4) Subpoenas of cell phone, land line, Internet, email,
46 and social networking website records; and

47 (5) Services of technology experts to examine any
48 available information collected from a computer or
49 communications device belonging to or used by the missing
50 person.

51 (g) If a person remains missing for 30 days after the
52 receipt of a missing persons complaint or the date on which
53 the person was last seen, whichever occurs earlier, the lead
54 law-enforcement agency shall attempt to obtain the
55 following information:

56 (1) DNA samples from family members and the missing
57 person, along with any necessary authorizations to release
58 such information. All DNA samples obtained in a missing
59 persons investigation shall be immediately forwarded to an
60 appropriate laboratory for analysis;

61 (2) Any necessary written authorization to release the
62 missing person's medical and dental records, including any

63 available x-rays, to the lead law-enforcement agency. If no
64 family or next of kin exists or can be located, the lead
65 law-enforcement agency may execute a written declaration,
66 stating that an active investigation seeking to locate the
67 missing person is being conducted and that the records are
68 required for the exclusive purpose of furthering the
69 investigation. The written declaration, signed by the
70 supervising or chief officer of the law-enforcement agency,
71 is sufficient authority for a health care practitioner to
72 immediately release the missing person's x-rays, dental
73 records, dental x-rays, and records of any surgical implants
74 to the law-enforcement agency;

75 (3) Additional photographs of the missing person that
76 may aid the investigation; and

77 (4) Fingerprints of the missing person.

78 (h) Nothing in this section precludes a law-enforcement
79 agency from attempting to obtain the materials identified in
80 subsection (g) of this section before the expiration of the
81 30-day period.

§15-3D-6. Reporting and handling of unidentified human remains.

1 (a) If a law-enforcement officer or other official
2 discovers or comes into custody of unidentified human
3 remains, the officer or official shall immediately notify the
4 office of the Chief Medical Examiner of the location of
5 those remains. After a law-enforcement agency performs an
6 appropriate death scene investigation with the assistance of
7 the Chief Medical Examiner or county medical examiner,
8 unidentified human remains shall remain in the custody of
9 the office of the Chief Medical Examiner or the county
10 medical examiner pursuant to the requirements of §61-12-3
11 of this code.

12 (b) If a law-enforcement officer or other official is
13 uncertain whether materials he or she discovers or comes
14 into custody of are human remains, the officer or official

15 shall immediately notify and seek the assistance of the
16 office of the Chief Medical Examiner.

§15-3D-7. Identification of human remains.

1 (a) The Chief Medical Examiner or county medical
2 examiner, whichever is applicable, shall make reasonable
3 attempts to promptly identify unidentified human remains,
4 by:

5 (1) Taking photographs of the human remains, prior to
6 an autopsy;

7 (2) Performing dental or skeletal x-rays, when possible;

8 (3) Taking photographs of items found with the human
9 remains;

10 (4) Obtaining fingerprints from the remains, when
11 possible;

12 (5) Taking samples of tissue suitable for DNA typing,
13 when obtainable;

14 (6) Taking samples of whole bone or hair, or both, when
15 obtainable and suitable for DNA typing; and

16 (7) Collecting any other information or materials that
17 may support identification efforts.

18 (b) A medical examiner or any other person may not
19 dispose of, or materially alter, unidentified human remains
20 before:

21 (1) Any obtainable DNA samples have been collected
22 that are suitable for DNA identification archiving;

23 (2) Photographs of the unidentified person or human
24 remains have been taken; and

25 (3) All other appropriate methods of identification have
26 been exhausted.

27 (c) A medical examiner shall make reasonable efforts to
28 obtain prompt DNA analysis of biological samples from
29 unidentified human remains if the human remains have not
30 been identified by other means within 30 days.

31 (d) A medical examiner shall seek available support
32 from appropriate state and federal agencies in efforts to
33 identify human remains including, but not limited to,
34 mitochondrial or nuclear DNA testing services, federal
35 grants for DNA testing, or federal grants for laboratory or
36 medical examiner office improvement.

37 (e) The medical examiner shall promptly submit all
38 available information that may aid in the identification of
39 human remains to NamUs and to the West Virginia State
40 Police, for entry into all other appropriate law-enforcement
41 databases.

42 (f) When human remains have been identified as
43 belonging to a missing person, the medical examiner shall
44 promptly notify the lead law-enforcement agency, or if the
45 lead law-enforcement agency is unknown, the West
46 Virginia State Police that the missing person's remains have
47 been identified.

48 (g) As soon as possible, the lead law-enforcement
49 agency shall make and document efforts to locate family
50 members of the deceased person to inform them of the death
51 and location of the remains of their family member, unless
52 disclosure of such information would compromise a
53 criminal investigation into a missing person's death.

54 (h) Nothing in this article shall be interpreted to
55 preclude the West Virginia State Police or any other
56 law-enforcement agency from pursuing additional efforts to
57 identify human remains, including efforts to publicize
58 information, descriptions, or photographs that may aid in
59 the identification of the remains.

§15-3D-8. Filing a false missing persons complaint; criminal penalties.

1 A person who knowingly and willfully files a false
2 missing persons complaint is guilty of a misdemeanor and,
3 upon conviction thereof, shall be fined not less than \$25 nor
4 more than \$200, or confined in jail for five days, or both
5 fined and confined.

CHAPTER 225

**(Com. Sub. for S. B. 356 - By Senators Weld,
Clements, Maroney, Cline and Swope)**

[Passed February 21, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-1-7, relating generally to compliance with judicial discovery requirements in state and federal criminal cases; requiring the Department of Military Affairs and Public Safety and the agencies therewithin to provide to state and federal prosecutors information regarding certain past or present employees called as witnesses for the prosecution who have been previously determined to have engaged in conduct which might reasonably constitute impeachment evidence; requiring disclosure of the employee's name to the prosecuting attorney or United States attorney; limiting the department's or agency's responsibilities to those circumstances wherein the department or agency is on notice that the employee has been subpoenaed or is to be called as a prosecution witness; clarifying that the responsibilities imposed by this section upon the department or agency are met by transmittal of the name to the prosecuting attorney or attorney for the United States; granting immunity to the department and agencies for

good faith compliance with the requirement to provide information; and clarifying that the immunity granted by the section is in addition to any other immunities granted under law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEFINITIONS; GENERAL PROVISIONS.

§15A-1-7. Compliance with requests for personnel information.

1 (a) Notwithstanding any provision of this code or any
2 rule promulgated thereunder to the contrary, when the
3 Department of Military Affairs and Public Safety or any
4 agency within the department is placed on notice that a past
5 or current employee has been subpoenaed or is to be called
6 as a witness in a criminal proceeding on behalf of the state
7 or federal government, the department, or agency, and the
8 employee has, to the departments' or agencies' knowledge,
9 previously been determined to have engaged in conduct
10 reflecting dishonesty, moral turpitude, bias, prejudice, or
11 other conduct which might reasonably be deemed to
12 constitute impeachment evidence, the department or agency
13 shall provide the name of the employee to the prosecuting
14 attorney or United States attorney representing the state or
15 the United States in the prosecution.

16 (b) The responsibilities of the department and agencies
17 imposed by this section are met by transmittal of the
18 employee name to the prosecuting attorney or attorney for
19 the United States.

20 (c) The Department of Military Affairs and Public
21 Safety and all its officers and employees are immune from
22 any and all liability arising from the good faith release of
23 information under the provisions of this section. The
24 immunity granted by this section shall be in addition to any
25 other immunity now existing or granted under any other
26 provision of this code or common law.

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CHAPTER 226

**(Com. Sub. for S. B. 357 - By Senators Weld,
Clements and Cline)**

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to repeal §15-9A-1, §15-9A-2, §15-9A-3, and §15-9A-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §15A-2-1 and §15A-2-3 of said code; and to amend said code by adding thereto two new sections, designated §15A-2-4 and §15A-2-5, all relating to the Division of Administrative Services; designating division as staffing agency for certain agencies; providing that division perform executive and administrative support services for certain agencies; designating the division as the state administrative agency responsible for criminal justice and juvenile justice systems; providing exception; providing that code references to the Division of Justice and Community Services are to be construed as references to Division of Administrative Services; transferring employees of Division of Justice and Community Services to Division of Administrative Services; enumerating duties of director of division; requiring legislative rulemaking; and providing for posting of human trafficking assistance notices.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.

§15-9A-1. Legislative findings.

1 [Repealed.]

§15-9A-2. Division established; appointment of director.

1 [Repealed.]

§15-9A-3. Duties and powers of the director.

1 [Repealed.]

§15-9A-4. Human trafficking assistance notices.

1 [Repealed.]

**CHAPTER 15A. DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY.**

ARTICLE 2. DIVISION OF ADMINISTRATIVE SERVICES.

§15A-2-1. Division of Administrative Services.

1 (a) The Division of Administrative Services is created
2 within the department to perform the administrative services
3 for identified agencies within the department.

4 (b) The Division of Administrative Services shall
5 provide fiscal services, payroll services, human resources
6 services, and procurement services for the Division of
7 Corrections and Rehabilitation, created in §15A-3-1 *et seq.*
8 of this code, and any other agencies or boards required by
9 the secretary: *Provided*, That the secretary may not require
10 the administrative services of the State Police, the West
11 Virginia National Guard, or the West Virginia Military
12 Authority be provided by the Division of Administrative
13 Services. The division is the designated staffing agency for,
14 and shall provide executive and administrative support to,
15 the Governor's Committee on Crime, Delinquency, and
16 Correction, and all of its subcommittees, in the coordination
17 of planning for the criminal justice system and
18 administering federal and state grant programs assigned to
19 it by the actions of the Governor or Legislature.

20 (c) The State Police, the West Virginia National Guard,
21 and the West Virginia Military Authority may elect to
22 utilize the services of the Division of Administrative
23 Services. The Director of the Division of Administrative
24 Services is authorized to enter into a memorandum of
25 understanding with the head of the State Police, the West
26 Virginia National Guard, or the West Virginia Military
27 Authority to effectuate this utilization.

28 (d) The division may apply for grants and other funding
29 from federal or state programs, foundations, corporations,
30 and organizations which funding is consistent with its
31 responsibilities and the purposes assigned to it or the
32 subcommittees it staffs. The Division of Administrative
33 Services is hereby designated as the state administrative
34 agency responsible for criminal justice and juvenile justice
35 systems, and various component agencies of state and local
36 government, for the planning and development of state
37 programs and grants which may be funded by federal, state,
38 or other allocations in the areas of public safety, community
39 corrections, law-enforcement training and compliance,
40 sexual assault forensic examinations, victim services,
41 human trafficking, and juvenile justice unless such
42 administration has been specifically entrusted to another
43 state agency by the Legislature. The division is empowered
44 to comply with all regulations and requirements to qualify
45 for such grants funded by federal, state, or other allocations
46 and to administer such funds.

47 (e) Notwithstanding any other provision of this code to
48 the contrary, whenever in this code, or a rule promulgated
49 thereunder, a reference is made to the Director of the
50 Division of Justice and Community Services, it shall be
51 construed to mean the Director of the Division of
52 Administrative Services. Whenever in this code, or a rule
53 promulgated thereunder, a reference is made to the Division
54 of Justice and Community Services, it shall be construed to
55 mean the Division of Administrative Services.

§15A-2-3. Transfer of employees; continuation of programs; transfer of equipment and records; protection.

1 (a) All persons employed by the Division of Juvenile
2 Services, the Regional Jail and Correctional Facility
3 Authority, or the Division of Corrections whose
4 employment responsibilities include those to be provided by
5 the Division of Administrative Services are assigned and
6 transferred to the Division of Administrative Services.
7 Effective July 1, 2019, all persons employed on the effective
8 date of this article by the Division of Justice and Community
9 Services whose current employment responsibilities include
10 those to be provided by the Division of Administrative
11 Services are hereby assigned and transferred to the Division
12 of Administrative Services.

13 (1) The Division of Administrative Services shall
14 assume all responsibilities of the administrative services
15 sections of the Division of Juvenile Services, the Regional
16 Jail and Correctional Facility Authority, and the Division of
17 Corrections, including those related to ongoing programs,
18 benefits, litigations, or grievances.

19 (2) All equipment and records necessary to effectuate
20 the purposes of this article shall be transferred to the
21 Division of Administrative Services.

22 (b) Any person transferred to the office of the Director
23 of the Division of Administrative Services who is a
24 classified civil service employee shall, within the limits
25 contained in §29-6-1 *et seq.* of this code, remain in the civil
26 service system as a covered employee. Any person
27 transferred to the office of the Director of the Division of
28 Administrative Services who is a classified exempt civil
29 service employee, other than the director, and his or her
30 deputy directors, and one exempt assistant, shall, within the
31 limits contained in §29-6-1 *et seq.* of this code, be
32 transferred into the civil service system as a permanent
33 covered employee, and is no longer exempt: *Provided*, That
34 any transferred employee that has been employed in his or

35 her position for less than the required probationary period
36 must first complete the probationary period prior to
37 becoming a permanent covered employee.

§15A-2-4. Criminal justice and grant administration.

1 (a) The director shall:

2 (1) Carry out the specific duties imposed on the
3 Governor's Committee on Crime, Delinquency, and
4 Correction under the provisions of §15-9-1 *et seq.* of this
5 code, §30-29-1 *et seq.* of this code, and §62-11C-1 *et seq.*
6 of this code;

7 (2) Maintain appropriate liaison with federal, state, and
8 local agencies and units of government, or combinations
9 thereof, in order that all programs, projects, and activities
10 for strengthening and improving law enforcement, public
11 safety, and the administration of criminal justice may
12 function effectively at all levels of government;

13 (3) Seek sources of federal grant assistance programs
14 that may benefit the state when authorized by the Governor
15 and manage the dispersal of those funds through grant
16 contracts to subgrantees in a manner consistent with state
17 and federal law and with sound and accountable
18 management practices for the efficient and effective use of
19 public funds;

20 (4) Seek sources of program or grant assistance from
21 foundations, corporations, and organizations which funding
22 is consistent with its responsibilities and the purposes
23 assigned to the director, the Governor's Committee on
24 Crime, Delinquency, and Correction, and any of its
25 subcommittees; and

26 (5) Serve as the Executive Director of the Governor's
27 Committee on Crime, Delinquency, and Correction and its
28 subcommittees: *Provided*, That notwithstanding any
29 provision of this code or a rule promulgated thereunder to
30 the contrary, appeals to the Governor's Committee on

31 Crime, Delinquency, and Correction from an individual
32 who has been denied entry into an entry level law-
33 enforcement certification program, a trainee who has not
34 been allowed to continue in the entry level law-enforcement
35 training process, an officer who has made application for his
36 or her law-enforcement certification to be reactivated and
37 that application has been denied, or an officer or individual
38 whose law-enforcement certification as a law enforcement
39 officer or as an instructor has been denied, suspended, or
40 decertified, pursuant to a final decision of the Law-
41 Enforcement Professional Standards Subcommittee
42 established by §30-29-2 of this code, shall be heard by the
43 Deputy Secretary of the Department of Military Affairs and
44 Public Safety or his or her designee.

45 (b) In discharging these duties, the director may:

46 (1) Work to bridge gaps between federal, state, and local
47 units of government, as well as private/nonprofit
48 organizations and the general public;

49 (2) Provide staff assistance in the coordination of all
50 facets of the criminal and juvenile justice systems on behalf
51 of the Governor's Committee on Crime, Delinquency, and
52 Correction, including, but not limited to, law enforcement,
53 jails, corrections, community corrections, juvenile justice,
54 sexual assault forensic examinations, and victim services;

55 (3) Acquire criminal justice resources and coordinate
56 the allocation of these resources to state, local, and not-for-
57 profit agencies;

58 (4) Maintain a web-based database for all community
59 corrections programs;

60 (5) Collect, compile, and analyze crime and justice data
61 in the state, generating statistical and analytical products for
62 criminal justice professionals and policy makers to establish
63 a basis for sound policy and practical considerations for the
64 criminal justice system, make such recommendations for

65 system improvement as may be warranted by such research,
66 and contract with other persons, firms, corporations, or
67 organizations to assist in these responsibilities; and

68 (6) Receive and disburse federal and state grants and
69 funding received from foundations, corporations, or other
70 entities.

71 (c) Nothing in this article authorizes the division to
72 undertake direct operational responsibilities in law
73 enforcement or the administration of criminal justice.

74 (d) The director shall propose legislative rules for
75 legislative approval pursuant to §29A-3-1 *et seq.* of this
76 code which may be necessary to fulfill the functions and
77 responsibilities of this article and the Governor's
78 Committee on Crime, Delinquency, and Correction. All
79 legislative rules and policies of the former Division of
80 Justice and Community Services shall be transferred to the
81 Division of Administrative Services and remain effective
82 until amended or terminated pursuant to the provisions of
83 §29A-3-1 *et seq.* of this code by the Division of
84 Administrative Services: *Provided*, That these rules shall
85 expire on July 1, 2022, if not superseded sooner.

§15A-2-5. 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 customarily
36 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 Alcohol 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 does 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 does 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; and producing or
97 storing feed for use in the production of livestock.



CHAPTER 227

(S. B. 358 - By Senators Weld, Clements, Cline and Swope)

[Passed February 21, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 7, 2019.]

AN ACT to amend and reenact §15-2D-3 of the Code of West Virginia, 1931, as amended, relating to exempting from the Purchasing Division purchases made by the Director of the

Division of Protective Services for equipment to maintain security at state facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-3. Duties and powers of the director and officers.

1 (a) The director is responsible for the control and
2 supervision of the division. The director and any officer of
3 the division specified by the director may carry designated
4 weapons and have the same powers of arrest and law
5 enforcement in Kanawha County as members of the West
6 Virginia State Police as set forth in §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
23 conditionally employed as a law-enforcement officer until
24 certified in accordance with the provisions of §30-29-5 of
25 this code.

26 (c) The director may:

27 (1) Employ necessary personnel, all of whom shall be
28 classified exempt, assign them the duties necessary for the
29 efficient management and operation of the division, and

30 specify members who may carry, without license, weapons
31 designated by the director;

32 (2) Contract for security and other services;

33 (3) Purchase equipment as necessary to maintain
34 security at the Capitol Complex and other state facilities as
35 may be determined by the Secretary of the Department of
36 Military Affairs and Public Safety. The provisions of §5A-
37 3-3 of this code do not apply to purchases made pursuant to
38 this subdivision;

39 (4) Establish and provide standard uniforms, arms,
40 weapons, and other enforcement equipment authorized for
41 use by members of the division and shall provide for the
42 periodic inspection of the uniforms and equipment. All
43 uniforms, arms, weapons, and other property furnished to
44 members of the division by the State of West Virginia is and
45 remains the property of the state;

46 (5) Appoint security officers to provide security on
47 premises owned or leased by the State of West Virginia;

48 (6) Upon request by the Superintendent of the West
49 Virginia State Police, provide security for the Speaker of the
50 House of Delegates, the President of the Senate, the
51 Governor, or a justice of the Supreme Court of Appeals;

52 (7) Gather information from a broad base of employees
53 at and visitors to the Capitol Complex to determine their
54 security needs and develop a comprehensive plan to
55 maintain and improve security at the Capitol Complex
56 based upon those needs; and

57 (8) Assess safety and security needs and make
58 recommendations for safety and security at any proposed or
59 existing state facility as determined by the Secretary of the
60 Department of Military Affairs and Public Safety, upon
61 request of the secretary of the department to which the
62 facility is or will be assigned: *Provided*, That records of
63 such assessments, and any other records determined by the

64 Secretary of the Department of Military Affairs and Public
65 Safety to compromise the safety and security at any
66 proposed or existing state facility, are not public records and
67 are not subject to disclosure in response to a Freedom of
68 Information Act request under §29B-1-1 *et seq.* of this code.

69 (d) The director shall:

70 (1) On or before July 1, 1999, propose legislative rules
71 for promulgation in accordance with the provisions of
72 §29A-3-1 *et seq.* of this code. The rules shall, at a minimum,
73 establish ranks and the duties of officers within the
74 membership of the division.

75 (2) On or before July 1, 1999, enter into an interagency
76 agreement with the Secretary of the Department of Military
77 Affairs and Public Safety and the Secretary of the
78 Department of Administration, which delineates their
79 respective rights and authorities under any contracts or
80 subcontracts for security personnel. A copy of the
81 interagency agreement shall be delivered to the Governor,
82 the President of the Senate, and the Speaker of the House of
83 Delegates, and a copy shall be filed in the office of the
84 Secretary of State and shall be a public record.

85 (3) Deliver a monthly status report to the Speaker of the
86 House of Delegates and the President of the 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 90 days of
104 the amendment and reenactment of this section by the 80th
105 Legislature, ensure that all of its employees who are
106 providing services on the grounds or in the buildings of the
107 Capitol Complex or who have access to sensitive or critical
108 information submit to a fingerprint-based state and federal
109 background inquiry through the state repository.

110 (iii) Any contract entered into, amended, or renewed by
111 an agency or entity of state government with a service
112 provider shall contain a provision reserving the right to
113 prohibit specific employees thereof from accessing
114 sensitive or critical information or to be present at the
115 Capitol Complex based upon results addressed from a
116 criminal background check.

117 (iv) For purposes of this section, the term “service
118 provider” means any person or company that provides
119 employees to a state agency or entity of state government to
120 work on the grounds or in the buildings that make up the
121 Capitol Complex or who have access to sensitive or critical
122 information.

123 (v) In accordance with the provisions of Public Law 92-
124 544 the criminal background check information will be
125 released to the Director of the Division of Protective
126 Services.

127 (5) Be required to provide his or her approval prior to
128 the installation of any and all electronic security systems
129 purchased by any state agency which are designed to
130 connect to the division’s command center.

131 (e) Effective July 1, 2017, the Director of Security and
132 security officers of the Department of Arts, Culture, and
133 History shall be made part of, and be under the supervision
134 and direction of, the Division of Protective Services.
135 Security for all Capitol Complex properties of the
136 Department of Arts, Culture, and History shall be the
137 responsibility of the Division of Protective Services.

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CHAPTER 228

**(S. B. 519 - By Senators Maroney, Plymale, Stollings,
Woelfel, Takubo, Boso and Swope)**

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to requiring persons employed to dispatch emergency calls in county emergency dispatch centers to complete a training course in emergency cardiovascular care for telephonic cardiopulmonary resuscitation; requiring training to be completed by a certain date; and requiring calls to be transferred to call center in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-5. Enhanced emergency telephone system requirements.

1 (a) An enhanced emergency telephone system, at a
2 minimum, shall provide that:

3 (1) All the territory in the county, including every
4 municipal corporation in the county, which is served by
5 telephone company central office equipment that will
6 permit such a system to be established shall be included in
7 the system: *Provided*, That if a portion of the county or a
8 portion of a municipal corporation within the county is
9 already being served by an enhanced emergency telephone
10 system, that portion of the county or municipality may be
11 excluded from the county enhanced emergency telephone
12 system;

13 (2) Every emergency service provider that provides
14 emergency service within the territory of a county
15 participate in the system;

16 (3) Each county answering point be operated constantly;

17 (4) Each emergency service provider participating in the
18 system maintain a telephone number in addition to the one
19 provided in the system; and

20 (5) If the county answering point personnel reasonably
21 determine that a call is not an emergency, the personnel
22 provide the caller with the number of the appropriate
23 emergency service provider.

24 (b) To the extent possible, enhanced emergency
25 telephone systems shall be centralized.

26 (c) In developing an enhanced emergency telephone
27 system, a county commission or the West Virginia State
28 Police shall seek the advice of both the telephone companies
29 providing local exchange service within the county and the
30 local emergency providers.

31 (d) As a condition of employment, a person employed
32 as the director of an emergency dispatch center who
33 dispatches emergency calls or supervises the dispatching of
34 emergency call takers is subject to an investigation of their
35 character and background. This investigation shall include,
36 at a minimum, a criminal background check conducted by

37 the State Police at its expense. A felony conviction shall
38 preclude a person from holding any of these positions.

39 (e) As a condition of continued employment, persons
40 employed to dispatch emergency calls in county emergency
41 dispatch centers shall successfully complete:

42 (1) A 40-hour nationally recognized training course for
43 dispatchers within one year of the date of their employment;

44 (2) A nationally recognized training course in
45 emergency cardiovascular care for telephonic
46 cardiopulmonary resuscitation selected by the medical
47 director of an emergency medical dispatch center. This
48 training course shall incorporate protocols for out-of-
49 hospital cardiac arrest and compression-only
50 cardiopulmonary resuscitation and continuing education, as
51 appropriate. The training requirements of this subdivision
52 are effective not later than July 1, 2020. Persons employed
53 subsequent to July 1, 2019, shall complete the training
54 within one year of the date of employment; and

55 (3) An additional nationally recognized emergency
56 medical dispatch course or an emergency medical dispatch
57 course approved by the Office of Emergency Medical
58 Services not later than July 1, 2013, or if employed
59 subsequent to July 1, 2013, within one year of the date of
60 employment.

61 (f) On or before July 1, 2013, the director of each county
62 emergency dispatch center shall develop policies and
63 procedures to establish a protocol for dispatching
64 emergency medical calls implementing a nationally
65 recognized emergency medical dispatch program or an
66 emergency medical dispatch program approved by the
67 Office of Emergency Medical Services: *Provided*, That a
68 county emergency dispatch center, which utilizes a one-
69 button transfer system, may continue to use this system if
70 the county emergency dispatch center establishes policies
71 and procedures which require the agency to whom the call

72 is transferred to remain on the call until a first responder
73 arrives.

74 (g) Each county or municipality shall appoint for each
75 answering point an enhanced emergency telephone system
76 advisory board consisting of at least six members to monitor
77 the operation of the system. The board shall be appointed by
78 the county or municipality and shall include at least one
79 member from affected:

80 (1) Fire service providers;

81 (2) Law-enforcement providers;

82 (3) Emergency medical providers;

83 (4) Emergency services providers participating in the
84 system; and

85 (5) Counties or municipalities.

86 The director of the county or municipal enhanced
87 telephone system shall serve as an ex officio member of the
88 advisory board.

89 (h) The initial advisory board shall serve staggered terms
90 of one, two, and three years. The initial terms of these
91 appointees shall commence on July 1, 1994. All future
92 appointments shall be for terms of three years, except that an
93 appointment to fill a vacancy shall be for the unexpired term.
94 All members shall serve without compensation. The board
95 shall adopt such policies, rules, and regulations as are
96 necessary for its own guidance. The board shall meet
97 monthly or quarterly. The board may make recommendations
98 to the county or municipality concerning the operation of the
99 system.

100 (i) Nothing herein contained may be construed to
101 prohibit or discourage in any way the establishment of
102 multijurisdictional or regional systems, or multijurisdictional
103 or regional agreements for the establishment of enhanced

104 emergency telephone systems, and any system established
105 pursuant to this article may include the territory of more than
106 one public agency, or may include only a portion of the
107 territory of a public agency.

108 (j) All public safety answering points that answer calls
109 for emergency medical conditions shall, in the appropriate
110 circumstances, provide telephonic assistance in
111 administering cardiopulmonary resuscitation directly or
112 transfer calls to a call center to provide assistance in
113 administering telephonic cardiopulmonary resuscitation.



CHAPTER 229

**(Com. Sub. for S. B. 600 - By Senators Trump and
Boso)**

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-1-8, relating generally to preservation of biological evidence obtained through criminal investigations and criminal trials; directing the Secretary of Military Affairs and Public Safety to investigate methods of storage and preservation of biological materials obtained by law enforcement in criminal investigations and criminal prosecutions; directing the Secretary of Military Affairs and Public Safety to submit to the Senate President and Speaker of the House of Delegates a proposed plan, along with proposed legislation, creating a program for the centralized storage and preservation of biological evidence obtained in criminal investigations and criminal trials throughout the state; requiring that such plan and proposed legislation be submitted on or before January 1, 2020; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEFINITIONS: GENERAL PROVISIONS.

§15A-1-8. Preservation of biological evidence from criminal cases; directing Secretary to undertake a study and report to the Legislature.

1 (a) As used in this section:

2 (1) “Biological evidence” means:

3 (A) A sexual assault forensic examination kit; or

4 (B) Semen, blood, saliva, hair, human body tissue, or
5 other biological material containing human DNA.

6 (2) “DNA” means deoxyribonucleic acid.

7 (3) “Secretary” means the Secretary of Military Affairs
8 and Public Safety.

9 (b) The Secretary of Military Affairs and Public Safety
10 shall undertake an investigation of effective modes and
11 methods of storing and preserving biological materials
12 obtained by law enforcement in criminal investigations and
13 criminal prosecutions.

14 (c) On or before January 1, 2020, the Secretary shall
15 submit to the President of the Senate and the Speaker of the
16 House of Delegates a proposed plan, along with proposed
17 legislation, creating within the department a program for the
18 centralized storage and preservation of biological evidence
19 obtained in criminal investigations and criminal trials
20 throughout the state.

21 (d) It is the intent of the Legislature in enacting this
22 section to acknowledge the importance of biological
23 evidence and to recognize that improvements in technology
24 make biological evidence ever more important in
25 identifying criminal perpetrators and protecting innocent
26 persons.

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CHAPTER 230

**(Com. Sub. for H. B. 2446 - By Delegates Hollen,
Steele and Mandt)**

[Passed February 13, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-3C-1, §15-3C-2, §15-3C-3, §15-3C-4, §15-3C-5, §15-3C-6, and §15-3C-7 of said code, all relating to the establishment of an alert system for law-enforcement officers missing in the line of duty or person suspected of killing or inflicting life threatening injuries upon a law-enforcement officer who remain at large; providing legislative findings and declarations relative to the Blue Alert plan; establishment of a Blue Alert program; definitions; activation of a Blue Alert; notice to participating media; broadcasting of a Blue Alert; notification to the Department of Transportation, the Division of Highways and the West Virginia Turnpike Commission of the Blue Alert; termination of the Blue Alert; immunity from criminal or civil liability; and authorization to promulgate guidelines and procedural rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. BLUE ALERT PLAN.

§15-3C-1. Short title.

1 This article shall be known and may be cited as the
2 “Blue Alert Plan”.

§15-3C-2. Findings and declarations relative to the “Blue Alert Plan”.

1 (a) The Legislature finds that:

2 (1) Public alerts can be one of the most effective tools
3 in locating criminal suspects;

4 (2) The disappearance of a law-enforcement officer in
5 the line of duty or a person who kills or inflicts a life-
6 threatening injury upon a law-enforcement officer poses a
7 serious threat to the safety of the public, and the rapid
8 dissemination of information, including a description of the
9 missing law-enforcement officer, suspect, or suspects,
10 details of the crime, and of any vehicles involved, to the
11 citizens of the affected community and region is, therefore,
12 critical;

13 (3) Alerted to the situation, the citizenry become an
14 extensive network of eyes and ears serving to assist law
15 enforcement in quickly locating and safely notifying the
16 law-enforcement community of the location of the missing
17 law-enforcement officer, suspect, or suspects;

18 (4) The most effective method of immediately notifying
19 the public of the location of a missing law-enforcement
20 officer or a person who kills or inflicts a life-threatening
21 injury upon a law-enforcement officer is through the
22 broadcast media; and

23 (5) All forms of developing technologies are required to
24 assist law enforcement in rapidly responding to these alerts
25 and are an additional tool for assuring the well-being and
26 safety of our law-enforcement officers and the public. Thus,
27 the use of traffic video recording and monitoring devices for
28 the purpose of surveillance of a suspect vehicle adds yet
29 another set of eyes to assist law enforcement and aid in
30 locating a missing law-enforcement officer or the
31 apprehension of a suspect or suspects who kill or inflict a
32 life-threatening injury upon a law-enforcement officer.

33 (b) The Legislature declares that given the successes
34 other states and regions have experienced in using broadcast
35 media alerts to quickly locate a missing law-enforcement

36 officer or locate and safely apprehend a suspect or suspects
37 who kill or inflict a life-threatening injury upon a law-
38 enforcement officer, and, with the recent development of
39 highway video recording and monitoring systems, it is
40 altogether fitting and proper, and within the public interest,
41 to establish this program for West Virginia.

§15-3C-3. Establishment of “Blue Alert” program.

1 (a) The Superintendent of the West Virginia State Police
2 shall establish a Blue Alert program authorizing the
3 broadcast media, upon notice from the West Virginia State
4 Police, to broadcast an alert to inform the public of a law-
5 enforcement officer who is missing in the line of duty or a
6 suspect or suspects who kill or inflict a life-threatening
7 injury upon a law- enforcement officer, subject to the
8 criteria established in §15-3C-4 of this code. The program
9 shall be a voluntary, cooperative effort between state law
10 enforcement and the broadcast media.

11 (b) As used in this article:

12 (1) “Blue Alert” means an alert issued by the West
13 Virginia State Police pursuant to the provisions of this
14 article.

15 (2) “Law-enforcement officer” means:

16 (i) Those persons defined as a chief executive pursuant
17 to §30-29-1(2) of this code;

18 (ii) Those persons defined as a law-enforcement officer
19 pursuant to §30-29-1(6) of this code;

20 (iii) Those persons defined as a law-enforcement
21 official pursuant to §30-29-1(7) of this code;

22 (iv) A federal official who is authorized to carry a
23 firearm and make arrests for violations of federal law; and

24 (v) A state officer or state correctional employee who is
25 authorized to carry a firearm and make arrests for violations
26 of state law.

27 (3) “Secretary” means the Secretary of the Department
28 of Military Affairs and Public Safety.

29 (4) “Suspect” or “Suspects” means an individual or
30 individuals who have killed or inflicted a life-threatening
31 injury upon a law-enforcement officer and who remain at
32 large.

33 (c) The Superintendent shall notify the broadcast media
34 serving the State of West Virginia of the establishment of
35 Blue Alert program and invite their voluntary participation.

36 (d) The Superintendent shall submit a plan to the Joint
37 Committee on Government and Finance no later than
38 December 1, 2019. The plan shall include Blue Alert
39 activation protocols, coordination and utilization of
40 established programs to facilitate the apprehension of a
41 person or persons who kill or inflict life-threatening injuries
42 upon law-enforcement officers, and analysis of any costs.
43 The Superintendent shall also make recommendations for
44 any additional legislation or actions necessary to further
45 facilitate the implementation of the “Blue Alert” program.

46 (e) A Blue Alert shall include:

47 (i) All appropriate information that the reporting law-
48 enforcement agency has that may assist in the location of a
49 missing law-enforcement officer or apprehension of a
50 suspect or suspects;

51 (ii) A statement instructing anyone with information
52 related to the killing or injuring of the law-enforcement
53 officer to contact his or her local law-enforcement agency;

54 (iii) A warning that the suspect or suspects are
55 dangerous and that members of the public should not
56 attempt to apprehend the suspect or suspects themselves.

§15-3C-4. Activation of Blue Alert.

1 The following criteria shall be met before the West
2 Virginia State Police activate the Blue Alert:

3 (1) A law-enforcement officer has been killed or
4 seriously injured, or is believed to be missing, in the line of
5 duty;

6 (2) There is sufficient information available relating to
7 the officer's last known location or the physical description
8 of any suspect, suspects, or vehicles involved that could be
9 broadcast to assist in locating the officer, suspect, or
10 suspects.

§15-3C-5. Notice to participating media; broadcast of alert.

1 (a) To participate, the media may agree, upon notice
2 from the West Virginia State Police via email or facsimile,
3 to transmit information to the public about a missing law-
4 enforcement officer or a suspect or suspects that has
5 occurred within their broadcast service region.

6 (b) The alerts shall include a description of the missing
7 law-enforcement officer, suspect, or suspects, such details
8 of the circumstance surrounding the law-enforcement
9 officer becoming missing or the death or injury to the law-
10 enforcement officer, as may be known, and such other
11 information as the West Virginia State Police may deem
12 pertinent and appropriate. The West Virginia State Police
13 shall, in a timely manner, update the broadcast media with
14 new information when appropriate concerning the missing
15 law-enforcement officer, suspect, or suspects.

16 (c) The alerts also shall provide information concerning
17 how those members of the public who have information
18 relating to the missing law-enforcement officer, suspect, or
19 suspects may contact the West Virginia State Police or other
20 appropriate law-enforcement agency.

21 (d) Concurrent with the notice provided to the broadcast
22 media, the West Virginia State Police shall also notify the
23 Department of Transportation, the Division of Highways
24 and the West Virginia Turnpike Commission of the Blue
25 Alert so that the department and the affected authorities
26 may, if possible, through the use of their variable message
27 signs, inform the motoring public that a Blue Alert is in
28 progress and may provide information relating to the
29 missing law-enforcement officer, suspect, or suspects and
30 how motorists may report any information they have to the
31 State Police or other appropriate law-enforcement agency.

32 (e) The alerts shall terminate upon notice from the West
33 Virginia State Police.

34 (f) The Superintendent shall develop and undertake a
35 campaign to inform law-enforcement agencies about the
36 Blue Alert program established under this article.

§15-3C-6. Immunity from civil or criminal liability.

1 No person or entity who, in good faith, follows and
2 abides by the provisions of this article is liable for any civil
3 or criminal penalty as the result of any act or omission in the
4 furtherance thereof unless it is alleged and proven that the
5 information disclosed was false and disclosed with the
6 knowledge that the information was false.

§15-3C-7. Guidelines; procedural rules.

1 The Superintendent may adopt guidelines and
2 procedural rules to effectuate the purposes of this article.

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CHAPTER 231

**(Com. Sub. for H. B. 2821 - By Delegates
Householder and Criss)
[By Request of the Adjutant General]**

[Passed February 25, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2019.]

AN ACT to amend and reenact §15-1B-17 of the Code of West Virginia, 1931, as amended, relating to command and clerical pay for certain national guard members; providing for commander pay clerical work for command, clerical and other pay.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-17. Command pay; inspections; compensation for clerical services and care of property.

1 (a) There may be paid to each commander of a brigade,
2 regiment, air wing, army group or other corresponding type
3 organization \$100 per month and to each commander of a
4 battalion, army squadron, air group or other equivalent type
5 organization \$50 per month and to each commander of a
6 company, air squadron or other equivalent type organization \$25
7 per month, payable quarterly, to be known as command pay.

8 (b) There is allowed to each commander of a brigade,
9 regiment, air wing, army group or equivalent type organization
10 the sum of \$100 per month and each commander of a battalion,
11 army squadron, air group or corresponding type organization the
12 sum of \$50 per month for clerical services; and to each
13 commander of a company air squadron or corresponding type
14 unit the sum of \$25 per month for like services, payable quarterly.
15 The Commandant of the West Virginia Military Academy is
16 allowed the sum of \$25 a month, payable quarterly, for like
17 services.

18 (c) At the discretion of the Adjutant General, there may
19 be paid to the enlisted man or woman who is directly
20 responsible for the care and custody of the federal and state
21 property of each organization or unit the sum of \$10 per
22 month, payable quarterly, upon the certificate of his or her
23 commanding officer that he or she has faithfully and
24 satisfactorily performed the duties assigned him or her and
25 accounted for all property entrusted to his or her care.

26 (d) The Adjutant General shall determine the amount of
27 entitlement to command pay and clerical pay, using
28 organizational charts showing chain of command and
29 authorized strengths and defining other equivalent type
30 organizations. Notwithstanding the provisions of subsections
31 (a) and (b) of this section, the Adjutant General may authorize
32 the payment of command and clerical pay above the amounts
33 set in subsections (a) and (b) out of existing funding: *Provided,*
34 That the authorized payment is no more than twice the amounts
35 authorized in subsections (a) and (b) of this section.

36 (e) Notwithstanding any other provision of this code, there
37 shall be paid to the command administrative officer of the
38 headquarters of the West Virginia Army National Guard and to
39 the executive staff support officer of the headquarters of the
40 West Virginia Air National Guard, or to the officer occupying a
41 similar position, regardless of title, \$100 per month, payable
42 quarterly, to be known as an administrative allowance.

43 (f) The state command sergeant of the West Virginia
44 Army National Guard and the command chief master
45 sergeant of the West Virginia Air National Guard shall
46 receive a monthly administrative allowance of \$100 per
47 month. The command sergeant major or command chief
48 master sergeant of a unit authorized under the command of
49 a commander in the rank of colonel shall receive a monthly
50 administrative allowance of \$75 per month. The command
51 sergeant major or command chief master sergeant of a unit
52 authorized under the command of a commander in the rank
53 of lieutenant colonel shall receive a monthly administrative
54 allowance of \$45 per month.

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CHAPTER 232

**(H. B. 2872 - By Delegates D. Kelly, Caputo,
Maynard, J. Kelly, Anderson, Hollen, Miller, Steele,
Harshbarger and Lovejoy)
[By Request of the Department of Military Affairs
and Public Safety]**

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §29-3-12 of the Code of West Virginia, 1931, as amended, relating to authorizing any member of the West Virginia State Police, Natural Resources Police Officer, or any county or municipal law-enforcement officer to assist the State Fire Marshal or any of his or her employees in any duties for which the State Fire Marshal has jurisdiction; granting the State Fire Marshal, any full-time deputy and assistant fire marshal the power of arrest for obstructing them in their official duties; authorizing the State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal to carry a firearm in the course of official duties; and establishing requirements for annual requalification.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§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 may enforce all laws of the state having to do with:

- 5 (1) Prevention of fire;

6 (2) The storage, sale, and use of any explosive,
7 combustible, or other dangerous article or articles in solid,
8 flammable liquid, or gas form;

9 (3) The installation and maintenance of equipment of all
10 sorts intended to extinguish, detect, and control fires;

11 (4) The means and adequacy of exit, in case of fire, from
12 buildings and all other places in which persons work, live,
13 or congregate, from time to time, for any purpose, except
14 buildings used wholly as dwelling houses for no more than
15 two families;

16 (5) The suppression of arson; and

17 (6) Any other thing necessary to carry into effect the
18 provisions of this article including, but not limited to,
19 confiscating any materials, chemicals, items, or personal
20 property owned, possessed, or used in direct violation of the
21 State Fire Code.

22 (b) *Assistance upon request.* — Upon request, the State
23 Fire Marshal shall assist any chief of any recognized fire
24 company or department. Upon the request of any federal
25 law-enforcement officer, state police officer, Natural
26 Resources police officer, or any county or municipal law-
27 enforcement officer, the State Fire Marshal, any deputy
28 state fire marshal, or assistant state fire marshal employed
29 pursuant to §29-3-11 of this code and any person deputized
30 pursuant to subsection (j) of this section may assist in the
31 lawful execution of the requesting officer's official duties:
32 *Provided,* That the State Fire Marshal, or other person
33 authorized to act under this subsection, shall at all times
34 work under the direct supervision of the requesting officer.

35 (c) *Enforcement of rules.* — The State Fire Marshal
36 shall enforce the rules promulgated by the State Fire
37 Commission as authorized by this article.

38 (d) *Inspections generally.* — The State Fire Marshal
39 shall inspect all structures and facilities, other than one- and

40 two-family dwelling houses, subject to the State Fire Code
41 and this article, including, but not limited to, state, county,
42 and municipally owned institutions, all public and private
43 schools, health care facilities, theaters, churches, and other
44 places of public assembly to determine whether the
45 structures or facilities are in compliance with the State Fire
46 Code.

47 (e) *Right of entry.* — The State Fire Marshal may, at all
48 reasonable hours, enter any building or premises, other than
49 dwelling houses, for the purpose of making an inspection
50 which he or she may consider necessary under the
51 provisions of this article. The State Fire Marshal and any
52 deputy state fire marshal or assistant state fire marshal
53 approved by the State Fire Marshal may enter upon any
54 property, or enter any building, structure or premises,
55 including dwelling houses during construction and prior to
56 occupancy, for the purpose of ascertaining compliance with
57 the conditions set forth in any permit or license issued by
58 the office of the State Fire Marshal pursuant to §29-3-
59 12b(A)(1) or §29-3B-1 *et seq.* of this code.

60 (f) *Investigations.* — The State Fire Marshal may, at any
61 time, investigate as to the origin or circumstances of any fire
62 or explosion or attempt to cause fire or explosion occurring
63 in the state. The State Fire Marshal has the authority at all
64 times of the day or night, in performance of the duties
65 imposed by the provisions of this article, to investigate
66 where any fires or explosions or attempt to cause fires or
67 explosions may have occurred, or which at the time may be
68 burning. Notwithstanding the above provisions of this
69 subsection, prior to entering any building or premises for the
70 purposes of the investigation, the State Fire Marshal shall
71 obtain a proper search warrant: *Provided,* That a search
72 warrant is not necessary where there is permissive waiver or
73 the State Fire Marshal is an invitee of the individual having
74 legal custody and control of the property, building or
75 premises to be searched.

76 (g) *Testimony.* — The State Fire Marshal, in making an
77 inspection or investigation when in his or her judgment the
78 proceedings are necessary, may take the statements or
79 testimony under oath of all persons who may be cognizant
80 of any facts or have any knowledge about the matter to be
81 examined and inquired into and may have the statements or
82 testimony reduced to writing; and shall transmit a copy of
83 the statements or testimony so taken to the prosecuting
84 attorney for the county wherein the fire or explosion or
85 attempt to cause a fire or explosion occurred.
86 Notwithstanding the above, no person may be compelled to
87 testify or give any statement under this subsection.

88 (h) *Arrests; warrants.* — The State Fire Marshal, any
89 full-time deputy fire marshal, or any full-time assistant fire
90 marshal employed by the State Fire Marshal pursuant to
91 §29-3-11 of this code is hereby authorized and empowered
92 and any person deputized pursuant to §29-3-11 of this code
93 may be authorized and empowered by the State Fire
94 Marshal:

95 (1) To arrest any person anywhere within the confines
96 of the State of West Virginia, or have him or her arrested,
97 for any violation of the arson-related offenses of §61-3-1 *et*
98 *seq.* of this code or of the explosives-related offenses of
99 §61-3E-1 *et seq.* of said code: *Provided*, That any and all
100 persons so arrested shall be forthwith brought before the
101 magistrate or circuit court; *Provided, however*, That the
102 State Fire Marshal, any full-time deputy fire marshal or any
103 full-time assistant fire marshal is authorized to arrest
104 persons for violations of §61-5-17 of this code.

105 (2) To make complaint in writing before any court or
106 officer having jurisdiction and obtain, serve, and execute an
107 arrest warrant when knowing or having reason to believe
108 that anyone has committed an offense under any provision
109 of this article, of the arson-related offenses of §61-3-1 *et*
110 *seq.* of this code or of the explosives-related offenses of
111 §61-3E-1 *et seq.* of this code. Proper return shall be made

112 on all arrest warrants before the tribunal having jurisdiction
113 over the violation.

114 (3) To make complaint in writing before any court or
115 officer having jurisdiction and obtain, serve, and execute a
116 warrant for the search of any premises that may possess
117 evidence or unlawful contraband relating to violations of
118 this article, of the arson-related offenses of §61-3-1 *et seq.*
119 of this code or of the explosives-related offenses of §61-3E-
120 1 *et seq.* of said code. Proper return shall be made on all
121 search warrants before the tribunal having jurisdiction over
122 the violation.

123 (4) Any member of the West Virginia State Police,
124 Natural Resources Police Officer, or any county or
125 municipal law-enforcement officer may assist, upon
126 request, the State Fire Marshal or any of his or her
127 employees authorized to enforce the provisions of this
128 section in any duties for which the State Fire Marshal has
129 jurisdiction.

130 (i) *Witnesses and oaths.* — The State Fire Marshal may
131 issue subpoenas and subpoenas duces tecum to compel the
132 attendance of persons before him or her to testify in relation
133 to any matter which is, by the provision of this article, a
134 subject of inquiry and investigation by the State Fire
135 Marshal and cause to be produced before him or her such
136 papers as he or she may require in making the examination.
137 The State Fire Marshal may administer oaths and
138 affirmations to persons appearing as witnesses before him
139 or her. False swearing in any matter or proceeding is
140 considered perjury and is punishable as perjury.

141 (j) *Deputizing members of fire departments in this state.*
142 — The State Fire Marshal may deputize a member of any
143 fire department, duly organized and operating in this state,
144 who is approved by the chief of his or her department and
145 who is properly qualified to act as his or her assistant for the
146 purpose of making inspections with the consent of the
147 property owner or the person in control of the property and

148 the investigations as may be directed by the State Fire
149 Marshal, and the carrying out of orders as may be prescribed
150 by him or her, to enforce and make effective the provisions
151 of this article and any and all rules promulgated by the State
152 Fire Commission under authority of this article: *Provided*,
153 That in the case of a volunteer fire department, only the
154 chief thereof or his or her single designated assistant may be
155 so deputized.

156 (k) *Written report of examinations.* — The State Fire
157 Marshal shall, at the request of the county commission of
158 any county or the municipal authorities of any incorporated
159 municipality in this state, make to them a written report of
160 the examination made by him or her regarding any fire
161 happening within their respective jurisdictions.

162 (l) *Report of losses by insurance companies.* — Each
163 fire insurance company or association doing business in this
164 state, within 10 days after the adjustment of any loss
165 sustained by it that exceeds \$1,500, shall report to the State
166 Fire Marshal information regarding the amount of
167 insurance, the value of the property insured, and the amount
168 of claim as adjusted. This report is in addition to any
169 information required by the State Insurance Commissioner.
170 Upon the request of the owner or insurer of any property
171 destroyed or injured by fire or explosion, or in which an
172 attempt to cause a fire or explosion may have occurred, the
173 State Fire Marshal shall report in writing to the owner or
174 insurer the result of the examination regarding the property.

175 (m) *Issuance of permits and licenses.* — The State Fire
176 Marshal may issue permits, documents, and licenses in
177 accordance with the provisions of this article or §29-3B-1 *et*
178 *seq.* of this code: *Provided*, That unless otherwise provided,
179 the State Fire Marshall shall take final action upon any
180 completed permit applications within 30 days of receipt if
181 the application is uncontested, or within 90 days if the
182 application is contested. The State Fire Marshal may require
183 any person who applies for a permit to use explosives, other
184 than an applicant for a license to be a pyrotechnic operator

185 under §29-3E-6 of this code, to be fingerprinted and to
186 authorize the State Fire Marshal to conduct a criminal
187 records check through the criminal identification bureau of
188 the West Virginia State Police and a national criminal
189 history check through the Federal Bureau of Investigation.
190 The results of any criminal records or criminal history check
191 shall be sent to the State Fire Marshal.

192 (n) *Issuance of citations for fire and life safety*
193 *violations.* — The State Fire Marshal, any deputy fire
194 marshal, and any assistant fire marshal employed pursuant
195 to §29-3-11 of this code, and any person deputized pursuant
196 to subsection (j) of this section may be authorized by the
197 State Fire Marshal to issue citations, in his or her
198 jurisdiction, for fire and life safety violations of the State
199 Fire Code and as provided for by the rules promulgated by
200 the State Fire Commission in accordance with §29-3-1 *et*
201 *seq.* of this code: *Provided,* That a summary report of all
202 citations issued pursuant to this section by persons
203 deputized under subsection (j) of this section shall be
204 forwarded monthly to the State Fire Marshal in the form and
205 containing information as he or she may by rule require,
206 including the violation for which the citation was issued, the
207 date of issuance, the name of the person issuing the citation,
208 and the person to whom the citation was issued. The State
209 Fire Marshal may at any time revoke the authorization of a
210 person deputized pursuant to subsection (j) of this section to
211 issue citations, if in the opinion of the State Fire Marshal,
212 the exercise of authority by the person is inappropriate.

213 Violations for which citations may be issued include,
214 but are not limited to:

- 215 (1) Overcrowding places of public assembly;
- 216 (2) Locked or blocked exits in public areas;
- 217 (3) Failure to abate a fire hazard;

218 (4) Blocking of fire lanes or fire department
219 connections; and

220 (5) Tampering with, or rendering inoperable except
221 during necessary maintenance or repairs, on-premise
222 firefighting equipment, fire detection equipment, and fire
223 alarm systems.

224 (o) *Required training; liability coverage.* — No person
225 deputized pursuant to subsection (j) of this section may be
226 authorized to issue a citation unless that person has
227 satisfactorily completed a law-enforcement officer training
228 course designed specifically for fire marshals. The course
229 shall be approved by the Law-enforcement Training
230 Subcommittee of the Governor's Committee on Criminal
231 Justice and Highway Safety and the State Fire Commission.
232 In addition, no person deputized pursuant to subsection (j)
233 of this section may be authorized to issue a citation until
234 evidence of liability coverage of the person has been
235 provided, in the case of a paid municipal fire department, by
236 the municipality wherein the fire department is located, or
237 in the case of a volunteer fire department, by the county
238 commission of the county wherein the fire department is
239 located or by the municipality served by the volunteer fire
240 department and that evidence of liability coverage has been
241 filed with the State Fire Marshal.

242 (p) *Statewide contracts.* — The State Fire Marshal may
243 cooperate with the Department of Administration,
244 Purchasing Division, to establish one or more statewide
245 contracts for equipment and supplies utilized by fire
246 companies and departments in accordance with §5A-3-1 *et*
247 *seq.* of this code.

248 (1) Any statewide contract established hereunder shall
249 be made available to any fire company and department in
250 this state, as well as any other state agency or political
251 subdivision that has a need for the equipment or supplies
252 included in those contracts.

253 (2) The State Fire Marshal may develop uniform
254 standards for equipment and supplies used by fire
255 companies and departments in accordance with §5A-3-1 *et*
256 *seq.* of this code.

257 (3) The State Fire Commission shall propose legislative
258 rules for promulgation in accordance with §29A-3-1 *et seq.*
259 of this code to effectuate the provisions of this subsection.

260 (q) *Penalties for violations.* — Any person who violates
261 any fire and life safety rule of the State Fire Code is guilty
262 of a misdemeanor and, upon conviction thereof, shall be
263 fined not less than \$100 nor more than \$1,000, or confined
264 in jail not more than 90 days, or both fined and confined.
265 Every day during which any violation of the provisions of
266 this article continues after knowledge or official notice that
267 it is illegal is a separate offense.

268 (r) The State Fire Marshal, any full-time deputy fire
269 marshal, or any full-time assistant fire marshal employed by
270 the State Fire Marshal pursuant to §29-3-11 of this code may
271 carry a firearm while acting in the course of his or her
272 official duties, if he or she has successfully completed a
273 firearms training and certification program equivalent to
274 that provided to officers attending the entry level law-
275 enforcement certification course provided at the West
276 Virginia State Police Academy. The person shall thereafter
277 successfully complete an annual firearms qualification
278 course equivalent to that required of certified law-
279 enforcement officers as established by legislative rule. The
280 State Fire Marshal may reimburse the person for the cost of
281 the training and requalification.

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CHAPTER 233

**(Com. Sub. for S. B. 241 - By Senators Weld, Cline,
Hamilton and Baldwin)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §39-1-11 of the Code of West Virginia, 1931, as amended, relating to writings to be recorded under the direction of the county clerk; permitting the clerk, with authorization from the county commission, to scan and make available online when financially feasible certain documents in electronic form rather than in well-bound books, not prepare indices in separate books, and replace existing books by scanning them in approved electronic format; requiring that existing books be retained; providing exception to retention of books; requiring that copies of documents in electronic format are stored on an off-site server; and updating terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.

§39-1-11. Recordation of writings and plats and papers annexed; index; interlineations; filing under Uniform Commercial Code.

1 Every writing (except financing, continuation, and
2 termination statements and other statements and writings
3 permitted to be filed under chapter 46 of this code)
4 authorized by law to be recorded, when admitted to record,
5 shall, with all certificates of acknowledgment, and all plats,
6 schedules, and other papers thereto annexed or thereon
7 indorsed, be recorded by, or under the direction of, the clerk
8 of the county commission, in a well-bound book, to be
9 carefully preserved; and there shall be an index to such book

10 as well in the name of the grantee as of the grantor:
11 *Provided*, That the county commission may, in accordance
12 with the provisions of §5A-8-15 of this code, authorize the
13 clerk to scan, record, and make available online when
14 determined to be financially feasible by the county
15 commission all such writings and papers in electronic form
16 rather than in well-bound books, not prepare in separate
17 books an index of any type, and replace existing well-bound
18 books by scanning them in an approved electronic format:
19 *Provided, however*, That existing well-bound books be
20 retained either on-site or off-site unless the provisions of
21 §5A-8-15 of this code are followed: *Provided further*, That
22 any documents in an electronic format are stored on a server
23 off site, such as a cloud-based server, to retain a backup
24 copy of electronic documents.

25 After being recorded, such writing may be delivered to
26 the party entitled to claim under the same. If, except in those
27 cases where such writing is recorded by photography or
28 similar process producing exact facsimile copies, there
29 appear upon such writing, or any paper or certificate
30 annexed thereto, any interlineation, erasure, or alteration, of
31 which no memorandum is contained in the writing, paper,
32 or certificate, the clerk shall append to the record thereof a
33 memorandum describing as accurately as may be such
34 interlineation, erasure, or alteration; and such memorandum
35 shall be copied into every such writing, paper, or certificate.
36 Every such memorandum shall be prima facie evidence of
37 what is stated therein: *Provided*, That the clerk of the county
38 commission may refuse to accept for recordation any
39 instrument printed on both sides of the paper or printed in
40 whole or part in smaller than 10-point type with at least two
41 points separating each line. Any failure of such instrument
42 to be so accepted by the clerk of the county commission
43 shall not affect the validity thereof as to the parties thereto:
44 *Provided, however*, That any such instrument shall be
45 accepted by the clerk for recording at one and one-half times
46 the legal fee therefor.

47 Financing, continuation, and termination statements and
48 other statements and writings permitted to be filed under
49 chapter 46 of this code shall be filed in a proper file by the

50 clerk of the county commission or the Secretary of State, as
51 the case may be, as specified in said chapter 46. Such
52 statements and writings filed in the office of the clerk of the
53 county commission and such statements and writings filed
54 in the office of the Secretary of State shall be indexed
55 according to the name of the debtor and shall disclose the
56 assigned file number and the address of the debtor given in
57 the respective statement or writing. The date and hour of
58 filing and the file number shall be noted on the statement or
59 writing involved. A financing, continuation, or termination
60 statement or other statement or writing permitted to be filed
61 under chapter 46 of this code may, after the same ceases to
62 be effective or lapses, as specified in said chapter 46, be
63 removed from the files in the office of the clerk of the
64 county commission or the Secretary of State, as the case
65 may be, and destroyed.



CHAPTER 234

**(S. B. 669 - By Senators Azinger, Baldwin, Beach,
Boso, Clements, Hardesty, Jeffries, Lindsay,
Maynard, Romano, Rucker, Smith, Takubo, Weld,
Woelfel and Trump)**

[Passed March 9, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §39-4A-1, §39-4A-2, §39-4A-3, §39-4A-4, and §39-4A-5, all relating to the appointment of commissioners to acknowledge signatures by persons residing in or out of the state of West Virginia covering deeds, leases, and other writings pertaining to West Virginia property for recordation in the state of West Virginia; authorizing the Secretary of State to appoint a qualified person as a commissioner; setting forth qualifications for appointment; establishing application requirements and

procedures; authorizing the Secretary of State to deny, refuse to renew, revoke, suspend, or impose a condition on a commission; establishing application fee; establishing term of office; establishing powers and duties of commissioners; setting forth prohibited acts; authorizing rulemaking by the Secretary of State; incorporating requirements, duties, prohibitions, penalties, and procedures set forth in the Revised Uniform Law on Notarial Acts; and requiring inclusion of active commissioners in online database of notaries public.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. OUT-OF-STATE COMMISSIONERS.

§39-4A-1. Commissioners out of state; qualifications; application fee.

1 (a) The Secretary of State may appoint a qualified
2 person residing within or without this state and within the
3 United States, its territories, or possessions as a
4 commissioner to acknowledge signatures performed in or
5 out of this state by persons residing in or out of the state of
6 West Virginia covering deeds, leases, and other writings
7 pertaining to West Virginia property for recordation in the
8 state of West Virginia.

9 (b) To be qualified for an appointment pursuant to
10 subsection (a) of this section, a person must be
11 commissioned as a notary public pursuant to §39-4-20 of
12 this code.

13 (c) An individual qualified under subsection (b) of this
14 section may apply to the Secretary of State for a commission
15 and shall comply with and provide the information required
16 by subsection (d) of this section and pay the requisite fee.

17 (d) Applications for appointment as a commissioner
18 must be made in the form and manner as prescribed by the
19 Secretary of State. The application must include the
20 following information:

21 (1) Full name;

- 22 (2) Date of birth;
- 23 (3) Legal residential address;
- 24 (4) Employer, if any;
- 25 (5) Daytime phone number;
- 26 (6) Email address;
- 27 (7) Applicant's signature; and
- 28 (8) Any other information deemed necessary by the
29 Secretary of State.
- 30 (e) The Secretary of State may deny, refuse to renew,
31 revoke, suspend, or impose a condition on a commission for
32 any act or omission that demonstrates the individual lacks
33 the honesty, integrity, competence, or reliability to act as a
34 commissioner, including:
- 35 (1) Failure to comply with this article;
- 36 (2) A fraudulent, dishonest, or deceitful misstatement or
37 omission in the application for a commission submitted to
38 the Secretary of State;
- 39 (3) A conviction of the applicant or commissioner for
40 any felony or for a crime involving fraud, dishonesty, or
41 deceit;
- 42 (4) A finding against, or admission of liability by, the
43 applicant or commissioner in any legal proceeding or
44 disciplinary action based on the applicant's or
45 commissioner's fraud, dishonesty, or deceit;
- 46 (5) Failure by the commissioner to discharge any duty
47 required of a commissioner, whether by this article, rules
48 promulgated by the Secretary of State, or any federal or state
49 law;

50 (6) Use of false or misleading advertising or
51 representation by the notary public representing that the
52 notary has a duty, right, or privilege that the notary does not
53 have;

54 (7) Revocation, suspension, or refusal or failure to
55 renew the commissioner's commission as a notary public
56 pursuant to §39-4-1 *et seq.* of this code;

57 (8) Violation by the commissioner of a rule of the
58 Secretary of State regarding a commissioner; and

59 (9) Denial, refusal to renew, revocation, suspension, or
60 conditioning of a commission in another state.

61 (f) Before issuance of a commission, an applicant shall
62 provide at the time of application a statement that he or she
63 solemnly swears or affirms, under penalty of perjury, that
64 the answers to all questions in this application are true,
65 complete, and correct; and, if appointed and commissioned,
66 he or she will perform faithfully, to the best of his or her
67 ability, all acts in accordance with the law.

68 (g) A nonrefundable fee of \$500 for each commission
69 issued shall be paid to the Secretary of State: *Provided*, That
70 the Secretary of State shall have the authority to refund
71 some or all of the application fee for denials resulting from
72 good-faith mistakes made by applicants.

73 (h) All fees and moneys collected by the Secretary of
74 State pursuant to the provisions of this section shall be
75 deposited by the Secretary of State as follows:

76 (1) One-half shall be deposited in the state General
77 Revenue Fund; and

78 (2) One-half shall be deposited in the service fees and
79 collections account established by §59-1-2 of this code for
80 the operation of the Office of the Secretary of State.

§39-4A-2. Powers of commissioners; official seals.

1 (a) Upon approval of a successful application,
2 commissioners shall hold office for 10 years, unless
3 removed by the Secretary of State under the grounds set
4 forth in §39-4A-1(e) of this code.

5 (b) When any oath may lawfully be administered, or
6 affidavit or deposition taken, within the state, territory, or
7 district for which any such commissioner is appointed, to be
8 used in this state, it may be done by the commissioner.

9 (c) Each commissioner shall have an official seal, which
10 shall be a rubber stamp and shall contain:

11 (1) The words "Official Seal";

12 (2) The words "Commissioner for West Virginia";

13 (3) The commissioner's name exactly as it is written as
14 an official signature;

15 (4) The city and state of residence of the commissioner;
16 and

17 (5) The words "My Commission Expires" and the date
18 of expiration of the commission.

19 (d) A stamped imprint of the seal, together with the
20 official signature, shall be filed in the office of the Secretary
21 of State.

22 (e) Commissioners may take, within or any place out of
23 the State of West Virginia, the acknowledgements of deeds
24 and other writings to be admitted to the record in the State
25 of West Virginia, but each acknowledgement shall reflect
26 where the acknowledgement was taken, including, but not
27 limited to, the state and county or territory.

28 (f) Every certificate of the commissioner shall be
29 authenticated by his or her signature and official seal.

§39-4A-3. Prohibited acts.

1 Commissioners shall refrain from the following
2 prohibited activities:

3 (1) Assisting persons in drafting legal records, giving
4 legal advice, or otherwise practicing law;

5 (2) Acting as an immigration consultant or an expert on
6 immigration matters; or

7 (3) Representing a person in a judicial or administrative
8 proceeding relating to immigration to the United States,
9 United States citizenship, or related matters.

10 (4) No provision of this section shall be construed to
11 prohibit the practice of law by a duly licensed attorney.

§39-4A-4. Rulemaking.

1 The Secretary of State may propose rules for legislative
2 approval to implement this article, in accordance with the
3 provisions of §29A-3-1 *et seq.* of this code.

§39-4A-5. Incorporation of Revised Uniform Law on Notarial Acts; online database.

1 (a) All requirements, duties, prohibitions, penalties, and
2 procedures set forth in §39-4-1 *et seq.* of this code that are
3 consistent with the foregoing provisions of this article shall
4 apply to commissioners.

5 (b) The Secretary of State shall include all active
6 commissioners in its database of notaries public set forth in
7 §39-4-22 of this code, which database shall clearly
8 distinguish commissioners from notaries public.

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CHAPTER 235

**(Com. Sub. for S. B. 270 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed February 21, 2019; in effect from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT to amend and reenact §17-2A-17a of the Code of West Virginia, 1931, as amended; and to amend and reenact §17-2E-2, §17-2E-3, §17-2E-5, and §17-2E-6 of said code, all relating to the use of state-owned rights-of-way; modifying requirements related to accommodation leases; providing for the determination of fair market value and compensation for accommodation leases; amending procedures and requirements of the state's dig once policy; modifying definitions; providing for the determination of fair market value and compensation to Division of Highways relating to dig once policy; modifying notice requirements for permit applicants; amending procedures for the adjudication of disputes between telecommunications carriers; providing certain exemptions from dig once requirements; and authorizing the Division of Highways to, upon approval of the Governor, transfer or assign the ownership, control, or any rights related to any in-kind compensation received by the division to any other state agency.

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 does not adversely affect highway or
5 traffic safety or otherwise impair the highway or its
6 aesthetic quality, and does not conflict with the provisions
7 of federal, state, or local laws, legislative rules, or agency
8 policies. Utilities provide essential services 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. The
12 accommodation of utility facilities on the rights-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, any
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, or those facilities which are
27 owned or leased by a local exchange carrier, as defined by
28 150 CSR 6.

29 (c) In addition to all other powers given and assigned to
30 the commissioner in this chapter, the commissioner may
31 acquire, either temporarily or permanently, in the name of
32 the division, and adjacent to public roadways or highways,
33 all real or personal property, public or private, or any
34 interests or rights therein, including any easement, riparian
35 right, or right of access, determined by the commissioner to
36 be necessary for present or presently foreseeable future
37 utility accommodation purposes.

38 (d) Notwithstanding any provision of this article to the
39 contrary, the commissioner may lease real property held by
40 the division or any interest or right in the property, including
41 airspace rights, if any, for the purpose of accommodating
42 any utility providing telecommunications or broadband

43 services that has requested a lease if the commissioner finds,
44 in his or her sole discretion, that entering into the lease
45 agreement with such utility is in the public interest. The
46 execution and governance of such accommodation leases
47 are subject to the following:

48 (1) The term of any accommodation lease authorized by
49 this section may not exceed 30 years;

50 (2) Neither competitive bids nor public solicitations are
51 required prior to entering into a utility accommodation
52 lease;

53 (3) Any utility accommodation lease shall require the
54 utility to pay fair market value for the real property interest
55 as determined by the commissioner: *Provided*, That because
56 the social, environmental, and economic benefits from such
57 use of state highway rights-of-way is of overwhelming
58 value to the citizens of this state and is in the overall public
59 interest, the division shall establish the fair market value for
60 purposes of this article at \$0 in monetary compensation:
61 *Provided, however*, That a utility accommodation lease may
62 include provisions that convey the state in-kind
63 compensation if the lease includes multiple districts of the
64 Division of Highways;

65 (4) For any utility which is not subject to the jurisdiction
66 of the Public Service Commission, an accommodation lease
67 may not contain any exclusivity provisions;

68 (5) The provisions of this subsection do not require any
69 utility to lease any real property, or any interest or right in
70 the property, from the commissioner; and

71 (6) The ownership, control, or any rights related to any
72 in-kind compensation received by the division may, upon
73 written approval of the Governor, be transferred or assigned
74 to any other state agency.

ARTICLE 2E. DIG ONCE POLICY.

§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) “Direct bury” means the burying of
10 telecommunications wire or cable directly into the ground
11 by means of plowing or direct insertion without the opening
12 of a trench and without the installation of conduit or
13 innerduct.

14 (5) “Division” means the Division of Highways.

15 (6) “Longitudinal access” means access to or the use of
16 any part of a right-of-way that extends generally parallel to
17 the traveled right-of-way.

18 (7) “Permit” means an encroachment permit issued by
19 the commissioner of the division under the authority of this
20 code, and pursuant to the Accommodation of Utilities on
21 Highway Right-of-Way and Adjustment and Relocation of
22 Utility Facilities on Highway Projects Policy, or equivalent
23 policy, as may be currently enforced by the division, that
24 specifies the requirements and conditions for performing
25 work in a right-of-way and where such work involves the
26 creation or opening of a trench for the installation of
27 telecommunications facilities in a right-of-way.

28 (8) “Right-of-way” means land, property, or any interest
29 therein acquired or controlled by the division for
30 transportation facilities or other transportation purposes or
31 specifically acquired for utility accommodation.

32 (9) “Telecommunications carrier” means a
33 telecommunications carrier:

34 (A) As determined by the Public Service Commission
35 of West Virginia; or

36 (B) That meets the definition of telecommunications
37 carrier with respect to the Federal Communications
38 Commission, as contained in 47 U.S.C. §153.

39 (10) “Telecommunications facility” means any cable,
40 line, fiber, wire, conduit, innerduct, access manhole,
41 handhole, tower, hut, pedestal, pole, box, transmitting
42 equipment, receiving equipment, power equipment, or other
43 equipment, system, or device that is used to transmit,
44 receive, produce or distribute a signal for
45 telecommunications purposes via wireline, electronic, or
46 optical means.

47 (11) “Utility” has the meaning ascribed to it in §17-2A-
48 17a of this code.

49 (12) “Wireless access” means access to, and use of, a
50 right-of-way for the purpose of constructing, installing,
51 maintaining, using, or operating telecommunications
52 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 a permit for longitudinal access or
7 wireless access to a right-of-way, the division shall:

8 (1) First enter into an agreement with a
9 telecommunications carrier that is competitively neutral and
10 nondiscriminatory as to other telecommunications carriers;
11 and

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 shall comply with all
16 applicable federal regulations with respect to approval of an
17 agreement, including, but not limited to, 23 C.F.R. §710.403
18 and 23 C.F.R. §710.405. The agreement shall be approved
19 by the Commissioner of Highways in order to be effective
20 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 subsection (a) of this section, the
29 division may not grant a property interest in a right-of-way
30 pursuant to this article.

31 (d) A telecommunications carrier shall compensate the
32 division for the use of spare conduit or related facilities
33 owned or controlled by the division as part of any
34 longitudinal access or wireless access granted to a right-of-
35 way pursuant to this section. The compensation must be,
36 without limitation:

37 (1) At fair market value: *Provided*, That because the
38 social, environmental, and economic benefits from such use
39 of state highway rights-of-way is of overwhelming value to
40 the citizens of this state and is in the overall public interest,

41 the division shall establish the fair market value for
42 purposes of this article at \$0 in monetary compensation;

43 (2) Competitively neutral;

44 (3) Nondiscriminatory;

45 (4) Open to public inspection;

46 (5) Determined based on the geographic region of this
47 state, taking into account the population and the impact on
48 private right-of-way users in the region; and once
49 determined, set at an amount that encourages the
50 deployment of digital infrastructure within this state; and

51 (6) Paid with in-kind compensation.

52 (e) The division may consider adjustments for areas the
53 division, in conjunction with the council, determines are
54 underserved or unserved areas of the state and may consider
55 the value to such areas for economic development,
56 enhancing the transportation system, expanding
57 opportunities for digital learning, and telemedicine.

58 (f) For the purpose of determining the amount of in-kind
59 compensation a telecommunications carrier must pay the
60 division for the use of spare conduit or excess conduit or
61 related facilities of the division as part of any longitudinal
62 access or wireless access granted to a right-of-way pursuant
63 to this section, the division may:

64 (1) Conduct an analysis once every five years, in
65 accordance with the rules, policies, or guidelines of the
66 division, to determine the fair market value of a right-of-
67 way to which access has been granted pursuant to this
68 section; and

69 (2) Determine the fair market value of the in-kind
70 compensation based on the incremental costs for the
71 installation of conduit and related facilities.

72 (g) The provisions of this article shall not apply to the
73 relocation or modification of existing telecommunications
74 facilities in a right-of-way, nor shall these provisions apply
75 to aerial telecommunications facilities or associated
76 apparatus or equipment in a right-of-way. Relocation of
77 telecommunications facilities within rights-of-way for state
78 highways shall be in accordance with the provisions of §17-
79 4-17b of this code.

**§17-2E-5. Telecommunications carrier initiated construction
and joint use.**

1 (a) Upon application for a permit, the applying
2 telecommunications carrier shall notify, by email, the
3 council and all other telecommunications carriers on record
4 with the council of the application. Other
5 telecommunications carriers have 15 calendar days to notify
6 the applicant of their interest to share the applicant's trench.
7 This requirement extends to all underground construction
8 technologies.

9 (b) If no competing telecommunications carrier
10 provides notice of interest to share the applicant's trench
11 within 15 calendar days of notice of the project, the carrier
12 applying for the permit shall affirm that fact to the division
13 prior to being issued a permit.

14 (c) If a competing telecommunications carrier provides
15 notice of interest to share the applicant's trench, an
16 agreement between the two (or more) telecommunications
17 carriers shall be executed by those entities within 30 days of
18 the notice of interest, outlining the responsibilities and
19 financial obligations of each, with respect to the installation
20 within the right-of-way. The financial obligations of each
21 carrier shall be based on the proportionate sharing of costs
22 between each carrier for joint trenching or trench sharing
23 based on the amount of conduit innerduct space or excess
24 conduit that is authorized in the agreements entered into
25 pursuant to this article. If the division uses a trench, it shall
26 also pay its proportional share unless it is utilizing the trench

27 as in-kind payment for use of the right-of-way. A copy of
28 the executed agreement shall be provided to the division.

29 (d) Should a dispute arise between the initial applying
30 telecommunications carrier and a competing
31 telecommunications carrier, including a failure to execute
32 an agreement required by subsection (c) of this section, the
33 dispute shall be adjudicated by the Public Service
34 Commission. All disputes brought to the Public Service
35 Commission under this article shall be adjudicated within
36 45 days.

37 (e) If two or more telecommunications carriers are
38 required or authorized to share a single trench, each carrier
39 in the trench must share the cost and benefits of the trench
40 in a fair, reasonable, competitively neutral, and
41 nondiscriminatory manner. This requirement extends to all
42 underground construction technologies.

43 (f) The commissioner of the division shall promulgate
44 rules governing the relationship between the
45 telecommunications carriers, as hereinafter provided in this
46 article.

47 (g) The provisions of this section do not apply to the
48 following projects:

49 (1) Projects where the trench is less than 1,000 feet in
50 length;

51 (2) Projects that use the direct bury of cable or wire
52 facilities;

53 (3) Projects that are solely for the service of entities
54 involved in national security matters or where the disclosure
55 or sharing of a trench location would be against federal
56 policy; or

57 (4) Projects where the telecommunications carrier
58 installs an amount of spare conduit or innerduct equal to
59 what is being installed for its own use and which is made

60 available for lease to competing telecommunications
61 carriers on a nondiscriminatory basis at rates established by
62 the rules of the Federal Communications Commission. All
63 carriers installing spare conduit or innerduct shall notify the
64 council of the location and capacity of such spare conduit
65 and innerduct upon completion of the project, and the
66 council shall make such information publicly available for
67 competing telecommunications carriers.

§17-2E-6. In-kind compensation.

1 (a) In-kind compensation paid to the division under an
2 agreement entered into pursuant to this article may include,
3 without limitation:

4 (1) Conduit or excess conduit;

5 (2) Innerduct;

6 (3) Dark fiber;

7 (4) Access points;

8 (5) Telecommunications equipment or services;

9 (6) Bandwidth; and

10 (7) Other telecommunications facilities as a component
11 of the present value of the trenching.

12 (b) The division shall value any in-kind compensation
13 based on fair market value at the time of installation or
14 review, and may also consider any valuation or cost
15 information provided by the telecommunications carrier.

16 (c) In-kind compensation paid to the division may be
17 disposed of if both of the following conditions are met:

18 (1) The telecommunications facility received as in-kind
19 payment has not been used within 10 years of its
20 installation; and

21 (2) The commissioner of the division determines that
22 the division does not have an immediately foreseeable need
23 for the telecommunications facility.

24 (d) Upon determining that it is appropriate to dispose of
25 the telecommunications facility, the division shall
26 determine its current fair market value. The division shall
27 offer the provider or providers who made the in-kind
28 payment the option to purchase any telecommunications
29 facility obtained from such provider. If the provider or
30 providers do not purchase the telecommunications facility,
31 it shall be offered for public auction in the same manner as
32 the division auctions excess rights-of-way.

33 (e) Notwithstanding the provisions of subsections (c)
34 and (d) of this section, the division may, upon written
35 approval of the Governor, transfer or assign the ownership,
36 control, or any rights related to any in-kind compensation
37 received by the division to any other state agency.

CHAPTER 236

**(Com. Sub. for S. B. 538 - By Senators Clements,
Stollings, Plymale and Cline)**

[Passed March 9, 2019; in effect from passage.]

[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §17-2D-2 of the Code of West Virginia, 1931, as amended, relating generally to the West Virginia Highway Design-Build Pilot Program; modifying and defining monetary project limits of the program and changing terminology; allowing exceptions for declared states of emergency; and allowing use of the program with limits for projects financed with and without bonds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. HIGHWAY DESIGN-BUILD PILOT PROGRAM.

§17-2D-2. Highway Design-Build Program.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the Commissioner of the West Virginia Division
3 of Highways may expedite the construction of projects by
4 combining the design and construction elements of a
5 highway or bridge project into a single contract as provided
6 in this article.

7 (b)(1) The Division of Highways may contractually
8 obligate no more than \$50 million in each year in the
9 program: *Provided*, That if any of the \$50 million is not so
10 contractually obligated in one year, the remaining amount
11 may be applied to the following year's contractual
12 obligation amount: *Provided, however*, That the total
13 aggregate amount to be contractually obligated may not
14 exceed \$150 million in any one year: *Provided further*, That
15 for fiscal years beginning after June 30, 2017, the Division
16 of Highways may contractually obligate no more than \$200
17 million on any one project: *And provided further*, That for
18 fiscal years beginning after June 30, 2017, the Division of
19 Highways may contractually obligate no more than \$400
20 million in each year in the program: *And provided further*,
21 That for fiscal years beginning after June 30, 2017, if any of
22 the \$400 million is not contractually obligated in any year,
23 the remaining amount may be applied to the following
24 year's contract obligation amount: *And provided further*,
25 That for fiscal years beginning after June 30, 2017, the total
26 aggregate amount to be contractually obligated may not
27 exceed \$500 million in any one year.

28 (2) Notwithstanding the limits set forth in §17-2D-
29 2(b)(1) of this code, for projects financed without bonds for
30 fiscal years beginning after June 30, 2019, the Division of
31 Highways may contractually obligate in the program:

32 (A) No more than \$200 million on any one project;

33 (B) No more than \$200 million in each year; and

34 (C) No more than \$300 million in the total aggregate
35 amount in any one year.

36 (3) Notwithstanding and in addition to the limits set
37 forth in §17-2D-2(b)(1) and §17-2D-2(b)(2) of this code, for
38 projects financed with bonds for fiscal years beginning after
39 June 30, 2018, the Division of Highways may contractually
40 obligate in the program:

41 (A) No more than \$300 million on any one project;

42 (B) No more than \$600 million in each year; and

43 (C) No more than \$700 million in the total aggregate
44 amount in any one year.

45 (c) A design-build project may be let to contract only in
46 accordance with the commissioner's established policies
47 and procedures concerning design-build projects.

48 (d) Projects receiving funding above the amount of
49 federal core funding as appropriated to the state by formula
50 in a federal highway authorization, currently titled MAP-21,
51 may utilize the program, but shall not be included in
52 calculating contractual obligation limits provided by §17-
53 2D-2(b) of this code.

54 (e) The contractual obligations made for projects that
55 are necessitated by a declared state of emergency within a
56 county that the Governor has included in a declaration of
57 emergency shall not be included in calculating contractual
58 obligation limits provided in §17-2D-2(b) of this code.

●

CHAPTER 237

(Com. Sub. for H. B. 2378 - By Delegates Espinosa, Westfall and Lavender-Bowe)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §18A-3-6 of the Code of West Virginia, 1931, as amended, relating generally to grounds for revocation of a teaching certificate; and providing that a teaching certificate or license shall be automatically revoked if a teacher is convicted of certain crimes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-6. Ground for revocation of certificates; recalling certificates for correction.

1 (a) The state superintendent may, after 10 days' notice and
2 upon proper evidence, revoke the certificates of any teacher for
3 any of the following causes: Intemperance; untruthfulness;
4 cruelty; immorality; the conviction of a felony or a guilty plea
5 or a plea of no contest to a felony charge; the conviction, guilty
6 plea or plea of no contest to any charge involving sexual
7 misconduct with a minor or a student; or for using fraudulent,
8 unapproved or insufficient credit to obtain the
9 certificates: *Provided*, That in order for any conduct of a
10 teacher involving intemperance; cruelty; immorality; or using
11 fraudulent, unapproved or insufficient credit to obtain the
12 certificates to constitute grounds for the revocation of the
13 certificates of the teacher, there must be a rational nexus
14 between the conduct of the teacher and the performance of his
15 or her job. The state superintendent may designate the West

16 Virginia commission for professional teaching standards or
17 members thereof to conduct hearings on revocations or
18 certificate denials and make recommendations for action by
19 the state superintendent: *Provided further*, That a teacher, as
20 defined by West Virginia Code §18-1-1(g), convicted under
21 §61-8D-3 or §61-8D-5 of this code or comparable statute in
22 any other state, any criminal offense that requires the teacher
23 to register as a sex offender, or any criminal offense which has
24 as an element delivery or distribution of a controlled substance,
25 shall have his or her certificate or license automatically
26 revoked. Should the conviction resulting in automatic
27 revocation pursuant to this section be overturned by any Court
28 of this State or the United States, the teacher's certification
29 shall be reinstated unless otherwise prohibited by law.

30 (b) Any county superintendent who knows of any acts on
31 the part of any teacher for which a certificate may be revoked
32 in accordance with this section shall report this, together with
33 all the facts and evidence, to the state superintendent for such
34 action as in the state superintendent's judgment may be proper.

35 (c) If a certificate has been granted through an error,
36 oversight, or misinformation, the state superintendent may
37 recall the certificate and make such corrections as will
38 conform to the requirements of law and the state board.



CHAPTER 238

**(Com. Sub. for H. B. 2662 - By Delegates Westfall,
Rohrbach, Zukoff, Toney, R. Thompson, J. Kelly,
Evans, Dean, Campbell and Cooper)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §18A-2-5 and §18A-4-8e of the
Code of West Virginia, 1931, as amended, all relating to

certificates or employment of school personnel; providing that a service personnel contract of employment is automatically terminated if the employee is convicted of certain crimes; and providing that a bus operator certificate is automatically revoked if the bus driver is convicted of certain crimes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-5. Employment of service personnel; limitation.

1 The board is authorized to employ such service
 2 personnel, including substitutes, as is deemed necessary for
 3 meeting the needs of the county school system: *Provided*,
 4 That the board may not employ a number of such personnel
 5 whose minimum monthly salary under section eight-a,
 6 article four, of this chapter is specified as pay grade "H",
 7 which number exceeds the number employed by the board
 8 on March 1, 1988.

9 Effective July 1, 1988, a county board shall not employ
 10 for the first time any person who has not obtained a high
 11 school diploma or general educational development
 12 certificate (GED) or who is not enrolled in an approved
 13 adult education course by the date of employment in
 14 preparation for obtaining a GED: *Provided*, That such
 15 employment is contingent upon continued enrollment or
 16 successful completion of the GED program.

17 Before entering upon their duties service personnel shall
 18 execute with the board a written contract which shall be in
 19 the following form:

20 "COUNTY BOARD OF EDUCATION

21 SERVICE PERSONNEL CONTRACT OF
 22 EMPLOYMENT

23 THIS (Probationary or Continuing) CONTRACT OF
 24 EMPLOYMENT, made and entered into this _____

25 day of _____, 19____, by and between THE
26 BOARD OF EDUCATION OF THE COUNTY OF
27 _____, a corporation, hereinafter called the
28 'Board,' and (Name and Social Security Number of
29 Employee), of (Mailing Address), hereinafter called the
30 'Employee.'

31 WITNESSETH, that whereas, at a lawful meeting of the
32 Board of Education of the County of _____ held at
33 the offices of said Board, in the City of
34 _____, _____ County,
35 West Virginia, on the _____ day of
36 _____, 19____, the Employee was duly
37 hired and appointed for employment as a (Job
38 Classification) at (Place of Assignment) for the school year
39 commencing _____ for the employment term and at
40 the salary and upon the terms hereinafter set out.

41 NOW, THEREFORE, pursuant to said employment,
42 Board and Employee mutually agree as follows:

43 (1) The Employee is employed by the Board as a (Job
44 Classification) at (Place of Assignment) for the school year
45 or remaining part thereof commencing _____,
46 19____. The period of employment is _____ days at an
47 annual salary of \$ _____ at the rate of \$ _____ per
48 month.

49 (2) The Board hereby certifies that the Employee's
50 employment has been duly approved by the Board and will
51 be a matter of the Board's minute records.

52 (3) The services to be performed by the Employee shall
53 be such services as are prescribed for the job classification
54 set out above in paragraph (1) and as defined in Section 8,
55 Article 4, Chapter 18A of the Code of West Virginia, as
56 amended.

57 (4) The Employee may be dismissed at any time for
58 immorality, incompetency, cruelty, insubordination,

59 intemperance or willful neglect of duty pursuant to the
60 provisions of Section 8, Article 2, Chapter 18A of the Code
61 of West Virginia, as amended.

62 (5) The Superintendent of the _____ County
63 Board of Education, subject to the approval of the Board,
64 may transfer and assign the Employee in the manner
65 provided by Section 7, Article 2, Chapter 18A of the Code
66 of West Virginia, as amended.

67 (6) This contract shall at all times be subject to any and
68 all existing laws, or such laws as may hereafter be lawfully
69 enacted, and such laws shall be a part of this contract.

70 (7) This contract may be terminated or modified at any
71 time by the mutual consent of the Board and the Employee.

72 (8) This contract shall be automatically terminated if the
73 Employee is convicted under §61-8D-3 or §61-8D-5 of this
74 code or comparable statute in any other state, of any
75 criminal offense that requires the Employee to register as a
76 sex offender, or of any criminal offense which has as an
77 element delivery or distribution of a controlled substance:
78 *Provided*, That should the conviction resulting in automatic
79 revocation pursuant to this section be overturned by any
80 Court of this state or the United States, the Employee's
81 contract shall be reinstated unless otherwise prohibited by
82 law.

83 (9) This contract must be signed and returned to the
84 Board at its address of
85 _____ within thirty
86 days after being received by the Employee.

87 (10) By signing this contract the Employee accepts
88 employment upon the terms herein set out.

89 WITNESS the following signatures as of the day, month
90 and year first above written:

91 _____, (President, _____ County Board of
92 Education) _____, (Secretary, _____ County
93 Board of Education) _____, (Employee)”

94 The use of this form shall not be interpreted to authorize
95 boards to discontinue any employee’s contract status with
96 the board or rescind any rights, privileges or benefits held
97 under contract or otherwise by any employee prior to the
98 effective date of this section.

99 Each contract of employment shall be designated as a
100 probationary or continuing contract. The employment of
101 service personnel shall be made a matter of minute record.
102 The employee shall return the contract of employment to the
103 county board of education within thirty days after receipt or
104 otherwise he or she shall forfeit his or her right to
105 employment.

106 Under such regulation and policy as may be established
107 by the county board, service personnel selected and trained
108 for teacher-aide classifications, such as monitor aide,
109 clerical aide, classroom aide and general aide, shall work
110 under the direction of the principal and teachers to whom
111 assigned.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

1 (a) The state board shall develop and make available
2 competency tests for all of the classification titles defined in
3 section eight of this article and listed in section eight-a of
4 this article for service personnel. The board shall review
5 and, if needed, update the competency tests at least every
6 five years. Each classification title defined and listed is
7 considered a separate classification category of employment
8 for service personnel and has a separate competency test,
9 except for those class titles having Roman numeral

10 designations, which are considered a single classification of
11 employment and have a single competency test.

12 (1) The cafeteria manager class title is included in the
13 same classification category as cooks and has the same
14 competency test.

15 (2) The executive secretary class title is included in the
16 same classification category as secretaries and has the same
17 competency test.

18 (3) The classification titles of chief mechanic, mechanic
19 and assistant mechanic are included in one classification
20 title and have the same competency test.

21 (b) The purpose of these tests is to provide county
22 boards a uniform means of determining whether school
23 service personnel who do not hold a classification title in a
24 particular category of employment meet the definition of the
25 classification title in another category of employment as
26 defined in section eight of this article. Competency tests
27 may not be used to evaluate employees who hold the
28 classification title in the category of their employment.

29 (c) The competency test consists of an objective written
30 or performance test, or both. Applicants may take the
31 written test orally if requested. Oral tests are recorded
32 mechanically and kept on file. The oral test is administered
33 by persons who do not know the applicant personally.

34 (1) The performance test for all classifications and
35 categories other than bus operator is administered by an
36 employee of the county board or an employee of a
37 multicounty vocational school that serves the county at a
38 location designated by the superintendent and approved by
39 the board. The location may be a vocational school that
40 serves the county.

41 (2) A standard passing score is established by the state
42 Department of Education for each test and is used by county
43 boards.

44 (3) The subject matter of each competency test is
45 commensurate with the requirements of the definitions of
46 the classification titles as provided in section eight of this
47 article. The subject matter of each competency test is
48 designed in such a manner that achieving a passing grade
49 does not require knowledge and skill in excess of the
50 requirements of the definitions of the classification titles.
51 Achieving a passing score conclusively demonstrates the
52 qualification of an applicant for a classification title.

53 (4) Once an employee passes the competency test of a
54 classification title, the applicant is fully qualified to fill
55 vacancies in that classification category of employment as
56 provided in section eight-b of this article and may not be
57 required to take the competency test again.

58 (d) An applicant who fails to achieve a passing score is
59 given other opportunities to pass the competency test when
60 applying for another vacancy within the classification
61 category.

62 (e) Competency tests are administered to applicants in a
63 uniform manner under uniform testing conditions. County
64 boards are responsible for scheduling competency tests,
65 notifying applicants of the date and time of the test. County
66 boards may not use a competency test other than the test
67 authorized by this section.

68 (f) When scheduling of the competency test conflicts
69 with the work schedule of a school employee who has
70 applied for a vacancy, the employee is excused from work
71 to take the competency test without loss of pay. (g)
72 Competency tests are used to determine the qualification of
73 new applicants seeking initial employment in a particular
74 classification title as either a regular or substitute employee.

75 (h) Notwithstanding any provisions in this code to the
76 contrary, once an employee holds or has held a
77 classification title in a category of employment, that
78 employee is considered qualified for the classification title

79 even though that employee no longer holds that
80 classification.

81 (i) The requirements of this section do not alter the
82 definitions of class titles as provided in section eight of this
83 article or the procedure and requirements of section eight-b
84 of this article.

85 (j) Notwithstanding any other provision of this code to
86 the contrary and notwithstanding any rules of the school
87 board concerning school bus operator certification, the
88 certification test for school bus operators shall be required
89 as follows, and school bus operators may not be required to
90 take the certification test more frequently:

91 (1) For substitute school bus operators and for school
92 bus operators with regular employee status but on a
93 probationary contract, the certification test shall be
94 administered annually;

95 (2) For school bus operators with regular employee
96 status and continuing contract status, the certification test
97 shall be administered triennially; and

98 (3) For substitute school bus operators who are retired
99 from a county board and who at the time of retirement had
100 ten years of experience as a regular full-time bus operator,
101 the certification test shall be administered triennially.

102 (4) *School bus operator certificate.* —

103 (A) A school bus operator certificate may be issued to a
104 person who has attained the age of twenty-one, completed
105 the required training set forth in state board rule, and met
106 the physical requirements and other criteria to operate a
107 school bus set forth in state board rule.

108 (B) The state superintendent may, after ten days' notice
109 and upon proper evidence, revoke the certificate of any bus
110 operator for any of the following causes:

111 (i) Intemperance, untruthfulness, cruelty or immorality;

112 (ii) Conviction of or guilty plea or plea of no contest to
113 a felony charge;

114 (iii) Conviction of or guilty plea or plea of no contest to
115 any charge involving sexual misconduct with a minor or a
116 student;

117 (iv) Just and sufficient cause for revocation as specified
118 by state board rule; and

119 (v) Using fraudulent, unapproved or insufficient credit
120 to obtain the certificates.

121 (vi) Of the causes for certificate revocation listed in this
122 paragraph (B), the following causes constitute grounds for
123 revocation only if there is a rational nexus between the
124 conduct of the bus operator and the performance of the job:

125 (I) Intemperance, untruthfulness, cruelty or immorality;

126 (II) Just and sufficient cause for revocation as specified
127 by state board rule; and

128 (III) Using fraudulent, unapproved or insufficient credit
129 to obtain the certificate.

130 (C) The certificate shall be automatically revoked if the
131 bus operator is convicted under §61-8D-3 or §61-8D-5 of
132 this code or comparable statute in any other state, of any
133 criminal offense that requires the bus operator to register as
134 a sex offender, or of any criminal offense which has as an
135 element the distribution of a controlled substance: *Provided,*
136 That should the conviction resulting in automatic revocation
137 pursuant to this section be overturned by any Court of this
138 state or the United States, the bus operator's certificate shall
139 be reinstated unless otherwise prohibited by law.

140 (D) The state superintendent shall designate a review
141 panel to conduct hearings on certificate revocations or

142 denials and make recommendations for action by the state
143 superintendent. The state board, after consultation with
144 employee organizations representing school service
145 personnel, shall promulgate a rule to establish the review
146 panel membership and composition, method of
147 appointment, governing principles and meeting schedule.

148 (E) It is the duty of any county superintendent who
149 knows of any acts on the part of a bus operator for which a
150 certificate may be revoked in accordance with this section
151 to report the same, together with all the facts and evidence,
152 to the state superintendent for such action as in the state
153 superintendent's judgment may be proper.

154 (F) If a certificate has been granted through an error,
155 oversight or misinformation, the state superintendent may
156 recall the certificate and make such corrections as will
157 conform to the requirements of law and state board rules.

158 (5) The state board shall promulgate, in accordance with
159 article three-b, chapter twenty-nine-a of this code, revised
160 rules in compliance with this subsection.

CHAPTER 239

**(Com. Sub. for S. B. 291 - By Senators Sypolt,
Baldwin, Maynard, Rucker and Roberts)**

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §5H-1-1, §5H-1-2, and §5H-1-3 of the Code of West Virginia, 1931, as amended, all relating generally to survivor benefits for emergency response providers; changing the name of the West Virginia Fire and EMS Survivor Benefit Act to the West Virginia Emergency

Responders Survivor Benefit Act; making Division of Forestry personnel who die as a proximate result of their participation in wildland fire fighting, emergency response, or disaster response operations eligible for survivor benefits; defining terms; making technical changes; and reorganizing language in the act for clarity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WEST VIRGINIA EMERGENCY RESPONDERS SURVIVOR BENEFIT ACT.

§5H-1-1. Title and legislative intent.

1 (a) This article is known as the “West Virginia
2 Emergency Responders Survivor Benefit Act.

3 (b) It is the intent of the Legislature to provide for the
4 payment of survivor benefits to the surviving spouse,
5 designated beneficiary, children, or parents of firefighters,
6 EMS personnel, law-enforcement agency personnel, and
7 Division of Forestry personnel killed in the performance of
8 their emergency response duties.

§5H-1-2. First responder survivor benefit.

1 (a) *Terms.* — For the purposes of this article, the
2 following terms have the following meanings:

3 (1) “Emergency responder” means a paid or volunteer
4 firefighter, EMS personnel, law-enforcement agency
5 personnel, or Division of Forestry personnel.

6 (2) “Emergency response duties” means:

7 (A) For a firefighter, EMS provider, or law-enforcement
8 agency personnel, participation in any role of a fire
9 department, EMS agency, or law-enforcement agency
10 function, including, but not limited to: Training functions;
11 administrative meetings; fire department, EMS agency, or
12 law-enforcement incidents or service calls; apparatus,

13 equipment, or station maintenance; and fundraisers,
14 including travel to or from such functions; and

15 (B) For a Division of Forestry employee, participation
16 in Division of Forestry wildland fire fighting, emergency,
17 or disaster response operations, including, but not limited
18 to, travel to and from the locations of wildland fires,
19 emergencies, or disasters.

20 (3) “Law-enforcement agency” means any duly
21 authorized state, county, or municipal organization
22 employing one or more persons whose responsibility is the
23 enforcement of laws of the state or any county or
24 municipality thereof: *Provided*, That neither the Public
25 Service Commission nor any state institution of higher
26 education nor any resort area district is a law-enforcement
27 agency.

28 (4) “Travel” includes riding upon or in any apparatus or
29 vehicle which is owned or used by the fire department, EMS
30 agency, law-enforcement agency, or the Division of
31 Forestry, or any other vehicle going to, or directly returning
32 from, an emergency responder’s home, place of business, or
33 other place where he or she shall have been prior to
34 participating in a fire department function, EMS agency
35 function, law-enforcement agency function, or a Division of
36 Forestry wildland fire-fighting operation, or upon the
37 authorization of the chief of the department, agency head,
38 or other person in charge.

39 (b) An emergency responder who dies as a proximate
40 result of the performance of his or her emergency response
41 duties is eligible for the survivor benefits established by this
42 act.

43 (c) Within 30 days after the death of an eligible
44 emergency responder, the department or agency head shall
45 submit certification of the death to the Governor’s Office.
46 Certification of the death shall include the name of the
47 certified fire department, EMS agency, law-enforcement

48 agency, or Division of Forestry program, the name of the
49 deceased emergency responder, the name or names and
50 addresses of the beneficiary or beneficiaries, any
51 documentation designating a beneficiary or beneficiaries,
52 and a description of the circumstances that qualify the
53 deceased individual for survivor benefits under this act.

54 (d) Upon receipt of the certification of the death from
55 the certified fire department, EMS agency, law-enforcement
56 agency, or Division of Forestry program, the state shall,
57 from moneys from the State Treasury, General Fund, pay to
58 the certified fire department, EMS agency, law-enforcement
59 agency, or Division of Forestry program the sum of
60 \$100,000 in the name of the beneficiary or beneficiaries of
61 the emergency responder eligible for the survivor benefit.
62 Within five days of receipt of this sum from the state, the
63 fire department, EMS agency, law-enforcement agency, or
64 Division of Forestry Program shall pay the sum as a benefit
65 to the surviving designated beneficiary or beneficiaries. If
66 there is no surviving designated beneficiary, then the sum
67 shall be paid as if the decedent had designated as
68 beneficiaries those persons who are entitled to inherit the
69 decedent's intestate estate, in the proportions established by
70 §42-1-3 and §42-1-3a of this code. It is the responsibility of
71 the certified fire department, EMS agency, law-enforcement
72 agency, or Division of Forestry program to document the
73 beneficiary or beneficiaries above mentioned for purposes
74 of reporting to the Governor's Office.

75 (e) Any death ruled by a physician to be a result of an
76 injury sustained during performance of emergency response
77 duties makes a deceased emergency responder eligible for
78 this benefit, regardless of when the death occurs.

79 (f) The death of an eligible emergency responder
80 qualifies his or her beneficiaries for only one state survivor
81 benefit, paid pursuant to the provisions of this section,
82 regardless of the amount.

83 (g) Every department or agency head employing
84 persons to which this article applies shall provide notice of
85 the benefit provided hereby to such employees and
86 encourage covered employees to provide a written
87 designation of beneficiary to be maintained in the
88 employee's personnel file.

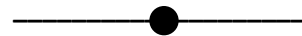
89 (h) A person applying to the State Fire Marshal for
90 certification as a firefighter shall provide a written
91 designation of beneficiary using forms and procedures
92 prescribed by the State Fire Marshal.

93 (i) A person applying to the Commissioner of the
94 Bureau for Public Health for emergency medical services
95 personnel certification shall provide a written designation of
96 beneficiary using forms and procedures prescribed by the
97 commissioner.

§5H-1-3. Effective date.

1 (a) The effective date for this act is January 1, 2007. The
2 operation of the amendments to this article enacted during the
3 year 2012 shall be effective retroactively to January 1, 2012.

4 (b) The operation of the amendments to this article enacted
5 during the 2018 First Extraordinary Session of the Legislature
6 shall be effective retroactively to January 1, 2018.



CHAPTER 240

(S. B. 36 - By Senators Weld and Boso)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §11-21-12d of the Code of West Virginia, 1931, as amended, relating to allowing an

adjustment to gross income for calculating the personal income tax liability of certain retirees receiving pensions from defined benefit pension plans that have been terminated with a consequent reduced benefit; and reinstating the effective period of the allowed adjustment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12d. Additional modification reducing federal adjusted gross income.

1 (a) In addition to amounts authorized to be subtracted
2 from federal adjusted gross income pursuant to §11-21-
3 12(c) of this code, any person who retires under an
4 employer-provided defined benefit pension plan that
5 terminates prior to or after the retirement of that person and
6 the pension plan is covered by a guarantor whose maximum
7 benefit guarantee is less than the maximum benefit to which
8 the retiree was entitled had the plan not terminated may
9 subtract annually from his or her federal adjusted income a
10 sum equal to the difference in the amount of the maximum
11 annual pension benefit the person would have received for
12 such tax year had the plan not terminated and the maximum
13 annual pension benefit actually received from the guarantor
14 under a benefit guarantee plan: *Provided*, That if the Tax
15 Commissioner determines that this adjustment reduces the
16 revenues of the state by \$2 million or more in any one year,
17 then the Tax Commissioner shall reduce the percentage of
18 the reduction to a level at which the commissioner believes
19 will reduce the cost of the adjustment to \$2 million for the
20 next year. This tax adjustment is effective for taxable years
21 beginning on and after January 1, 2008: *Provided, however*,
22 That for the taxable year 2007, the tax adjustment shall be
23 effective and shall apply retroactively: *Provided further*,
24 That the adjustment terminates for the tax years on and after
25 January 1, 2015.

26 (b) This adjustment shall be effective for tax years
27 beginning on January 1, 2020, and shall terminate for
28 taxable years on and after January 1, 2023.

29 (c) This modification is available regardless of the type
30 of return form filed.

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CHAPTER 241

**(S. B. 268 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 5, 2019; in effect from passage.]
[Approved by the Governor on February 27, 2019.]

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
2 as when used in a comparable context in the laws of the
3 United States relating to federal income taxes, unless a
4 different meaning is clearly required by the context or by
5 definition in this article. Any reference in this article to the
6 laws of the United States means the provisions of the
7 Internal Revenue Code of 1986, as amended, and any other
8 provisions of the laws of the United States that relate to the
9 determination of income for federal income tax purposes.

10 All amendments made to the laws of the United States after
11 December 31, 2017, but prior to January 1, 2019, shall be
12 given effect in determining the taxes imposed by this article
13 to the same extent those changes are allowed for federal
14 income tax purposes, whether the changes are retroactive or
15 prospective, but no amendment to the laws of the United
16 States made on or after January 1, 2019, shall be given any
17 effect.

18 (b) The term “Internal Revenue Code of 1986” means
19 the Internal Revenue Code of the United States enacted by
20 the federal Tax Reform Act of 1986 and includes the
21 provisions of law formerly known as the Internal Revenue
22 Code of 1954, as amended, and in effect when the federal
23 Tax Reform Act of 1986 was enacted that were not amended
24 or repealed by the federal Tax Reform Act of 1986. Except
25 when inappropriate, any reference in any law, executive
26 order, or other document:

27 (1) To the Internal Revenue Code of 1954 includes a
28 reference to the Internal Revenue Code of 1986; and

29 (2) To the Internal Revenue Code of 1986 includes a
30 reference to the provisions of law formerly known as the
31 Internal Revenue Code of 1954.

32 (c) *Effective date.* — The amendments to this section
33 enacted in the year 2019 are retroactive to the extent
34 allowable under federal income tax law. With respect to
35 taxable years that began prior to January 1, 2019, the law in
36 effect for each of those years shall be fully preserved as to
37 that year, except as provided in this section.

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CHAPTER 242

**(S. B. 269 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 5, 2019; in effect from passage.]
[Approved by the Governor on February 27, 2019.]

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. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning
2 as when used in a comparable context in the laws of the
3 United States relating to income taxes, unless a different
4 meaning is clearly required. Any reference in this article to
5 the laws of the United States means the provisions of the
6 Internal Revenue Code of 1986, as amended, and any other
7 provisions of the laws of the United States that relate to the
8 determination of income for federal income tax purposes.
9 All amendments made to the laws of the United States after
10 December 31, 2017, but prior to January 1, 2019, shall be
11 given effect in determining the taxes imposed by this article
12 to the same extent those changes are allowed for federal
13 income tax purposes, whether the changes are retroactive or
14 prospective, but no amendment to the laws of the United
15 States made on or after January 1, 2019, may be given any
16 effect.

17 (b) *Medical savings accounts.* — The term “taxable
18 trust” does not include a medical savings account
19 established pursuant to §33-15-20 or §33-16-15 of this code.
20 Employer contributions to a medical savings account
21 established pursuant to those sections are not wages for
22 purposes of withholding under §11-21-71 of this code.

23 (c) *Surtax.* — The term “surtax” means the 20 percent
24 additional tax imposed on taxable withdrawals from a
25 medical savings account under §33-15-20 of this code and
26 the 20 percent additional tax imposed on taxable
27 withdrawals from a medical savings account under §33-16-
28 15 of this code which are collected by the Tax
29 Commissioner as tax collected under this article.

30 (d) *Effective date.* — The amendments to this section
31 enacted in the year 2019 are retroactive to the extent
32 allowable under federal income tax law. With respect to
33 taxable years that began prior to January 1, 2019, the law in
34 effect for each of those years shall be fully preserved as to
35 that year, except as provided in this section.

36 (e) For purposes of the refundable credit allowed to a
37 low-income senior citizen for property tax paid on his or her
38 homestead in this state, the term “laws of the United States”
39 as used in §11-21-9(a) of this code means and includes the
40 term “low income” as defined in §11-21-21(b) of this code
41 and as reflected in the poverty guidelines updated
42 periodically in the federal register by the U.S. Department
43 of Health and Human Services under the authority of 42
44 U.S.C. § 9902(2).

45 (f) For taxable years beginning on and after January 1,
46 2018, whenever this article refers to “each exemption for
47 which he or she is entitled to a deduction for the taxable year
48 for federal income tax purposes”, this phrase means the
49 exemption the person would have been allowed to claim for
50 the taxable year had the federal income tax law not been
51 amended to eliminate the personal exemption for federal tax
52 years beginning on or after January 1, 2018.

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CHAPTER 243

(Com. Sub. for S. B. 405 - By Senator Sypolt)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §11A-3-23, §11A-3-25, §11A-3-56, §11A-3-57, §11A-3-58, and §11A-3-59 of the Code of West Virginia, 1931, as amended, all relating to increasing the limit to \$500 on additional expenses a purchaser may recover in preparing notice list for redemption of purchase and for licensed attorney's title examination.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED, AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

1 (a) After the sale of any tax lien on any real estate
2 pursuant to §11A-3-5 of this code, the owner of, or any other
3 person who was entitled to pay the taxes on, any real estate
4 for which a tax lien on the real estate was purchased by an
5 individual may redeem at any time before a tax deed is
6 issued for the real estate. In order to redeem, he or she shall
7 pay to the State Auditor the following amounts:

8 (1) An amount equal to the taxes, interest and charges
9 due on the date of the sale, with interest at the rate of one
10 percent per month from the date of sale;

11 (2) All other taxes which have since been paid by the
12 purchaser, his or her heirs or assigns, with interest at the rate
13 of one percent per month from the date of payment;

14 (3) Any additional expenses incurred from January 1 of
15 the year following the sheriff's sale to the date of
16 redemption for the preparation of the list of those to be
17 served with notice to redeem and any written documentation
18 used for the preparation of the list, with interest at the rate
19 of one percent per month from the date of payment for
20 reasonable legal expenses incurred for the services of an
21 attorney who has performed an examination of the title to
22 the real estate and rendered written documentation used for
23 the preparation of the list: The maximum amount the owner
24 or other authorized person shall pay, excluding the interest,
25 for the expenses incurred for the preparation of the list of
26 those to be served required by §11A-3-19 of this code is
27 \$500. An attorney may only charge a fee for legal services
28 actually performed and must certify that he or she conducted
29 an examination to determine the list of those to be served
30 required by §11A-3-19 of this code; and

31 (4) All additional statutory costs paid by the purchaser.

32 (b) Where the State Auditor has not received from the
33 purchaser satisfactory proof of the expenses incurred in
34 preparing the notice to redeem, and any written
35 documentation used for the preparation of the list of those
36 to be served with notice to redeem, including the
37 certification required in subdivision (3), subsection (a) of
38 this section, incident thereto, in the form of receipts or other
39 evidence of legal expenses, incurred as provided in §11A-
40 3-13 of this code, the person redeeming shall pay the State
41 Auditor the sum of \$500 plus interest at the rate of one
42 percent per month from January 1 of the year following the
43 sheriff's sale for disposition by the sheriff pursuant to the
44 provisions of §11A-3-10, §11A-3-24, §11A-3-25, and
45 §11A-3-32 of this code.

46 (c) The person redeeming shall be given a receipt for the
47 payment and the written opinion or report used for the
48 preparation of the list of those to be served with notice to
49 redeem required by section nineteen of this article.

50 (d) Any person who, by reason of the fact that no
51 provision is made for partial redemption of the tax lien on

52 real estate purchased by an individual, is compelled in order
53 to protect himself or herself to redeem the tax lien on all of
54 the real estate when it belongs, in whole or in part, to some
55 other person, shall have a lien on the interest of that other
56 person for the amount paid to redeem the interest. He or she
57 shall lose his or her right to the lien, however, unless within
58 30 days after payment he or she files with the clerk of the
59 county commission his or her claim in writing against the
60 owner of the interest, together with the receipt provided in
61 this section. The clerk shall docket the claim on the
62 judgment lien docket in his or her office and properly index
63 the claim. The lien may be enforced as other judgment liens
64 are enforced.

65 (e) Before a tax deed is issued, the county clerk may
66 accept, on behalf of the State Auditor, the payment
67 necessary to redeem any real estate encumbered with a tax
68 lien and write a receipt. The amount of the payment
69 necessary to redeem any real estate encumbered with a tax
70 lien shall be provided by the State Auditor and the State
71 Auditor shall update the required payments plus interest at
72 least monthly.

73 (f) On or before the 10th day of each month, the county
74 clerk shall deliver to the State Auditor the redemption
75 money paid and the name and address of the person who
76 redeemed the property on a form prescribed by the State
77 Auditor.

§11A-3-25. Distribution of surplus to purchaser.

1 (a) Where the land has been redeemed in the manner set
2 forth in §11A-3-23 of this code, and the State Auditor has
3 delivered the redemption money to the sheriff pursuant to
4 §11A-3-24 of this code, the sheriff shall, upon receipt of the
5 sum necessary to redeem, promptly notify the purchaser or
6 his or her heirs or assigns, by mail, of the fact of the
7 redemption and pay to the purchaser or his or her heirs or
8 assigns the following amounts:

9 (1) From the sale of tax lien surplus fund provided by
10 §11A-3-10 of this code:

11 (A) The surplus of money paid in excess of the amount
12 of the taxes, interest, and charges paid by the purchaser to
13 the sheriff at the sale; and

14 (B) The amount of taxes, interest and charges paid by
15 the purchaser on the date of the sale, plus the interest at the
16 rate of one percent per month from the date of sale to the
17 date of redemption;

18 (2) All other taxes on the land which have since been
19 paid by the purchaser or his or her heirs or assigns, with
20 interest at the rate of one percent per month from the date of
21 payment to the date of redemption;

22 (3) Any additional reasonable expenses that the
23 purchaser may have incurred from January 1 of the year
24 following the sheriff's sale to the date of redemption for the
25 preparation of the list of those to be served with notice to
26 redeem and any written documentation used for the
27 preparation of the list, in accordance with §11A-3-19 of this
28 code, with interest at the rate of one percent per month from
29 the date of payment, but the amount which shall be paid,
30 excluding the interest, for the expenses incurred for the
31 preparation of the list of those to be served with notice to
32 redeem required by §11A-3-19 of this code shall not exceed
33 the amount actually incurred by the purchaser or \$500,
34 whichever is less: *Provided*, That the attorney may only
35 charge a fee for legal services actually performed and must
36 certify that he or she conducted an examination to determine
37 the list of those to be served required by §11A-3-19 of this
38 code; and

39 (4) All additional statutory costs paid by the purchaser.

40 (b) (1) The notice shall include:

41 (A) A copy of the redemption certificate issued by the
42 State Auditor;

43 (B) An itemized statement of the redemption money to
44 which the purchaser is entitled pursuant to the provisions of
45 this section; and

46 (C) Where, at the time of the redemption, the State
47 Auditor has not received from the purchaser satisfactory
48 proof of the expenses incurred in preparing the list of those
49 to be served with notice to redeem and any written
50 documentation used for the preparation of the list in
51 accordance with §11A-3-19 of this code, the State Auditor
52 shall also include instructions to the purchaser as to how
53 these expenses may be claimed.

54 (2) Subject to the limitations of this section, the
55 purchaser is entitled to recover any expenses incurred in
56 preparing the list of those to be served with notice to redeem
57 and any written documentation used for the preparation of
58 the list from January 1 of the year following the sheriff's
59 sale to the date of the sale to the date of the redemption.

60 (c) Where, pursuant to §11A-3-23 of this code, the State
61 Auditor has not received from the purchaser satisfactory
62 proof of the expenses incurred in preparing the list of those
63 to be served with notice to redeem, including written
64 documentation used for preparation of the list, in the form
65 of receipts or other evidence within 30 days from the date
66 of notification by the State Auditor, the sheriff shall refund
67 the amount to the person redeeming and the purchaser is
68 barred from any claim. Where, pursuant to that section, the
69 State Auditor has received from the person redeeming and
70 therefore delivered to the sheriff the sum of \$500 plus
71 interest at the rate of one percent per month from January 1
72 of the year following the sheriff's sale to the date of the sale
73 to the date of redemption, and the purchaser provides the
74 sheriff within 30 days from the date of notification
75 satisfactory proof of the expenses, and the amount of the
76 expenses is less than the amount paid by the person
77 redeeming, the sheriff shall refund the difference to the
78 person redeeming.

§11A-3-36. Operating fund for land department in Auditor's office.

1 (a) The Auditor shall establish a special operating fund
2 for the land department in his or her office. He or she shall
3 pay into such fund all redemption fees, all publication or
4 other charges collected by him or her, if such charges were
5 paid by or were payable to him or her, the unclaimed surplus
6 proceeds received by him or her from the sale of delinquent
7 and other lands pursuant to this article, and all payments
8 made to him or her under the provisions of §11A-3-64 and
9 §11A-3-65 of this code, except such part thereof as
10 represents state taxes and interest. All payments so excepted
11 shall be credited by the Auditor to the general school fund
12 or other proper state fund.

13 (b) The operating fund shall be used by the Auditor in
14 cases of deficits in land sales to pay any balances due to
15 deputy commissioners for services rendered, and any
16 unpaid costs, including those for publication which have
17 accrued or will accrue under the provisions of this article, to
18 pay fees due surveyors under the provisions of §11A-3-43
19 of this code, and to pay for the operation and maintenance
20 of the land department in his or her office. The surplus over
21 and above the amount of 20 percent of gross revenue from
22 operation of the fund from the prior year, remaining at the
23 end of any fiscal year, shall be paid by the Auditor into the
24 General School Fund.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

1 (a) After the sale of any tax lien on any real estate
2 pursuant to §11A-3-45 or §11A-3-48 of this code, the owner
3 of, or any other person who was entitled to pay the taxes on,
4 any real estate for which a tax lien thereon was purchased
5 by an individual, may redeem at any time before a tax deed
6 is issued therefor. In order to redeem, he or she must pay to
7 the deputy commissioner the following amounts:

8 (1) An amount equal to the taxes, interest and charges
9 due on the date of the sale, with interest thereon at the rate
10 of one percent per month from the date of sale;

11 (2) All other taxes thereon, which have since been paid
12 by the purchaser, his or her heirs or assigns, with interest at
13 the rate of one percent per month from the date of payment;

14 (3) Such additional expenses as may have been incurred
15 in preparing the list of those to be served with notice to
16 redeem, and for any licensed attorney's title examination
17 incident thereto, with interest at the rate of one percent per
18 month from the date of payment, but the amount he or she
19 shall be required to pay, excluding said interest, for such
20 expenses incurred for the preparation of the list of those to
21 be served with notice to redeem required by §11A-3-52 of
22 this code, and for any licensed attorney's title examination
23 incident thereto, shall not exceed \$500. An attorney may
24 only charge a fee for legal services actually performed and
25 must certify that he or she conducted an examination to
26 determine the list of those to be served required by §11A-3-
27 52 of this code;

28 (4) All additional statutory costs paid by the purchaser;
29 and

30 (5) The deputy commissioner's fee and commission as
31 provided by §11A-3-66 of this code. Where the deputy
32 commissioner has not received from the purchaser
33 satisfactory proof of the expenses incurred in preparing the
34 notice to redeem, or of any licensed attorney's title
35 examination incident thereto, in the form of receipts or other
36 evidence thereof, the person redeeming shall pay the deputy
37 commissioner the sum of \$500 plus interest thereon at the
38 rate of one percent per month from the date of the sale for
39 disposition pursuant to the provisions of §11A-3-57, §11A-
40 3-58, and §11A-3-64 of this code. Upon payment to the
41 deputy commissioner of those and any other unpaid
42 statutory charges required by this article, and of any unpaid
43 expenses incurred by the sheriff, the Auditor and the deputy

44 commissioner in the exercise of their duties pursuant to this
45 article, the deputy commissioner shall prepare an original
46 and five copies of the receipt for the payment and shall note
47 on said receipts that the property has been redeemed. The
48 original of such receipt shall be given to the person
49 redeeming. The deputy commissioner shall retain a copy of
50 the receipt and forward one copy each to the sheriff,
51 assessor, the Auditor and the clerk of the county
52 commission. The clerk shall endorse on the receipt the fact
53 and time of such filing and note the fact of redemption on
54 his or her record of delinquent lands.

55 (b) Any person who, by reason of the fact that no
56 provision is made for partial redemption of the tax lien on
57 real estate purchased by an individual, is compelled in order
58 to protect himself or herself to redeem the tax lien on all of
59 such real estate when it belongs, in whole or in part, to some
60 other person, shall have a lien on the interest of such other
61 person for the amount paid to redeem such interest. He or
62 she shall lose his or her right to the lien, however, unless
63 within 30 days after payment he or she shall file with the
64 clerk of the county commission his or her claim in writing
65 against the owner of such interest, together with the receipt
66 provided for in this section. The clerk shall docket the claim
67 on the judgment lien docket in his or her office and properly
68 index the same. Such lien may be enforced as other
69 judgment liens are enforced.

§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.

1 (a) Upon payment of the sum necessary to redeem, the
2 deputy commissioner shall promptly deliver to the sheriff
3 the redemption money paid and the name and address of the
4 purchaser, his or her heirs or assigns.

5 (b) Of the redemption money received by the sheriff
6 pursuant to this section, the sheriff shall hold as surplus to
7 be disposed of pursuant to §11A-3-64 of this code an
8 amount thereof equal to the amount of taxes, interest and

9 charges due on the date of the sale, plus the interest at the
10 rate of one percent per month thereon from the date of sale
11 to the date of redemption.

§11A-3-58. Distribution to purchaser.

1 (a) Where the land has been redeemed in the manner set
2 forth in §11A-3-56 of this code, and the deputy
3 commissioner has delivered the redemption money to the
4 sheriff pursuant to §11A-3-57 of this code, the sheriff shall,
5 upon delivery of the sum necessary to redeem, promptly
6 notify the purchaser, his or her heirs or assigns, by mail, of
7 the redemption and pay to the purchaser, his or her heirs or
8 assigns, the following amounts:

9 (1) The amount paid to the deputy commissioner at the
10 sale;

11 (2) All other taxes thereon, which have since been paid
12 by the purchaser, his or her heirs or assigns, with interest at
13 the rate of one percent per month from the date of payment;

14 (3) Such additional expenses as may have been incurred
15 in preparing the list of those to be served with notice to
16 redeem, and for any licensed attorney's title examination
17 incident thereto, with interest at the rate of one percent per
18 month from the date of payment, but the amount which shall
19 be paid, excluding said interest, for such expenses incurred
20 for the preparation of the list of those to be served with
21 notice to redeem required by §11A-3-52 of this code, and
22 for any licensed attorney's title examination incident
23 thereto, shall not exceed \$500; and

24 (4) All additional statutory costs paid by the purchaser.

25 (b) (1) The notice shall include:

26 (A) A copy of the redemption certificate issued by the
27 deputy commissioner;

28 (B) An itemized statement of the redemption money to
29 which the purchaser is entitled pursuant to the provisions of
30 this section; and

31 (C) Where, at the time of the redemption, the deputy
32 commissioner has not received from the purchaser
33 satisfactory proof of the expenses incurred in preparing the
34 list of those to be served with notice to redeem or for any
35 licensed attorney's title examination incident thereto, the
36 deputy commissioner shall also include instructions to the
37 purchaser as to how these expenses may be claimed.

38 (2) Subject to the limitations of this section, the
39 purchaser is entitled to recover any expenses incurred in
40 preparing the list of those to be served with notice to redeem
41 and for any licensed attorney's title examination incident
42 thereto from the date of the sale to the date of the
43 redemption.

44 (c) Where, pursuant §11A-3-56 of this code, the deputy
45 commissioner has not received from the purchaser
46 satisfactory proof of the expenses incurred in preparing the
47 notice to redeem, in the form of receipts or other evidence
48 of legal expenses, or for any licensed attorney's title
49 examination and rendered written documentation used for
50 the preparation of the list incident thereto, in the form of
51 receipts or other evidence thereof, and therefore received
52 from the purchaser as required by said section and delivered
53 to the sheriff the sum of \$500 plus interest thereon at the
54 rate of one percent per month from the date of the sale to the
55 date of redemption, and the sheriff has not received from the
56 purchaser such satisfactory proof of such expenses within
57 30 days from the date of notification, the sheriff shall refund
58 such amount to the person redeeming and the purchaser is
59 barred from any claim thereto. Where, pursuant to §11A-3-
60 56 of this code, the deputy commissioner has received from
61 the purchaser and therefore delivered to the sheriff said sum
62 of \$500 plus interest thereon at the rate of one percent per
63 month from the date of the sale to the date of redemption,
64 and the purchaser provides the sheriff within 30 days from

65 the date of notification such satisfactory proof of such
 66 expenses, and the amount of such expenses is less than the
 67 amount paid by the person redeeming, the sheriff shall
 68 refund the difference to the person redeeming.

§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.

70 Upon payment of the final costs and fees required by
71 this article, the purchaser shall have the right to inspect and
72 perform necessary and reasonable repairs for the
73 preservation of the real property: *Provided*, That the current
74 occupant has a duty to preserve the property to the best of
75 his or her ability and control.



CHAPTER 244

(S. B. 499 - By Senators Blair and Cline)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §11-10-3, §11-10-4, §11-10-7, §11-10-14, §11-10-15, and §11-10-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-10-18c; to amend and reenact §11-21-3, §11-21-51a, §11-21-59, and §11-21-71a of said code; to amend said code by adding thereto four new sections, designated §11-21-37a, §11-21-37b, §11-21-37c, and §11-21-59a; to amend said code by adding thereto a new article, designated §11-21A-1, §11-21A-2, §11-21A-3, §11-21A-4, §11-21A-5, §11-21A-6, §11-21A-7, §11-21A-8, §11-21A-9, §11-21A-10, §11-21A-11, and §11-21A-12; and to amend and reenact §11-24-20 of said code, all relating generally to amending West Virginia tax laws to conform to changes in how partnerships and their partners and other pass-through entities and their equity owners are treated for federal income tax purposes for tax years beginning after December

31, 2017; amending West Virginia Tax Procedures and Administration Act, Personal Income Tax Act, and Corporation Net Income Tax Act to provide for administration, collection, and enforcement of income tax on certain partnerships and other pass-through entities treated as partnerships for federal income tax purposes and their partners and equity owners in conformity with changes made by United States Congress in how these entities and their equity owners are treated for federal income tax purposes for taxable years beginning after December 31, 2017; providing for application of West Virginia Tax Procedure and Administration Act to apply to imputed income taxes imposed on partnerships and other pass-through entities; imposing addition to tax for failure of partnership and other pass-through entity to file partnership's returns and reports; imposing imputed personal income tax on certain partnerships and other pass-through entities treated like partnerships for federal income tax purposes based on federal audit adjustments; providing general rules and special rules for allocation and apportionment of business income; providing for filing of amended composite personal income tax returns by pass-through entities on behalf of nonresident equity owners; providing additional rules for reporting of federal changes to federal taxable incomes; providing amended rules for reporting of federal adjustments by Internal Revenue Service or other competent authority; providing rules for reporting adjustments by other states' resident claims credit for tax paid to another state; providing for pass-through entity withholding on nonresidents when partnership or other pass-through entity pushes federal audit adjustments out to equity owners; adding a new article providing for administration, collection, and enforcement of additional West Virginia income taxes from certain partnerships and other pass-through entities treated like partnerships for federal income tax purposes, or their equity owners, that are attributable to federal audit adjustments; defining certain terms; providing for reporting of adjustments to federal taxable income; providing for reporting of federal audit adjustments resulting from federal audit of pass-through entity or from

administrative adjustment requests; providing for assessment of additional West Virginia income taxes, interest, and additions to tax arising from federal adjustments to federal taxable income within applicable statute of limitations; allowing payment of estimated West Virginia income tax payments during course of federal audit of certain partnerships and other pass-through entities treated as partnerships for federal income tax purposes; providing for refund or credit of West Virginia income taxes attributable to finalized federal audit adjustments; providing rules for scope of audit adjustments and extensions of time; specifying effective dates; providing for legislative, interpretive, and procedural rules; providing for Tax Procedures and Administration Act and Tax Crimes and Penalties Act to apply to imputed income tax imposed on certain partnerships and other pass-through entities treated as partnerships for federal income tax purposes; providing additional rules for reporting of changes in federal taxable income of corporations; making technical corrections in existing code sections being amended; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-3. Application of this article.

1 (a) The provisions of this article apply to inheritance and
2 transfer taxes, estate tax, and interstate compromise and
3 arbitration of inheritance and death taxes: (1) The business
4 registration tax; (2) the minimum severance tax on coal; (3)
5 the corporate license tax; (4) the business and occupation
6 tax; (5) the severance tax, additional severance taxes,
7 telecommunications tax; (6) the interstate fuel tax; (7) the
8 consumers sales and service tax; (8) the use tax; (9) the
9 economic opportunity district excise taxes; (10) the tobacco
10 products excise taxes; (11) the excise tax on e-vapors; (12)
11 the soft drinks tax; (13) the personal income tax; (14) the
12 business franchise tax; (15) the corporation net income tax;

13 (16) the gasoline and special fuels excise tax; (17) the motor
14 fuels excise tax; (18) the motor carrier road tax; (19) the
15 health care provider taxes; (20) the various solid waste
16 assessment fees administered by the Tax Commissioner
17 pursuant to chapters 17, 17A, 20, 22, and 22C of this code;
18 (21) the excise taxes imposed by this code on sales of
19 alcoholic liquor and wine; (22) the various tax credits
20 administered by the Tax Commissioner; (23) any other tax
21 or fee administered by the Tax Commissioner pursuant to
22 this article; and (24) the tax relief for elderly homeowners
23 and renters administered by the State Tax Commissioner.
24 This article shall not apply to ad valorem taxes on real and
25 personal property or any other tax not listed in this section,
26 except that in the case of ad valorem taxes on real and
27 personal property, when any return, claim, statement or
28 other document is required to be filed, or any payment is
29 required to be made within a prescribed period or before a
30 prescribed date, and the applicable law requires delivery to
31 the office of the sheriff of a county of this state, the methods
32 prescribed in §11-10-5f of this code for timely filing and
33 payment to the Tax Commissioner or State Tax Department
34 are the same methods utilized for timely filing and payment
35 with the sheriff.

36 (b) The provisions of this article apply to beer barrel tax
37 levied by §11-16-1 *et seq.* of this code; and to wine liter tax
38 levied by §60-8-4 of this code.

39 (c) The provisions of this article apply to any other
40 article of this chapter or of this code when the application is
41 expressly provided by the Legislature.

42 (d) The provisions of this article apply to municipal
43 sales and use taxes imposed under §8-13C-1 *et seq.* of this
44 code and collected by the Tax Commissioner.

§11-10-4. Definitions.

1 For the purpose of this article, the term:

2 (a) “C corporation” means a legal entity that is taxed
3 separately from its owners under subchapter C of the
4 Internal Revenue Code as defined in §11-21-1 *et seq.* and
5 §11-24-1 *et seq.* of this code.

6 (b) “Information return or report” means any document
7 required to be filed with the Tax Commissioner by any
8 article of this code, which provides information to the Tax
9 Commissioner but does not include an accurately calculated
10 tax liability of an individual or business entity. Information
11 return or report includes, but is not limited to, information
12 returns filed by S corporations pursuant to §11-24-13b of
13 this code, information returns filed by partnerships pursuant
14 to §11-21-58 of this code, any statement required to be
15 furnished under IRC § 6226(a)(2) or under any other
16 provision of the Internal Revenue Code which provides for
17 the application of rules similar to those in IRC § 6226; and
18 any other information return or report required to be filed
19 with the Tax Commissioner pursuant to §11-21A-1 *et seq.*
20 of this code, or any other article of this code that is
21 administered under §11-10-1 *et seq.* of this code.

22 (c) “Officer or employee of this state” shall include, but
23 is not limited to, any former officer or employee of the State
24 of West Virginia.

25 (d) “Office of Tax Appeals” means the West Virginia
26 Office of Tax Appeals created by §11-10A-3 of this code.

27 (e) “Pass-through entity” means an entity that is not
28 subject to tax under §11-24-1 *et seq.* of this code imposing
29 tax on C corporations or other entities taxable as a C
30 corporation for federal income tax purposes.

31 (f) “Person” shall include, but is not limited to, any
32 individual, firm, partnership, limited partnership,
33 copartnership, joint venture, limited liability company or
34 other pass-through entity, association, corporation,
35 municipal corporation, organization, receiver, estate, trust,
36 guardian, executor, administrator, and also any officer,

37 employee, or member of any of the foregoing who, as an
38 officer, employee, or member, is under a duty to perform or
39 is responsible for the performance of an act prescribed by
40 the provisions of this article and the provisions of any of the
41 other articles of this chapter or this code which impose taxes
42 administered by the Tax Commissioner, unless the intention
43 to give a more limited or broader meaning is disclosed by
44 the context of this article or any of the other articles of this
45 chapter which impose taxes or fees administered by the Tax
46 Commissioner under this article.

47 (g) "Return" means for taxable years beginning on or
48 after January 1, 2007, a tax or information return or report,
49 declaration of estimated tax, claim or petition for refund or
50 credit or petition for reassessment which is complete and
51 that is required by, or provided for, or permitted under the
52 provisions of this article (or any article of this chapter
53 administered under this article) which is filed with the Tax
54 Commissioner by, on behalf of, or with respect to any
55 person and any amendment or supplement thereto,
56 including supporting schedules, attachments, or lists which
57 are supplemental to the return so filed. For purposes of this
58 subsection, "complete" means for taxable years beginning
59 on or after January 1, 2007, the information required to be
60 entered is entered on the applicable return forms. A return
61 form is not to be considered complete if the information
62 required to be entered on the applicable return forms is only
63 contained in amendments or supplements thereto, including
64 supporting schedules, attachments, or lists. A return that is
65 not considered complete is deemed not to be filed:

66 (1) For purposes of claiming a refund of any tax
67 administered under this article;

68 (2) For purposes of the commencement of any limitation
69 on any assessment under §11-10-15 of this code;

70 (3) For purposes of determining the commencement of
71 the period when the Tax Commissioner shall pay interest for
72 the late payment of a refund;

73 (4) For purposes of additions to tax imposed under §11-
74 10-18, §11-10-18a, or §11-10-18b of this code; or

75 (5) For purposes of penalties imposed under §11-10-19
76 of this code.

77 (h) “State” means any state of the United States or the
78 District of Columbia.

79 (i) “Tax” or “taxes” includes within the meaning thereof
80 taxes and fees specified in §11-10-3 of this code, and
81 additions to tax, penalties, and interest, unless the intention
82 to give the same a more limited meaning is disclosed by the
83 context.

84 (j) “Tax commissioner” or “commissioner” means the
85 Tax Commissioner of the State of West Virginia or his or
86 her delegate.

87 (k) “Taxpayer” means any person required to file a
88 return for any tax or fee administered under this article, or
89 any person liable for the payment of any tax or fee
90 administered under this article.

91 (l) “Tax administered under this article” means any tax
92 or fee to which this article applies as set forth in §11-10-3
93 of this code.

94 (m) “This code” means the Code of West Virginia,
95 1931, as amended.

96 (n) “This state” means the State of West Virginia.

§11-10-7. Assessment.

1 (a) *General.* — If the Tax Commissioner believes that
2 any tax administered under this article has been
3 insufficiently returned by a taxpayer, either because the
4 taxpayer has failed to properly remit the tax or fee, or has
5 failed to make a return, or has made a return which is
6 incomplete, deficient, or otherwise erroneous, he or she may

7 proceed to investigate and determine or estimate the tax
8 liability and make an assessment therefor.

9 (b) *Jeopardy assessments.* — If the Tax Commissioner
10 believes that the collection of any tax administered under
11 this article will be jeopardized by delay, he or she shall
12 thereupon make an assessment of tax, noting that fact upon
13 the assessment. The amount assessed shall immediately be
14 due and payable. Unless the taxpayer against whom a
15 jeopardy assessment is made posts the required security and
16 petitions for reassessment within 20 days after service of
17 notice of the jeopardy assessment, such assessment shall
18 become final: *Provided*, That upon written request of the
19 taxpayer made within the 20-day period, showing
20 reasonable cause therefor, the Tax Commissioner may grant
21 an extension of time not to exceed 30 additional days within
22 which such petition may be filed. If a taxpayer against
23 whom a jeopardy assessment has been made petitions for
24 reassessment or requests an extension of time to file a
25 petition for reassessment, the petition or request shall be
26 accompanied by remittance of the amount assessed or such
27 security as the Tax Commissioner may consider necessary
28 to ensure compliance with the applicable provisions of this
29 chapter. If a petition for reassessment is timely filed, and the
30 amount assessed has been remitted, or such other security
31 posted, the provisions for hearing, determination, and
32 appeal set forth in §11-10A-1 *et seq.* of this code shall then
33 be applicable.

34 (c) *Amendment of assessment.* — The Tax
35 Commissioner may, at any time before the assessment
36 becomes final, amend, in whole or in part, any assessment
37 whenever he or she ascertains that such assessment is
38 improper or incomplete in any material respect.

39 (d) *Supplemental assessment.* — The Tax
40 Commissioner may, at any time within the period prescribed
41 for assessment, make a supplemental assessment whenever
42 he or she ascertains that any assessment is imperfect or
43 incomplete in any material respect.

44 (e) *Address for notice of assessment.* —

45 (1) *General rule.* — In the absence of notice to the Tax
46 Commissioner under §11-10-5o of this code of the existence
47 of a fiduciary relationship, notice of assessment, if sent by
48 certified mail or registered mail to the taxpayer at his or her
49 last known address, shall be sufficient even if such taxpayer
50 is deceased, or is under a legal disability, or, in the case of a
51 corporation or other legal entity, has terminated its
52 existence.

53 (2) *Joint income tax return.* — In the case of a joint
54 income tax return filed by a husband and wife, such notice
55 of assessment may be a single notice, except that if the Tax
56 Commissioner has been notified by either spouse that
57 separate residences have been established, then in lieu of a
58 single notice, a duplicate original of the joint notice shall be
59 sent by certified or registered mail to each spouse at his or
60 her last known address.

61 (3) *Estate tax.* — In the absence of notice to the Tax
62 Commissioner of the existence of a fiduciary relationship,
63 notice of assessment of a tax imposed by §11-11-1 *et seq.*
64 of this code, if addressed in the name of the decedent or
65 other person subject to liability and mailed to his or her last
66 known address, by registered or certified mail, shall be
67 sufficient for purposes of this article and §11-11-1 *et seq.* of
68 this code.

69 (f) For purposes of this section, the term “taxpayer”
70 includes any partnership or other pass-through entity that
71 owes tax pursuant to §11-21A-1 *et seq.* of this code.

§11-10-14. Overpayments; credits; refunds and limitations.

1 (a) *Refunds or credits of overpayments.* — In the case of
2 overpayment of any tax (or fee), additions to tax, penalties,
3 or interest imposed by this article, or any of the other articles
4 of this chapter, or of this code, to which this article is
5 applicable, the Tax Commissioner shall, subject to the
6 provisions of this article, refund to the taxpayer the amount

7 of the overpayment or, if the taxpayer so elects, apply the
8 same as a credit against the taxpayer's liability for the tax
9 for other periods. The refund or credit shall include any
10 interest due the taxpayer under §11-10-17 of this code.

11 (b) *Refunds or credits of gasoline and special fuel excise*
12 *tax or motor carrier road tax.* — Any person who seeks a
13 refund or credit of gasoline and special fuel excise taxes
14 under §11-14-10, §11-14-11, §11-14-12, §11-14A-9, or
15 §11-14A-11 of this code, or of motor fuel excise tax under
16 §11-14C-9 of this code shall file his or her claim for refund
17 or credit in accordance with the provisions of the applicable
18 sections. The 90-day time period for determination of
19 claims for refund or credit provided in subsection (d) of this
20 section does not apply to these claims for refund or credit:
21 *Provided,* That claims for refund or credit of the motor fuel
22 excise tax under §11-14C-9 of this code are subject to the
23 90-day time period provided in subsection (d) of this
24 section: *Provided, however,* That claims for refund or credit
25 of the motor fuel excise tax under §11-14C-9 of this code
26 made by the United States government or unit or agency
27 thereof, any municipal government or any agency thereof,
28 or any county board of education made pursuant to §11-
29 14C-9(c)(1), (2), (3), (4), (5), and (6) of this code will be
30 subject to a 30-day time period.

31 (c) *Claims for refund or credit.* — No refund or credit
32 shall be made unless the taxpayer has timely filed a claim
33 for refund or credit with the Tax Commissioner. A person
34 against whom an assessment or administrative decision has
35 become final is not entitled to file a claim for refund or
36 credit with the Tax Commissioner as prescribed herein. The
37 Tax Commissioner shall determine the taxpayer's claim and
38 notify the taxpayer in writing of his or her determination.

39 (d) *Petition for refund or credit; hearing.* —

40 (1) If the taxpayer is not satisfied with the Tax
41 Commissioner's determination of taxpayer's claim for
42 refund or credit, or if the Tax Commissioner has not

43 determined the taxpayer's claim within 90 days after the
44 claim was filed, or six months in the case of claims for
45 refund or credit of the taxes imposed by §11-21-1 *et seq.*,
46 §11-21A-1 *et seq.*, and §11-24-1 *et seq.* of this code, after
47 the filing thereof, the taxpayer may file, with the Tax
48 Commissioner, either personally or by certified mail, a
49 petition for refund or credit: *Provided*, That no petition for
50 refund or credit may be filed more than 60 days after the
51 taxpayer is served with notice of denial of taxpayer's claim:
52 *Provided, however*, That after December 31, 2002, the
53 taxpayer shall file the petition with the Office of Tax
54 Appeals in accordance with §11-10A-9 of this code.

55 (2) The petition for refund or credit shall be in writing,
56 verified under oath by the taxpayer, or by taxpayer's duly
57 authorized agent having knowledge of the facts, and set
58 forth with particularity the items of the determination
59 objected to, together with the reasons for the objections.

60 (3) When a petition for refund or credit is properly filed,
61 the procedures for hearing and for decision applicable when
62 a petition for reassessment is timely filed shall be followed.

63 (e) *Appeal.* — An appeal from the Office of Tax
64 Appeals' administrative decision upon the petition for
65 refund or credit may be taken by the taxpayer in the same
66 manner and under the same procedure as that provided for
67 judicial review of an administrative decision on a petition
68 for reassessment, but no bond is required of the taxpayer.
69 An appeal from the administrative decision of the Office of
70 Tax Appeals on a petition for refund or credit, if taken by
71 the taxpayer, shall be taken as provided in §11-10A-19 of
72 this code.

73 (f) *Decision of the court.* — Where the appeal is to
74 review an administrative decision on a petition for refund or
75 credit, the court may determine the legal rights of the parties
76 but in no event shall it enter a judgment for money.

77 (g) *Refund made or credit established.* — The Tax
78 Commissioner shall promptly issue his or her requisition on
79 the treasury or establish a credit, as requested by the
80 taxpayer, for any amount finally administratively or
81 judicially determined to be an overpayment of any tax (or
82 fee) administered under this article. The Auditor shall issue
83 his or her warrant on the Treasurer for any refund
84 requisitioned under this subsection payable to the taxpayer
85 entitled to the refund, and the Treasurer shall pay the
86 warrant out of the fund into which the amount refunded was
87 originally paid: *Provided*, That refunds of personal income
88 tax may also be paid out of the fund established pursuant to
89 §11-21-93 of this code.

90 (h) *Forms for claim for refund or a credit; where return*
91 *constitutes claim.* — The Tax Commissioner may prescribe
92 by rule or regulation the forms for claims for refund or
93 credit. Notwithstanding the foregoing, where the taxpayer
94 has overpaid the tax imposed by §11-21-1 *et seq.*, §11-21A-
95 1 *et seq.*, §11-23-1 *et seq.*, or §11-24-1 *et seq.* of this code,
96 a return signed by the taxpayer which shows on its face that
97 an overpayment of tax has been made constitutes a claim for
98 refund or credit.

99 (i) *Remedy exclusive.* — The procedure provided by this
100 section constitutes the sole method of obtaining any refund,
101 credit, or any tax (or fee) administered under this article, it
102 being the intent of the Legislature that the procedure set
103 forth in this article is in lieu of any other remedy, including
104 the Uniform Declaratory Judgments Act embodied in §55-
105 13-1 *et seq.* of this code, and §11-1-2a of this code.

106 (j) *Applicability of this section.* — The provisions of this
107 section apply to refunds or credits of any tax (or fee),
108 additions to tax, penalties or interest imposed by this article,
109 or any article of this chapter, or of this code, to which this
110 article is applicable.

111 (k) *Erroneous refund or credit.* — If the Tax
112 Commissioner believes that an erroneous refund has been

113 made or an erroneous credit has been established, he or she
114 may proceed to investigate and make an assessment within
115 the period prescribed in §11-10-15 of this code or institute
116 civil action to recover the amount of the refund or credit,
117 within two years from the date the erroneous refund was
118 paid or the erroneous credit was established, except that the
119 assessment may be issued or civil action brought within two
120 years from the date if it appears that any portion of the
121 refund or credit was induced by fraud or misrepresentation
122 of a material fact.

123 (1) *Limitation on claims for refund or credit.* —

124 (1) *General rule.* — Whenever a taxpayer claims to be
125 entitled to a refund or credit of any tax (or fee), additions to
126 tax, penalties or interest imposed by this article, or any
127 article of this chapter, or of this code, administered under
128 this article, paid into the treasury of this state, the taxpayer
129 shall, except as provided in subsection (d) of this section,
130 file a claim for refund, or credit, within three years after the
131 due date of the return in respect of which the tax (or fee)
132 was imposed, determined by including any authorized
133 extension of time for filing the return, or within two years
134 from the date the tax (or fee) was paid, whichever of the
135 periods expires the later, or if no return was filed by the
136 taxpayer, within two years from the time the tax (or fee) was
137 paid, and not thereafter.

138 (2) *Extensions of time for filing claim by agreement.* —
139 The Tax Commissioner and the taxpayer may enter into a
140 written agreement to extend the period within which the
141 taxpayer may file a claim for refund or credit, which period
142 shall not exceed two years. The period agreed upon may be
143 extended for additional periods not in excess of two years
144 each by subsequent agreements in writing made before
145 expiration of the period previously agreed upon.

146 (3) *Special rule where agreement to extend time for*
147 *making an assessment.* — Notwithstanding the provisions
148 of subdivisions (1) and (2) of this subsection, if an

149 agreement is made under §11-10-15 of this code extending
150 the time period in which an assessment of tax can be made,
151 then the period for filing a claim for refund or credit for
152 overpayment of the same tax made during the periods
153 subject to assessment under the extension agreement are
154 also extended for the period of the extension agreement plus
155 90 days.

156 (4) *Overpayment of federal tax.* — Notwithstanding the
157 provisions of subdivisions (1) and (2) of this subsection, in
158 the event of a final determination by the United States
159 Internal Revenue Service or other competent authority of an
160 overpayment in the taxpayer's federal income or estate tax
161 liability, the period of limitation upon claiming a refund
162 reflecting the final determination in taxes imposed by §11-
163 21-1 *et seq.*, §11-21A-1 *et seq.*, and §11-24-1 *et seq.* of this
164 code may not expire until six months after the determination
165 is made by the United States Internal Revenue Service or
166 other competent authority.

167 (5) *Tax paid to the wrong state.* — Notwithstanding the
168 provisions of subdivisions (1) and (2) of this subsection,
169 when an individual, or the fiduciary of an estate, has in good
170 faith erroneously paid personal income tax, estate tax or
171 sales tax, to this state on income or a transaction which was
172 lawfully taxable by another state and, therefore, not taxable
173 by this state, and no dispute exists as to the jurisdiction to
174 which the tax should have been paid, then the time period
175 for filing a claim for refund, or credit, for the tax
176 erroneously paid to this state does not expire until 90 days
177 after the tax is lawfully paid to the other state.

178 (6) *Exception for gasoline and special fuel excise tax,*
179 *motor fuel excise tax and motor carrier road tax.* — This
180 subsection does not apply to refunds or credits of gasoline
181 and special fuel excise tax, motor carrier road tax, or motor
182 fuel excise tax sought under §11-14-1 *et seq.*, §11-14A-1 *et*
183 *seq.*, or §11-14C-1 *et seq.* of this code.

§11-10-15. Limitations on assessment.

1 (a) *General rule.* — The amount of any tax, additions to
2 tax, penalties, and interest imposed by this article or any of
3 the other articles of this chapter to which this article is
4 applicable shall be assessed within three years after the date
5 the return was filed (whether or not such return was filed on
6 or after the date prescribed for filing): *Provided*, That in the
7 case of a false or fraudulent return filed with the intent to
8 evade tax, or in case no return was filed, the assessment may
9 be made at any time: *Provided, however*, That if a taxpayer
10 fails to disclose a listed transaction, as defined in Section
11 6707A of the Internal Revenue Code, on the taxpayer's state
12 or federal income tax return, an assessment may be made at
13 any time not later than six years after the due date of the
14 return required under §11-21-1 *et seq.*, or §11-24-1 *et seq.*,
15 or §11-21A-1 *et seq.* of this code for the same taxable year
16 or after such return was filed, or not later than three years
17 after an amended return is filed, whichever is later.

18 (b) *Time return deemed filed.* —

19 (1) *Early return.* — For purposes of this section, a return
20 filed before the last day prescribed by law, or by rules
21 promulgated by the Tax Commissioner for filing thereof,
22 shall be considered as filed on such last date;

23 (2) *Returns executed by Tax Commissioner.* — The
24 execution of a return by the Tax Commissioner pursuant to
25 the authority conferred by §11-10-5c of this code shall not
26 start the running of the period of limitations on assessment
27 and collection.

28 (c) *Exceptions.* — Notwithstanding subsection (a) of
29 this section:

30 (1) *Extension by agreement.* — The Tax Commissioner
31 and the taxpayer may enter into written agreements to
32 extend the period within which the Tax Commissioner may
33 make an assessment against the taxpayer which period shall
34 not exceed two years. The period so agreed upon may be

35 extended for additional periods not in excess of two years
36 each by subsequent agreements in writing made before the
37 expiration of the period previously agreed upon;

38 (2) *Deficiency in federal tax.* — Notwithstanding
39 subsection (a) of this section, in the event of a final
40 determination by the United States Internal Revenue
41 Service or other competent authority of a deficiency in the
42 taxpayer's federal income tax liability, the period of
43 limitation, upon assessment of a deficiency reflecting such
44 final determinations in the taxes imposed by §11-21-1 *et*
45 *seq.*, §11-21A-1 *et seq.*, and §11-24-1 *et seq.* of this code,
46 may not expire until 90 days after the Tax Commissioner is
47 advised of the determination by the taxpayer as provided in
48 §11-21-59 and §11-24-20 of this code, or until the period of
49 limitations upon assessment provided in subsection (a) of
50 this section has expired, whichever expires the later, and
51 regardless of the tax year of the deficiency;

52 (3) *Special rule for certain amended returns.* — Where,
53 within the 60-day period ending on the day on which the
54 time prescribed in this section for the assessment of any tax
55 for any taxable year would otherwise expire, the Tax
56 Commissioner receives a written document signed by the
57 taxpayer showing that the taxpayer owes an additional
58 amount of such tax for such taxable year, the period for the
59 assessment of such additional amount shall not expire
60 before the day 60 days after the day on which the Tax
61 Commissioner receives such document;

62 (4) *Net operating loss or capital loss carrybacks.* — In
63 the case of a deficiency attributable the application by the
64 taxpayer of a net operating loss carryback or a capital loss
65 carryback (including that attributable to a mathematical or
66 clerical error in application of the loss carryback) such
67 deficiency may be assessed at any time before expiration of
68 the period within which a deficiency for the taxable year of
69 the net operating loss or net capital loss which results in
70 such carryback may be assessed;

71 (5) *Certain credit carrybacks.* — In the case of a
72 deficiency attributable to the application to the taxpayer of
73 a credit carryback (including that attributable to a
74 mathematical or clerical error in application of the credit
75 carryback) such deficiency may be assessed at any time
76 before expiration of the period within which a deficiency for
77 the taxable year of the unused credit which results in such
78 carryback may be assessed, or with respect to any portion of
79 a credit carryback from a taxable year attributable to a net
80 operating loss carryback, capital loss carryback, or other
81 credit carryback from a subsequent taxable year, at any time
82 before expiration of the period within which a deficiency for
83 such subsequent taxable year may be assessed. The term
84 “credit carryback” means any carryback allowed under §5E-
85 1-8 of this code;

86 (6) *Overpayment of tax credited against payment of*
87 *another tax.* — In the event of a final determination that a
88 taxpayer owes less tax than the amount paid by the taxpayer,
89 and the amount paid was allowed as a credit against a tax
90 administered under this article, the period of limitation upon
91 assessment of a deficiency in the payment of such other tax
92 due to the overstating of the allowable credit, may not expire
93 until 90 days after the Tax Commissioner receives written
94 notice from the taxpayer advising the Tax Commissioner of
95 the final determination reducing the taxpayer’s liability for
96 a tax allowed as a credit against a tax administered under
97 this article, or until the period of limitations upon
98 assessment provided in subsection (a) of this section has
99 expired, whichever expires the later, and regardless of the
100 tax year of the deficiency.

101 (d) *Cases under bankruptcy code.* — The running of
102 limitations provided in subsection (a) of this section, on the
103 making of assessments, or provided in §11-10-16 of this
104 code, on collection, shall, in a case under Title 11 of the
105 United States Code, be suspended for the period during
106 which the Tax Commissioner is prohibited by reason of

107 such case from making the assessment or from collecting
108 the tax and:

109 (1) For assessment, 60 days thereafter; and

110 (2) For collection, six months thereafter.

§11-10-16. Limitations on collection.

1 (a) *Where assessment is issued.* — Every proceeding
2 instituted by the Tax Commissioner for the collection of the
3 amount found to be due under an assessment which has
4 become final of any tax, additions to tax, penalties or
5 interest imposed by this article or any of the other articles of
6 this chapter to which this article is applicable, irrespective
7 of whether the proceeding is instituted in a court or by
8 utilization of other methods provided by law for the
9 collection of such tax, additions to tax, penalty or interest,
10 shall be brought or commenced within 10 years after the
11 date on which such assessment has become final.

12 (b) *Where assessment is not issued.* — Every proceeding
13 instituted by the Tax Commissioner for the collection of the
14 amount determined to be due by methods provided by law
15 other than the issuance of an assessment, of any tax,
16 additions to tax, penalties, or interest imposed by this article
17 or any of the other articles of this chapter to which this
18 article is applicable, irrespective of whether the proceeding
19 is instituted in a court or by utilization of other methods
20 provided by law for the collection of such tax, additions to
21 tax, penalties or interest, shall be brought or commenced
22 within 10 years after the date on which the taxpayer filed
23 the annual return required to be filed by any of the articles
24 of this code to which §11-10-1 *et seq.* of this code is
25 applicable and, if no annual return is required, such 10-year
26 period shall begin on the day after the latest periodical return
27 required to be filed in any year is filed.

28 (c) *Extension of time for institutions of collection*
29 *proceedings by agreement.* — The Tax Commissioner and
30 the taxpayer may enter into written agreement to extend the

31 period within which the Tax Commissioner may institute
32 proceedings for the collection of the amount found to be due
33 under an assessment which has become final, or the amount
34 determined to be due by methods provided by law other than
35 the issuance of the assessment, of any tax, additions to tax,
36 penalties or interest imposed by this article or any of the
37 other articles of this code to which this article is applicable.
38 This period may not exceed two years. The period so agreed
39 upon may be extended for additional periods not in excess
40 of two years each by subsequent agreements in writing
41 made before the expiration of the period previously agreed
42 upon.

43 An extension of a tax lien, including an extension
44 agreed to in writing by the taxpayer and the Tax
45 Commissioner, beyond 10 years is not effective under the
46 provisions of this section unless the extension is docketed
47 by the Tax Commissioner in the office of the county
48 commission as is required under §38-10C-1 *et seq.* of this
49 code for docketing tax liens.

§11-10-18c. Failure to file partnership return or report.

1 (a) *General rule.* — In addition to the additions to tax
2 imposed by §11-10-18 of this code (relating to failure to file
3 return, supply information, or pay tax), if any partnership
4 required to file a return under §11-21A-3 of this code, or a
5 partnership adjustment report under §11-21A-3 of this code
6 for any taxable year:

7 (1) Fails to file such return or report at the time
8 prescribed therefor (determined with regard to any
9 extension of time for filing); or

10 (2) Files a return or report which fails to show the
11 information required under §11-21A-3 of this code, the
12 partnership shall be liable for a penalty determined under
13 §11-10-18c(b) of this code for each month (or fraction
14 thereof) during which such failure continues (but not to

15 exceed 12 months), unless it is shown that such failure is
16 due to reasonable cause.

17 (b) *Amount per month.* — For purposes of §11-10-
18 18c(a) of this code, the amount determined under §11-10-
19 18c(b) of this code for any month is the product of:

20 (1) \$195, multiplied by

21 (2) The number of persons who were partners in the
22 partnership during any part of the taxable year.

23 (c) *Assessment of penalty.* — The penalty imposed by
24 §11-10-18c(a) of this code shall be assessed against the
25 partnership.

26 (d) *Deficiency procedures not to apply.* — The
27 deficiency procedures set forth in §11-10A-1 *et seq.* of this
28 code may not apply in respect of the assessment or
29 collection of any penalty imposed by §11-10-18c(a) of this
30 code.

31 (e) *Adjustment for inflation.* —

32 (1) *In general.* — In the case of any return required to
33 be filed in a calendar year beginning after 2017, the \$195
34 amount under 11-10-18c(b)(1) of this section shall be
35 increased by such dollar amount multiplied by the cost-of-
36 living adjustment determined under IRC §1(f)(3)
37 determined by substituting “calendar year 2017” for
38 “calendar year 2016” in subparagraph (A)(ii) thereof.

39 (2) *Rounding.* — If any amount adjusted under §11-10-
40 18c(e)(1) of this code is not a multiple of \$5, such amount
41 shall be rounded to the next lowest multiple of \$5.

42 (f) *Effective date.* — This section enacted in 2019 shall
43 apply to taxable years beginning on and after January 1,
44 2018.

ARTICLE 21. PERSONAL INCOME TAX ACT.**§11-21-3. Imposition of tax; persons subject to tax.**

1 (a) *Imposition of tax.* — A tax determined in accordance
2 with the rates hereinafter set forth in this article is hereby
3 imposed for each taxable year on the West Virginia taxable
4 income of every individual, estate, and trust.

5 (b) *Partners and partnerships.* — A partnership as such
6 shall not be subject to tax under this article. Persons carrying
7 on business as partners shall be liable for tax under this
8 article only in their separate or individual capacities.
9 However, partnerships and other pass-through entities are
10 subject to the tax imposed by this article to the extent they
11 elect to pay additional West Virginia income taxes owed
12 that are attributable to final federal partnership audit
13 adjustments under §11-21A-3 of this code.

14 (c) *Associations taxable as corporations.* — An
15 association, trust or other unincorporated organization
16 which is taxable as a corporation for federal income tax
17 purposes, shall not be subject to tax under this article.

18 (d) *Exempt trusts and organizations.* — A trust or other
19 unincorporated organization which by reason of its purposes
20 or activities is exempt from federal income tax shall be
21 exempt from tax under this article (regardless of whether
22 subject to federal income tax on unrelated business taxable
23 income).

24 (e) *Cross references.* — For definitions of West Virginia
25 taxable income of:

26 (1) Resident individual, see §11-21-11 of this code.

27 (2) Resident estate or trust, see §11-21-18 of this code.

28 (3) Nonresident individual, see §11-21-30 of this code.

29 (4) Nonresident estate or trust, see §11-21-38 of this
30 code.

31 (f) *Effective date.* — This section as amended in 2019
32 shall apply to taxable years beginning on and after January
33 1, 2018.

§11-21-37a. Allocation and apportionment of income of nonresidents from multistate business activity.

1 (a) Notwithstanding any provision of §11-21-37 of this
2 code to the contrary, a business doing business in West
3 Virginia and in one or more other states shall allocate its
4 nonbusiness income as provided in §11-21-37a(c) of this
5 code and shall apportion its business income as provided in
6 §11-21-37a(f) of this code to determine the West Virginia
7 source income of its nonresident partners and nonresident S
8 corporation shareholders for purposes of this article. For
9 purposes of this section:

10 (1) The term “business entity” includes a partnership,
11 limited partnership, joint venture, corporation, S
12 corporation, and any other group or combination acting as a
13 unit, but does not include a sole proprietorship; and

14 (2) The term “engaging in business” or “doing business”
15 means any activity of a business entity which enjoys the
16 benefits and protection of government and laws in this state.

17 (b) Business activities entirely within West Virginia. —
18 If the business activities of a taxpayer take place entirely
19 within this state, the entire net income of the taxpayer is
20 subject to the tax imposed by this article. The business
21 activities of a taxpayer are considered to have taken place in
22 their entirety within this state if the taxpayer is not “taxable
23 in another state”. For purposes of allocation and
24 apportionment of net income under this section, a taxpayer
25 is taxable in another state if:

26 (1) In that state the taxpayer is subject to a net income
27 tax, a franchise tax measured by net income, a franchise tax
28 for the privilege of doing business, or a corporation stock
29 tax; or

30 (2) That state has jurisdiction to subject the taxpayer to
31 a net income tax, regardless of whether, in fact, that state
32 does or does not subject the taxpayer to the tax.

33 (c) *Nonbusiness income is allocated.* —

34 *Nonbusiness income.* — The term “nonbusiness
35 income” means all income other than business income.

36 (d) *Business activities partially within and partially*
37 *without West Virginia; allocation of nonbusiness income.* —
38 If the business activities of a taxpayer take place partially
39 within and partially without this state and the taxpayer is
40 also taxable in another state, rents and royalties from real or
41 tangible personal property, capital gains, interest, dividends
42 or patent or copyright royalties, to the extent that they
43 constitute nonbusiness income of the taxpayer, shall be
44 allocated as provided in §11-21-37a(d)(1) through (4) of
45 this code: *Provided*, That to the extent the items constitute
46 business income of the taxpayer, they may not be so
47 allocated but shall be apportioned to this state according to
48 the provisions of §11-21-37a(e) of this code.

49 (1) *Net rents and royalties.* —

50 (A) Net rents and royalties from real property located in
51 this state are allocable to this state.

52 (B) Net rents and royalties from tangible personal
53 property are allocable to this state:

54 (i) If and to the extent that the property is utilized in this
55 state; or

56 (ii) In their entirety if the taxpayer’s commercial
57 domicile is in this state and the taxpayer is not organized
58 under the laws of or taxable in the state in which the
59 property is utilized.

60 (C) The extent of utilization of tangible personal
61 property in a state is determined by multiplying the rents

62 and royalties by a fraction, the numerator of which is the
63 number of days of physical location of the property in the
64 state during the rental or royalty period in the taxable year
65 and the denominator of which is the number of days of
66 physical location of the property everywhere during all
67 rental or royalty periods in the taxable year. If the physical
68 location of the property during the rental or royalty period
69 is unknown or unascertainable by the taxpayer, tangible
70 personal property is utilized in the state in which the
71 property was located at the time the rental or royalty payer
72 obtained possession.

73 (2) *Capital gains.* —

74 (A) Capital gains and losses from sales of real property
75 located in this state are allocable to this state.

76 (B) Capital gains and losses from sales of tangible
77 personal property are allocable to this state if:

78 (i) The property had a situs in this state at the time of the
79 sale; or

80 (ii) The taxpayer's commercial domicile is in this state
81 and the taxpayer is not taxable in the state in which the
82 property had a situs.

83 (C) Capital gains and losses from sales of intangible
84 personal property are allocable to this state if the taxpayer's
85 commercial domicile is in this state.

86 (3) Interest and dividends are allocable to this state if the
87 taxpayer's commercial domicile is in this state.

88 (4) *Patent and copyright royalties.* —

89 (A) Patent and copyright royalties are allocable to this
90 state:

91 (i) If and to the extent that the patent or copyright is
92 utilized by the payer in this state; or

93 (ii) If and to the extent that the patent or copyright is
94 utilized by the payer in a state in which the taxpayer is not
95 taxable and the taxpayer's commercial domicile is in this
96 state.

97 (B) A patent is utilized in a state to the extent that it is
98 employed in production, fabrication, manufacturing, or
99 other processing in the state or to the extent that a patented
100 product is produced in the state. If the basis of receipts from
101 patent royalties does not permit allocation to states or if the
102 accounting procedures do not reflect states of utilization, the
103 patent is utilized in the state in which the taxpayer's
104 commercial domicile is located.

105 (C) A copyright is utilized in a state to the extent that
106 printing or other publication originates in the state. If the
107 basis of receipts from copyright royalties does not permit
108 allocation to states or if the accounting procedures do not
109 reflect states of utilization, the copyright is utilized in the
110 state in which the taxpayer's commercial domicile is
111 located.

112 (e) *Business income defined.* — The term “business
113 income” means income arising from transactions and
114 activity in the regular course of the taxpayer's trade or
115 business and includes income from tangible and intangible
116 property if the acquisition, management, and disposition of
117 the property or the rendering of services in connection
118 therewith constitute integral parts of the taxpayer's regular
119 trade or business operations and includes all income which
120 is apportionable under the Constitution of the United States.

121 (f) *Business activities partially within and partially*
122 *without this state; apportionment of business income.* — All
123 net income, after deducting those items specifically
124 allocated under §11-21-37a(d) of this code, shall be
125 apportioned to this state by multiplying the net income by a
126 fraction, the numerator of which is the property factor plus
127 the payroll factor plus two times the sales factor and the

128 denominator of which is four, reduced by the number of
129 factors, if any, having no denominator.

130 (1) *Property factor*. — The property factor is a fraction,
131 the numerator of which is the average value of the
132 taxpayer's real and tangible personal property owned or
133 rented and used by it in this state during the taxable year and
134 the denominator of which is the average value of all the
135 taxpayer's real and tangible personal property owned or
136 rented and used by the taxpayer during the taxable year,
137 which is reported on Schedule L Federal Form 1065, plus
138 the average value of all real and tangible personal property
139 leased and used by the taxpayer during the taxable year.

140 (2) *Value of property*. — Property owned by the
141 taxpayer shall be valued at its original cost, adjusted by
142 subsequent capital additions or improvements thereto and
143 partial disposition thereof, by reason of sale, exchange,
144 abandonment, etc.: *Provided*, That where records of original
145 cost are unavailable or cannot be obtained without
146 unreasonable expense, property shall be valued at original
147 cost as determined under rules of the Tax Commissioner.
148 Property rented by the taxpayer from others shall be valued
149 at eight times the annual rental rate. The term "net annual
150 rental rate" is the annual rental paid, directly or indirectly,
151 by the taxpayer, or for its benefit, in money or other
152 consideration for the use of property and includes:

153 (A) Any amount payable for the use of real or tangible
154 personal property, or any part of the property, whether
155 designated as a fixed sum of money or as a percentage of
156 sales, profits, or otherwise.

157 (B) Any amount payable as additional rent or in lieu of
158 rents, such as interest, taxes, insurance, repairs, or any other
159 items which are required to be paid by the terms of the lease
160 or other arrangement, not including amounts paid as service
161 charges, such as utilities, janitor services, etc. If a payment
162 includes rent and other charges unsegregated, the amount of

163 rent shall be determined by consideration of the relative
164 values of the rent and the other items.

165 (3) *Movable property.* — The value of movable tangible
166 personal property used both within and without this state
167 shall be included in the numerator to the extent of its
168 utilization in this state. The extent of the utilization shall be
169 determined by multiplying the original cost of the property
170 by a fraction, the numerator of which is the number of days
171 of physical location of the property in this state during the
172 taxable period and the denominator of which is the number
173 of days of physical location of the property everywhere
174 during the taxable year. The number of days of physical
175 location of the property may be determined on a statistical
176 basis or by other reasonable method acceptable to the Tax
177 Commissioner.

178 (4) *Leasehold improvements.* — Leasehold improvements
179 shall, for purposes of the property factor, be treated as property
180 owned by the taxpayer regardless of whether the taxpayer is
181 entitled to remove the improvement, or the improvements
182 revert to the lessor upon expiration of the lease. Leasehold
183 improvements shall be included in the property factor at their
184 original cost.

185 (5) *Average value of property.* — The average value of
186 property shall be determined by averaging the values at the
187 beginning and ending of the taxable year: *Provided*, That
188 the Tax Commissioner may require the averaging of
189 monthly values during the taxable year if substantial
190 fluctuations in the values of the property exist during the
191 taxable year, or where property is acquired after the
192 beginning of the taxable year, or is disposed of, or whose
193 rental contract ceases, before the end of the taxable year.

194 (6) *Payroll factor.* — The payroll factor is a fraction, the
195 numerator of which is the total compensation paid in this
196 state during the taxable year by the taxpayer for
197 compensation and the denominator of which is the total
198 compensation paid by the taxpayer during the taxable year,

199 as shown on the taxpayer's federal income tax return as filed
200 with the Internal Revenue Service, as reflected in the
201 schedule of wages and salaries and that portion of cost of
202 goods sold which reflects compensation or as shown on a
203 pro forma return.

204 (7) *Compensation*. — The term “compensation” means
205 wages, salaries, commissions, and any other form of
206 remuneration paid to employees for personal services.
207 Payments made to an independent contractor or to any other
208 person not properly classifiable as an employee shall be
209 excluded. Only amounts paid directly to employees are
210 included in the payroll factor. Amounts considered as paid
211 directly to employees include the value of board, rent,
212 housing, lodging and other benefits or services furnished to
213 employees by the taxpayer in return for personal services,
214 provided the amounts constitute income to the recipient for
215 federal income tax purposes.

216 (8) *Employee*. — The term “employee” means:

217 (A) Any officer of a business entity; or

218 (B) Any individual who, under the usual common-law
219 rule applicable in determining the employer-employee
220 relationship, has the status of an employee.

221 (9) *Compensation*. — Compensation is paid or accrued
222 in this state if:

223 (A) The employee's service is performed entirely within
224 this state; or

225 (B) The employee's service is performed both within
226 and without this state, but the service performed without the
227 state is incidental to the individual's service within this
228 state. The word “incidental” means any service which is
229 temporary or transitory in nature or which is rendered in
230 connection with an isolated transaction; or

231 (C) Some of the service is performed in this state and:

232 (i) The employee's base of operations or, if there is no
233 base of operations, the place from which the service is
234 directed or controlled is in the state; or

235 (ii) The base of operations or the place from which the
236 service is directed or controlled is not in any state in which
237 some part of the service is performed, but the employee's
238 residence is in this state.

239 The term "base of operations" is the place of a more or
240 less permanent nature from which the employee starts his or
241 her work and to which he or she customarily returns in order
242 to receive instructions from the taxpayer or communications
243 from his or her customers, or other persons, or to replenish
244 stock or other materials, repair equipment, or perform any
245 other functions necessary to the exercise of his or her trade
246 or profession at some other point or points. The term "place
247 from which the service is directed or controlled" refers to
248 the place from which the power to direct or control is
249 exercised by the employer.

250 (10) *Sales factor*. — The sales factor is a fraction, the
251 numerator of which is the gross receipts of the taxpayer
252 derived from transactions and activity in the regular course
253 of its trade or business in this state during the taxable year
254 (business income), less returns and allowances. The
255 denominator of the fraction is the total gross receipts
256 derived by the taxpayer from transactions and activity in the
257 regular course of its trade or business during the taxable year
258 (business income) and reflected in its gross income reported
259 and as appearing on the taxpayer's Federal Form 1065 or
260 1120, as appropriate, or any successor form, and consisting
261 of those certain pertinent portions of the (gross income)
262 elements set forth: *Provided*, That if either the numerator or
263 the denominator includes interest or dividends from
264 obligations of the United States government which are
265 exempt from taxation by this state, the amount of such
266 interest and dividends, if any, shall be subtracted from the
267 numerator or denominator in which it is included.

268 (11) *Allocation of sales of tangible personal property.* —

269 (A) Sales of tangible personal property are in this state
270 if:

271 (i) The property is received in this state by the
272 purchaser, other than the United States government,
273 regardless of the free on board point or other conditions of
274 the sale. In the case of delivery by common carrier or other
275 means of transportation, the place at which the property is
276 ultimately received after all transportation has been
277 completed is the place at which the property is received by
278 the purchaser. Direct delivery in this state, other than for
279 purposes of transportation, to a person or firm designated by
280 the purchaser, is delivery to the purchaser in this state and
281 direct delivery outside this state to a person or firm
282 designated by the purchaser is not delivery to the purchaser
283 in this state, regardless of where title passes or other
284 conditions of sale; or

285 (ii) The property is shipped from an office, store,
286 warehouse, factory or other place of storage in this state and
287 the purchaser is the United States government.

288 (B) All other sales of tangible personal property
289 delivered or shipped to a purchaser within a state in which
290 the taxpayer is not taxed, as defined in subsection (b) of this
291 section, shall be excluded from the denominator of the sales
292 factor.

293 (12) *Allocation of other sales.* — Sales, other than sales
294 of tangible personal property, are in this state if:

295 (A) The income-producing activity is performed in this
296 state; or

297 (B) The income-producing activity is performed both in
298 and outside this state and a greater proportion of the income-
299 producing activity is performed in this state than in any
300 other state, based on costs of performance; or

301 (C) The sale constitutes business income to the
302 taxpayer, or the taxpayer is a financial organization not
303 having its commercial domicile in this state, and in either
304 case the sale is a receipt described as attributable to this state
305 in §11-21-7b(b) of this code.

306 (f) *Income-producing activity.* — The term “income-
307 producing activity” applies to each separate item of income
308 and means the transactions and activity directly engaged in
309 by the taxpayer in the regular course of its trade or business
310 for the ultimate purpose of obtaining gain or profit. The
311 activity does not include transactions and activities
312 performed on behalf of the taxpayer, such as those
313 conducted on its behalf by an independent contractor.
314 “Income-producing activity” includes, but is not limited to,
315 the following:

316 (1) The rendering of personal services by employees
317 with utilization of tangible and intangible property by the
318 taxpayer in performing a service;

319 (2) The sale, rental, leasing, licensing, or other use of
320 real property;

321 (3) The sale, rental, leasing, licensing, or other use of
322 tangible personal property; or

323 (4) *The sale, licensing or other use of intangible*
324 *personal property.* — The mere holding of intangible
325 personal property is not, in itself, an income-producing
326 activity: *Provided,* That the conduct of the business of a
327 financial organization is an income-producing activity.

328 (g) *Cost of performance.* — The term “cost of
329 performance” means direct costs determined in a manner
330 consistent with generally accepted accounting principles
331 and in accordance with accepted conditions or practices in
332 the trade or business of the taxpayer.

333 (h) *Other methods of allocation and apportionment.* —

334 (1) *General.* — If the allocation and apportionment
335 provisions of §11-21-37a(d) and §11-21-37a(f) of this code
336 do not fairly represent the extent of the taxpayer's business
337 activities in this state, the taxpayer may petition for, or the
338 Tax Commissioner may require, in respect to all or any part
339 of the taxpayer's business activities, if reasonable:

340 (A) Separate accounting;

341 (B) The exclusion of one or more of the factors;

342 (C) The inclusion of one or more additional factors
343 which will fairly represent the taxpayer's business activity
344 in this state; or

345 (D) The employment of any other method to effectuate
346 an equitable allocation or apportionment of the taxpayer's
347 income. The petition shall be filed no later than the due date
348 of the annual return for the taxable year for which the
349 alternative method is requested, determined without regard
350 to any extension of time for filing the return and the petition
351 shall include a statement of the petitioner's objections and
352 of the alternative method of allocation or apportionment as
353 it believes to be proper under the circumstances with detail
354 and proof as the Tax Commissioner requires.

355 (2) *Burden of proof.* — In any proceeding before the
356 Office of Tax Appeals established in §11-10A-1 *et seq.* of
357 this code, or in any court in which employment of one of the
358 methods of allocation or apportionment provided in
359 subdivision (1) or (2) of this subsection is sought, on the
360 grounds that the allocation and apportionment provisions of
361 §11-21-37a(d) and §11-21-37a(f) of this code do not fairly
362 represent the extent of the taxpayer's business activities in
363 this state, the burden of proof is on:

364 (A) The Tax Commissioner, if the commissioner seeks
365 employment of one of the methods; or

366 (B) The taxpayer, if the taxpayer seeks employment of
367 one of the other methods.

368 (i) *Effective date.* — This section added in 2019 shall
369 apply to taxable years beginning on and after January 1,
370 2018.

§11-21-37b. Special apportionment rules.

1 (a) *General.* — The Legislature hereby finds that the
2 general formula set forth in §11-21-37a of this code for
3 apportioning the business income of individuals,
4 partnerships, other pass-through entities, and small business
5 corporations taxable in this as well as in another state is
6 inappropriate for use by certain businesses due to the
7 particular characteristics of those businesses or the manner
8 in which such businesses are conducted. Accordingly, the
9 general formula set forth in §11-21-37a of this code may not
10 be used to apportion business income when a specific
11 formula established under this section applies to the
12 business of the taxpayer. The Legislature further finds that
13 the Tax Commissioner has the authority under §11-1-1 *et*
14 *seq.* of this code to promulgate by legislative rules special
15 formula or formulae by which a specified classification of
16 taxpayers is required to apportion its business income.
17 Accordingly, this section may not be construed as
18 prohibiting the Tax Commissioner from exercising his
19 authority to promulgate legislative rules which set forth
20 such other special formula or formulae and in that regulation
21 requiring a specified classification of taxpayers to apportion
22 their business income as provided in that special formula,
23 instead of apportioning their business income employing the
24 general formula set forth in §11-21-37a of this code, when
25 the commissioner believes that the formula or formulae will
26 more fairly and more reasonably allocate and apportion to
27 this state the adjusted federal taxable income of the
28 taxpayer. Additionally, nothing in this section may prevent
29 the Tax Commissioner from requiring the use, or the
30 taxpayer from petitioning to use, as the case may be, some
31 other method of allocation or apportionment as provided in
32 §11-21-37a(h) of this code. Permission granted to a
33 taxpayer under §11-21-37a(h) of this code to use another
34 method of allocation or apportionment shall be valid for a

35 period of five consecutive taxable years, beginning with the
36 taxable year for which such authorization is granted,
37 provided there is no material change of fact or law which
38 materially affects the fairness and reasonableness of the
39 result reached under such other method of allocation or
40 apportionment. Upon expiration of any such authorization
41 the taxpayer may again petition under §11-21-37a of this
42 code to use another method of apportionment. A material
43 change of fact or law which materially affects the fairness
44 and reasonableness of the result reached under such other
45 method of allocation or apportionment automatically
46 revokes authorization to use that other method beginning
47 with the taxable year in which the material change of fact
48 occurred or the taxable year for which a material change in
49 law first takes effect, whichever occurs first.

50 (b) *Motor carriers.* — Motor carriers of property or
51 passengers shall apportion the business income component
52 of their adjusted federal taxable income to this state by the
53 use of the ratio which their total vehicle miles in this state
54 during the taxable year bears to total vehicle miles of the
55 corporation everywhere during the taxable year, except as
56 otherwise provided in this subsection.

57 (1) *Definitions.* — For purposes of this subsection:

58 (A) “Motor carrier” means any person engaging in the
59 transportation of passengers or property or both, for
60 compensation by motor propelled vehicle over roads in this
61 state, whether traveling on a scheduled route or otherwise.

62 (B) “Vehicle mile” means the operation of a motor
63 carrier over a distance of one mile, whether owned or
64 operated by a corporation.

65 (2) The provisions of this subsection may not apply to a
66 motor carrier:

67 (A) Which neither owns nor rents real or tangible
68 personal property located in this state, which has made no
69 pick-ups or deliveries within this state, and which has

70 traveled less than 50,000 vehicle miles in this state during
71 the taxable year; or

72 (B) Which neither owns nor rents any real or tangible
73 personal property located in this state, except vehicles, and
74 which makes no more than 12 trips into or through this state
75 during a taxable year.

76 (3) The mileage traveled under 50,000 miles or the
77 mileage traveled in this state during the 12 trips into or
78 through this state may not represent more than five percent
79 of the total motor vehicle miles traveled in all states during
80 the taxable year.

81 (c) *Effective date.* — The provisions of this section
82 enacted in 2019 shall apply to all taxable years beginning
83 on or after January 1, 2018.

§11-21-37c. Special apportionment rules - financial organizations.

1 (a) *General.* — The Legislature hereby finds that the
2 general formula set forth in §11-21-37a of this code for
3 apportioning the business income of persons taxable in this
4 state as well as in another state is inappropriate for use by
5 financial organizations due to the particular characteristics
6 of those organizations and the manner in which their
7 business is conducted. Accordingly, the general formula set
8 forth in §11-21-37a of this code may not be used to
9 apportion the business income of financial organizations,
10 which shall use only the apportionment formula and
11 methods set forth in this section.

12 (b) *West Virginia financial organizations taxable in*
13 *another state.* — The West Virginia taxable income of a
14 financial organization that has its commercial domicile in
15 this state and which is taxable in another state shall be the
16 sum of: (1) The nonbusiness income component of its
17 adjusted federal taxable income for the taxable year which
18 is allocated to this state as provided §11-21-37a(d) of this
19 code; plus (2) the business income component of its

20 adjusted federal taxable income for the taxable year which
21 is apportioned to this state as provided in this section.

22 (c) *Out-of-state financial organizations with business*
23 *activities in this state.* — The West Virginia taxable income
24 of a financial organization that does not have its commercial
25 domicile in this state but which regularly engages in
26 business in this state shall be the sum of: (1) The
27 nonbusiness income component of its adjusted federal
28 taxable income for the taxable year which is allocated to this
29 state as provided in §11-21-37a(d) of this code; plus (2) the
30 business income component of its adjusted federal taxable
31 income for the taxable year which is apportioned to this state
32 as provided in this section.

33 (d) *Engaging in business - nexus presumptions and*
34 *exclusions.* — A financial organization that has its
35 commercial domicile in another state is presumed to be
36 regularly engaging in business in this state if during any year
37 it obtains or solicits business with 20 or more persons within
38 this state, or if the sum of the value of its gross receipts
39 attributable to sources in this state equals or exceeds
40 \$100,000. However, gross receipts from the following types
41 of property, as well as those contacts with this state
42 reasonably and exclusively required to evaluate and
43 complete the acquisition or disposition of the property, the
44 servicing of the property or the income from it, the
45 collection of income from the property or the acquisition or
46 liquidation of collateral relating to the property shall not be
47 a factor in determining whether the owner is engaging in
48 business in this state:

49 (1) An interest in a real estate mortgage investment
50 conduit, a real estate investment trust, or a regulated
51 investment company;

52 (2) An interest in a loan backed security representing
53 ownership or participation in a pool of promissory notes or
54 certificates of interest that provide for payments in relation

55 to payments or reasonable projections of payments on the
56 notes or certificates;

57 (3) An interest in a loan or other asset from which the
58 interest is attributed to a consumer loan, a commercial loan,
59 or a secured commercial loan and in which the payment
60 obligations were solicited and entered into by a person that
61 is independent, and not acting on behalf, of the owner;

62 (4) An interest in the right to service or collect income
63 from a loan or other asset from which interest on the loan is
64 attributed as a loan described in the previous paragraph and
65 in which the payment obligations were solicited and entered
66 into by a person that is independent, and not acting on
67 behalf, of the owner; or

68 (5) Any amounts held in an escrow or trust account with
69 respect to property described above.

70 (e) *Definitions.* — For purposes of this section:

71 (1) “Commercial domicile” has same meaning as that
72 term is defined in §11-24-3a of this code.

73 (2) “Deposit” means:

74 (A) The unpaid balance of money or its equivalent
75 received or held by a financial organization in the usual
76 course of business and for which it has given or it is
77 obligated to give credit, either conditionally or
78 unconditionally, to a commercial, checking, savings, time,
79 or thrift account whether or not advance notice is required
80 to withdraw the credit funds, or which is evidenced by a
81 certificate of deposit, thrift certificate, investment
82 certificate, or certificate of indebtedness, or other similar
83 name, or a check or draft drawn against a deposit account
84 and certified by the financial organization, or a letter of
85 credit or a traveler’s check on which the financial
86 organization is primarily liable: *Provided*, That without
87 limiting the generality of the term “money or its
88 equivalent”, any account or instrument must be regarded as

89 evidencing the receipt of the equivalent of money when
90 credited or issued in exchange for checks or drafts or for a
91 promissory note upon which the person obtaining any credit
92 or instrument is primarily or secondarily liable or for a
93 charge against a deposit account or in settlement of checks,
94 drafts or other instruments forwarded to the bank for
95 collection;

96 (B) Trust funds received or held by the financial
97 organization, whether held in the trust department or held or
98 deposited in any other department of the financial
99 organization;

100 (C) Money received or held by a financial organization
101 or the credit given for money or its equivalent received or
102 held by a financial organization in the usual course of
103 business for a special or specific purpose, regardless of the
104 legal relationship thereby established, including, without
105 being limited to, escrow funds, funds held as security for an
106 obligation due the financial organization or other, including
107 funds held as dealers' reserves or for securities loaned by
108 the financial organization, funds deposited by a debtor to
109 meet maturing obligations, funds deposited as advance
110 payment on subscriptions to United States government
111 securities, funds held for distribution or purchase of
112 securities, funds held to meet its acceptances or letters of
113 credit, and withheld taxes: *Provided*, That there may not be
114 included funds which are received by the financial
115 organization for immediate application to the reduction of
116 an indebtedness to the receiving financial organization, or
117 under condition that the receipt thereof immediately reduces
118 or extinguishes an indebtedness;

119 (D) Outstanding drafts, including advice or
120 authorization to charge a financial organization's balance in
121 another organization, cashier's checks, money orders or
122 other officer's checks issued in the usual course of business
123 for any purpose, but not including those issued in payment
124 for services, dividends, or purchases or other costs or
125 expenses of the financial organization itself; and

126 (E) Money or its equivalent held as a credit balance by
127 a financial organization on behalf of its customer if the
128 entity is engaged in soliciting and holding balances in the
129 regular course of its business.

130 (3) “Financial organization” has the same meaning as
131 that term is defined in §11-21-3a of this code.

132 (4) “Sales” means, for purposes of apportionment under
133 this section, the gross receipts of a financial organization
134 included in the gross receipts factor described in subsection
135 (g) of this section, regardless of their source.

136 (f) Apportionment rules. — A financial organization
137 which regularly engages in business both within and
138 without this state shall apportion the business income
139 component of its federal taxable income, after adjustment as
140 provided in §11-24-6 of this code, by multiplying the
141 amount thereof by the special gross receipts factor
142 determined as provided in subsection (g) of this section.

143 (g) *Special gross receipts factor.* — The gross receipts
144 factor is a fraction, the numerator of which is the total gross
145 receipts of the taxpayer from sources within this state during
146 the taxable year and the denominator of which is the total
147 gross receipts of the taxpayer wherever earned during the
148 taxable year: *Provided*, That neither the numerator nor the
149 denominator of the gross receipts factor shall include
150 receipts from obligations described in §11-24-6(f)(1)(A),
151 (B), (C), and (D) of this code.

152 (1) *Numerator.* — The numerator of the gross receipts
153 factor shall include, in addition to items otherwise
154 includable in the sales factor under §11-21-37a of this code,
155 the following:

156 (A) Receipts from the lease or rental of real or tangible
157 personal property whether as the economic equivalent of an
158 extension of credit or otherwise if the property is located in
159 this state;

160 (B) Interest income and other receipts from assets in the
161 nature of loans which are secured primarily by real estate or
162 tangible personal property if the security property is located
163 in the state. If the security property is also located in one or
164 more other states, receipts are presumed to be from sources
165 within this state, subject to rebuttal based upon factors
166 described in rules to be proposed by the Tax Commissioner,
167 including the factor that the proceeds of any loans were
168 applied and used by the borrower entirely outside of this
169 state;

170 (C) Interest income and other receipts from consumer
171 loans which are unsecured or are secured by intangible
172 property that are made to residents of this state, whether at
173 a place of business, by traveling loan officer, by mail, by
174 telephone or other electronic means or otherwise;

175 (D) Interest income and other receipts from commercial
176 loans and installment obligations which are unsecured or are
177 secured by intangible property if and to the extent that the
178 borrower or debtor is a resident of or is domiciled in this
179 state: *Provided*, That receipts are presumed to be from
180 sources in this state and the presumption may be overcome
181 by reference to factors described in rules to be proposed by
182 the Tax Commissioner, including the factor that the
183 proceeds of any loans were applied and used by the
184 borrower entirely outside of this state;

185 (E) Interest income and other receipts from a financial
186 organization's syndication and participation in loans, under
187 the rules set forth in paragraphs (A) through (D), inclusive,
188 of this subdivision;

189 (F) Interest income and other receipts, including service
190 charges, from financial institution credit card and travel and
191 entertainment credit card receivables and credit card
192 holders' fees if the borrower or debtor is a resident of this
193 state or if the billings for any receipts are regularly sent to
194 an address in this state;

195 (G) Merchant discount income derived from financial
196 institution credit card holder transactions with a merchant
197 located in this state. When merchants are located within and
198 without this state, only receipts from merchant discounts
199 attributable to sales made from locations within this state
200 shall be attributed to this state. It shall be presumed, subject
201 to rebuttal, that the location of a merchant is the address
202 shown on the invoice submitted by the merchant to the
203 taxpayer;

204 (H) Gross receipts from the performance of services are
205 attributed to this state if:

206 (i) The service receipts are loan-related fees, including
207 loan servicing fees, and the borrower resides in this state,
208 except that, at the taxpayer's election, receipts from loan-
209 related fees which are either: (I) "Pooled" or aggregated for
210 collective financial accounting treatment; or (II) manually
211 written as nonrecurring extraordinary charges to be
212 processed directly to the general ledger may either be
213 attributed to a state based upon the borrowers' residences or
214 upon the ratio that total interest sourced to that state bears
215 to total interest from all sources;

216 (ii) The service receipts are deposit-related fees and the
217 depositor resides in this state, except that, at the taxpayer's
218 election, receipts from deposit-related fees which are either:
219 (I) "Pooled" or aggregated for collective financial
220 accounting treatment; or (II) manually written as
221 nonrecurring extraordinary charges to be processed directly
222 to the general ledger may either be attributed to a state based
223 upon the depositors' residences or upon the ratio that total
224 deposits sourced to that state bears to total deposits from all
225 sources;

226 (iii) The service receipt is a brokerage fee and the
227 account holder is a resident of this state;

228 (iv) The service receipts are fees related to estate or trust
229 services and the estate's decedent was a resident of this state

230 immediately before death or the grantor who either funded
231 or established the trust is a resident of this state; or

232 (v) The service receipt is associated with the
233 performance of any other service not identified above and
234 the service is performed for an individual resident of, or for
235 a corporation or other business domiciled in, this state and
236 the economic benefit of service is received in this state;

237 (I) Gross receipts from the issuance of travelers' checks
238 and money orders if the checks and money orders are
239 purchased in this state; and

240 (J) All other receipts not attributed by this rule to a state
241 in which the taxpayer is taxable shall be attributed pursuant
242 to the laws of the state of the taxpayer's commercial
243 domicile.

244 (2) Denominator. — The denominator of the gross
245 receipts factor shall include all of the taxpayer's gross
246 receipts from transactions of the kind included in the
247 numerator, but without regard to their source or situs.

248 (h) Effective date. — The provisions of this section
249 enacted in 2019 shall apply to all taxable years beginning
250 on or after January 1, 2018.

§11-21-51a. Composite returns.

1 (a) Nonresident individuals who are required by this
2 article to file a return and who are:

3 (1) Partners in a partnership deriving income from a
4 West Virginia source or sources; or

5 (2) Shareholders of a corporation having income from a
6 West Virginia source or sources and which made an election
7 under Section 1362(a) of the Internal Revenue Code (S
8 corporations) for the taxable year; or

9 (3) Beneficiaries who received a distribution (actual or
10 deemed) from an estate or trust having income from a West

11 Virginia source or sources may, upon payment of a
12 composite return processing fee of \$50, file a composite
13 return in accordance with the provisions of this section.

14 (b) In filing a composite return and determining the tax
15 due thereon, no personal exemptions may be utilized, and
16 the rate of tax shall be six and one-half percent. The entity
17 or entities, to which the composite return relates are
18 responsible for collection and remittance of all income tax
19 due at the time the return is filed.

20 (c) The composite return shall be filed in a manner and
21 form acceptable to and in accordance with instructions from
22 the commissioner, and need not be signed by all nonresident
23 individuals on whose behalf the return is filed: *Provided,*
24 That the return is signed by a partner, in the case of a
25 partnership, an equity owner of any other pass-through
26 entity a corporate officer, in the case of a corporation, by a
27 trustee, in the case of a trust or by an executor or
28 administrator in the case of an estate.

29 (d) For the purposes of this section, a composite return
30 means a return filed on a group basis as though there was
31 one taxpayer, and sets forth the name, address, taxpayer
32 identification number and percent ownership or interest of
33 each nonresident individual who consents to be included in
34 the composite return in addition to return information as that
35 term is defined in §11-10-5d of this code; the term includes
36 block filing: *Provided,* That nothing in this section may
37 prohibit a nonresident from also filing a separate
38 nonresident personal income tax return for the taxable year
39 and a separate return shall be filed if the nonresident has
40 income from any other West Virginia source. If a separate
41 return is also filed for the taxable year, the nonresident shall
42 be allowed credit for his or her share of the tax remitted with
43 the composite return for that taxable year.

44 (e) This section, as amended in the year 2019, shall
45 apply to composite returns filed after December 31, 2018.

§11-21-59. Report of change in federal taxable income.

1 (a) Unless the provision of §11-21A-1 *et seq.* of this
2 code apply, if the amount of a taxpayer's federal taxable
3 income reported on his or her federal income tax return for
4 any taxable year is changed or corrected by the United
5 States Internal Revenue Service or other competent
6 authority, or as the result of a renegotiation of a contract or
7 subcontract with the United States, the taxpayer shall report
8 such change or correction in federal taxable income within
9 90 days after the final determination of such change,
10 correction, or renegotiation, or as otherwise required by the
11 Tax Commissioner, and shall concede the accuracy of the
12 determination or state wherein it is erroneous. Any taxpayer
13 filing an amended federal income tax return shall also file
14 within 90 days thereafter an amended return under this
15 article, and shall give such information as the Tax
16 Commissioner may require. The Tax Commissioner may by
17 rule prescribe such exceptions to the requirements of this
18 section as he or she determines appropriate.

19 (b) (1) If a change or correction is made or allowed by
20 the Commissioner of Internal Revenue or other officer of
21 the United States, or other competent authority, a claim for
22 credit or refund resulting from the adjustment may be filed
23 by the taxpayer within two years from the date of the final
24 federal determination, or within the period provided in §11-
25 10-14 of this code, whichever period expires later.

26 (2) Within two years of the date of the final
27 determination, or within the period provided in §11-10-14
28 of this code, whichever period expires later, the Tax
29 Commissioner may allow a credit, make a refund, or mail to
30 the taxpayer a notice of proposed overpayment resulting
31 from the final federal determination.

32 (c) For the purposes of this section, assessments under a
33 partial agreement, closing agreement covering specific
34 matters, jeopardy or advance payment are considered part

35 of the final determination and must be submitted to the Tax
36 Commissioner with the final determination.

37 (d) If a partial agreement, a closing agreement covering
38 specific matters or any other agreement with the United
39 States Treasury Department would be final except for a
40 federal extension still open for flow-through adjustments
41 from other entities or other jurisdictions, the final
42 determination is the date the taxpayer signs the agreement.
43 Flow-through adjustments include, but are not limited to,
44 items of income gain, loss and deduction that flow through
45 to equity owners, of a partnership, or other pass-through
46 entity. Flow-through adjustments are finally determined
47 based on criteria specified in §11-21-59(g) of this code.

48 (e) The Tax Commissioner is not required to issue
49 refunds based on any agreement other than a final
50 determination.

51 (f) If a taxpayer has filed an amended federal return, and
52 no corresponding West Virginia amended return has been
53 filed with the Tax Commissioner, then the period of
54 limitations for issuing a notice of assessment shall be
55 reopened and shall not expire until three years from the date
56 of delivery to the Tax Commissioner by the taxpayer of the
57 amended federal return. However, upon the expiration of
58 the period of limitations as provided in §11-10-15 of this
59 code, then only those specific items of income, deductions,
60 gains, losses, or credits, which were adjusted in the
61 amended federal return shall be subject to adjustment for
62 purposes of recomputing West Virginia income, deductions,
63 gains, losses, credits, and the effect of such adjustments on
64 West Virginia allocations and apportionments.

65 (g) For the purposes of this section, “final
66 determination” means the appeal rights of both parties have
67 expired or have been exhausted relative to the tax year for
68 federal income tax purposes.

69 (h) The amendments made to this section in the year
70 2019 shall apply, without regard to taxable year, to federal
71 determinations that become final on or after the effective
72 date of the amendments to this section in the year 2019.

§11-21-59a. Report of change in taxes paid to other states.

1 (a) If the amount of any individual taxpayer's income
2 tax reported on a return filed with any other state for any
3 taxable year is changed or corrected by such state as a result
4 of an examination conducted by a competent authority of
5 the state, and the taxpayer previously claimed a credit for
6 such tax pursuant to §11-21-20 of this code, the taxpayer
7 shall file an amended return, or such other form as the Tax
8 Commissioner may prescribe, reporting the effects of the
9 change or correction on the taxpayer's West Virginia
10 personal income tax within one year after the final
11 determination of the change or correction, or as otherwise
12 required by the Tax Commissioner, and shall concede the
13 accuracy of such determination, or declare wherein it is
14 erroneous. However, if the Tax Commissioner has sufficient
15 information from which to compute the proper additional
16 tax and the taxpayer has paid the tax, then the taxpayer is
17 not required to file an amended West Virginia personal
18 income tax return. Any taxpayer filing an amended income
19 tax return with any other state that results in a change to the
20 taxpayer's West Virginia personal income tax shall also file
21 an amended return within one year thereafter under this
22 article and shall provide such information as the Tax
23 Commissioner may require. The Tax Commissioner may by
24 rule prescribe such exceptions to the requirements of this
25 section as the commissioner considers appropriate.

26 (b) For the purposes of this section, "final
27 determination" means the appeal rights of both parties have
28 expired or have been exhausted relative to the tax year.

29 (c) This section amended in the year 2019 shall apply,
30 without regard to the taxable year, to federal determinations

31 that become final on or after the effective date of this section
32 enacted in the year 2019.

§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.

1 (a) *General rule.* — For the privilege of doing business
2 in this state or deriving rents or royalties from real or
3 tangible personal property located in this state, including,
4 but not limited to, natural resources in place and standing
5 timber, a partnership, S corporation, estate or trust, which is
6 treated as a pass-through entity for federal income tax
7 purposes and which has taxable income for the taxable year
8 derived from or connected with West Virginia sources any
9 portion of which is allocable to a nonresident partner,
10 nonresident shareholder, or nonresident beneficiary, as the
11 case may be, shall pay a withholding tax under this section,
12 except as provided in subsections (c) and (k) of this section.

13 (b) *Amount of withholding tax.* —

14 (1) *In general.* — The amount of withholding tax
15 payable by any partnership, S corporation, estate or trust,
16 under subsection (a) of this section, shall be equal to four
17 percent of the effectively connected taxable income of the
18 partnership, S corporation, estate or trust, as the case may
19 be, which may lawfully be taxed by this state and which is
20 allocable to a nonresident partner, nonresident shareholder,
21 or nonresident beneficiary of a trust or estate: *Provided,*
22 That for taxable years commencing on or after January 1,
23 2008, the amount of withholding tax payable by any
24 partnership, S corporation, estate or trust, under subsection
25 (a) of this section, shall be equal to six and one-half percent
26 of the effectively connected taxable income of the
27 partnership, S corporation, estate or trust, as the case may
28 be, which may lawfully be taxed by this state and which is
29 allocable to a nonresident partner, nonresident shareholder,
30 or nonresident beneficiary of a trust or estate.

31 (2) *Credits against tax.* — When determining the
32 amount of withholding tax due under this section, the pass-
33 through entity may apply any tax credits allowable under
34 this chapter to the pass-through entity which pass through
35 to the nonresident distributees: *Provided*, That in no event
36 may the application of any credit or credits reduce the tax
37 liability of the distributee under this article to less than zero.

38 (c) *When withholding is not required.* — Withholding
39 may not be required:

40 (1) On distribution to a person, other than a corporation,
41 who is exempt from the tax imposed by this article. For
42 purposes of this subdivision, a person is exempt from the
43 tax imposed by this article only if such person is, by reason
44 of that person's purpose or activities, exempt from paying
45 federal income taxes on such person's West Virginia source
46 income. The pass-through entity may rely on the written
47 statement of the person claiming to be exempt from the tax
48 imposed by this article provided the pass-through entity
49 discloses the name and federal taxpayer identification
50 number for all such persons in its return for the taxable year
51 filed under this article or §11-24-1 *et seq.* of this code; or

52 (2) On distributions to a corporation which is exempt
53 from the tax imposed by §11-24-1 *et seq.* of this code. For
54 purposes of this subdivision, a corporation is exempt from
55 the tax imposed by §11-24-1 *et seq.* of this code only if the
56 corporation, by reason of its purpose or activities is exempt
57 from paying federal income taxes on the corporation's West
58 Virginia source income. The pass-through entity may rely
59 on the written statement of the person claiming to be exempt
60 from the tax imposed by §11-24-1 *et seq.* of this code
61 provided the pass-through entity discloses the name and
62 federal taxpayer identification number for all such
63 corporations in its return for the taxable year filed under this
64 article or §11-24-1 *et seq.* of this code; or

65 (3) On distributions when compliance will cause undue
66 hardship on the pass-through entity: *Provided*, That no pass-

67 through entity shall be exempt under this subdivision from
68 complying with the withholding requirements of this section
69 unless the Tax Commissioner, in his or her discretion,
70 approves in writing the pass-through entity's written
71 petition for exemption from the withholding requirements
72 of this section based on undue hardship. The Tax
73 Commissioner may prescribe the form and contents of such
74 a petition and specify standards for when a pass-through
75 entity will not be required to comply with the withholding
76 requirements of this section due to undue hardship. Such
77 standards shall take into account (among other relevant
78 factors) the ability of a pass-through entity to comply at
79 reasonable cost with the withholding requirements of this
80 section and the cost to this state of collecting the tax directly
81 from a nonresident distributee who does not voluntarily file
82 a return and pay the amount of tax due under this article with
83 respect to such distributions; or

84 (4) On distributions by nonpartnership ventures. An
85 unincorporated organization that has elected, under Section
86 761 of the Internal Revenue Code, to not be treated as a
87 partnership for federal income tax is not treated as a
88 partnership under this article and is not required to withhold
89 under this section. However, such unincorporated
90 organizations shall make and file with the Tax
91 Commissioner a true and accurate return of information
92 under §11-21-58(c) of this code, under such rules and in
93 such form and manner as the Tax Commissioner may
94 prescribe, setting forth: (A) The amount of fixed or
95 determinable gains, profits, and income; and (B) the name,
96 address and taxpayer identification number of persons
97 receiving fixed or determinable gains, profits or income
98 from the nonpartnership venture.

99 (5) *Publicly traded partnerships.* — A publicly traded
100 partnership, as defined in §11-21A-1 of this code, that is
101 treated as a partnership for federal income tax purposes for
102 the taxable year, is exempt from the withholding
103 requirements of §11-21-71a of this code, if the following

104 information is provided to the Tax Commissioner: The
105 name, address, taxpayer identification number, and West
106 Virginia source income of each partner that had an interest
107 in the publicly traded partnership during the taxable year.
108 This information shall be provided in an electronic format
109 approved by the Tax Commissioner.

110 (d) *Payment of withheld tax.* —

111 (1) *General rule.* — Each partnership, S corporation,
112 estate or trust, required to withhold tax under this section,
113 shall pay the amount required to be withheld to the Tax
114 Commissioner no later than:

115 (A) *S corporations.* — The 15th day of the third month
116 following the close of the taxable year of the S corporation
117 along with the annual information return due under §11-24-
118 1 *et seq.* of this code, unless paragraph (C) of this
119 subdivision applies.

120 (B) *Partnerships, estates, and trusts.* — The 15th day of
121 the fourth month following the close of the taxable year of
122 the partnership, estate or trust, with the annual return of the
123 partnership, estate or trust due under this article, unless
124 paragraph (C) of this subdivision applies: *Provided*, That for
125 tax years beginning after December 31, 2015, partnerships
126 shall pay the amount required to be withheld to the Tax
127 Commissioner, along with the annual return of the
128 partnership due under this article, on the 15th day of the
129 third month following the close of the taxable year of the
130 partnership, unless paragraph (C) of this subdivision
131 applies.

132 (C) *Composite returns.* — The 15th day of the fourth
133 month of the taxable year with the composite return filed
134 under §11-21-51a of this code: *Provided*, That for tax years
135 beginning after December 31, 2015, partnerships or partners
136 in a partnership filing composite returns under §11-21-51a
137 of this code shall pay the amount required to be withheld to
138 the Tax Commissioner, along with the annual return due

139 under this article, on the 15th day of the third month
140 following the close of the taxable year.

141 (2) *Special rules.* —

142 (A) *Where there is extension of time to file return.* — An
143 extension of time for filing the returns referenced in
144 subdivision (1) of this subsection does not extend the time
145 for paying the amount of withholding tax due under this
146 section. In this situation, the pass-through entity shall pay,
147 by the date specified in subdivision (1) of this subsection, at
148 least 90 percent of the withholding tax due for the taxable
149 year, or 100 percent of the tax paid under this section for the
150 prior taxable year, if such taxable year was a taxable year of
151 12 months and tax was paid under this section for that
152 taxable year. The remaining portion of the tax due under this
153 section, if any, shall be paid at the time the pass-through
154 entity files the return specified in subdivision (1) of this
155 subsection. If the balance due is paid by the last day of the
156 extension period for filing the return and the amount of tax
157 due with such return is 10 percent or less of the tax due
158 under this section for the taxable year, no additions to tax
159 may be imposed under §11-10-1 *et seq.* of this code with
160 respect to balance so remitted. If the amount of withholding
161 tax due under this section for the taxable year is less than
162 the estimated withholding taxes paid for the taxable year by
163 the pass-through entity, the excess shall be refunded to the
164 pass-through entity or, at its election, established as a credit
165 against withholding tax due under this section for the then
166 current taxable year.

167 (B) *Deposit in trust for Tax Commissioner.* — The Tax
168 Commissioner may, if the commissioner believes such
169 action is necessary for the protection of trust fund moneys
170 due this state, require any pass-through entity to pay over to
171 the Tax Commissioner the tax deducted and withheld under
172 this section, at any earlier time or times.

173 (e) *Effectively connected taxable income.* — For
174 purposes of this section, the term “effectively connected

175 taxable income” means the taxable income or portion
176 thereof of a partnership, S corporation, estate or trust, as the
177 case may be, which is derived from or attributable to West
178 Virginia sources as determined under §11-21-32 of this
179 code and such rules as the Tax Commissioner may
180 prescribe, whether the amount is actually distributed or is
181 determined to have been distributed for federal income tax
182 purposes.

183 (f) *Treatment of nonresident partners, S corporation*
184 *shareholders, or beneficiaries of a trust or estate.* —

185 (1) *Allowance of credit.* — Each nonresident partner,
186 nonresident shareholder, or nonresident beneficiary shall be
187 allowed a credit for such partner’s or shareholder’s or
188 beneficiary’s share of the tax withheld by the partnership, S
189 corporation, estate or trust under this section: *Provided,*
190 That when the distribution is to a corporation taxable under
191 §11-24-1 *et seq.* of this code, the credit allowed by this
192 section shall be applied against the distributee corporation’s
193 liability for tax under §11-24-1 *et seq.* of this code.

194 (2) *Credit treated as distributed to partner,*
195 *shareholder, or beneficiary.* — Except as provided in rules,
196 a nonresident partner’s share, a nonresident shareholder’s
197 share, or a nonresident beneficiary’s share of any
198 withholding tax paid by the partnership, S corporation,
199 estate or trust under this section shall be treated as
200 distributed to the partner by the partnership, or to the
201 shareholder by the S corporation, or to the beneficiary by
202 the estate or trust on the earlier of:

203 (A) The day on which the tax was paid to the Tax
204 Commissioner by the partnership, S corporation, estate, or
205 trust; or

206 (B) The last day of the taxable year for which the tax
207 was paid by the partnership, S corporation, estate, or trust.

208 (g) *Regulations.* — The Tax Commissioner shall
209 prescribe such rules as may be necessary to carry out the
210 purposes of this section.

211 (h) *Information statement.* —

212 (1) Every person required to deduct and withhold tax
213 under this section shall furnish to each nonresident partner,
214 or nonresident shareholder, or nonresident beneficiary, as
215 the case may be, a written statement, as prescribed by the
216 Tax Commissioner, showing the amount of West Virginia
217 effectively connected taxable income, whether distributed
218 or not distributed for federal income tax purposes by such
219 partnership, S corporation, estate or trust, to the nonresident
220 partner, or nonresident shareholder, or nonresident
221 beneficiary, the amount deducted and withheld as tax under
222 this section; and such other information as the Tax
223 Commissioner may require.

224 (2) A copy of the information statements required by
225 this subsection shall be filed with the West Virginia return
226 filed under this article (or §11-24-1 *et seq.* of this code for
227 S corporations) by the pass-through entity for its taxable
228 year to which the distribution relates. This information
229 statement shall be furnished to each nonresident distributee
230 on or before the due date of the pass-through entity's return
231 under this article or §11-24-1 *et seq.* of this code for the
232 taxable year, including extensions of time for filing such
233 return, or such later date as may be allowed by the Tax
234 Commissioner.

235 (i) *Liability for withheld tax.* — Every person required
236 to deduct and withhold tax under this section is hereby made
237 liable for the payment of the tax due under this section for
238 taxable years (of such persons) beginning after December
239 31, 1991, except as otherwise provided in this section. The
240 amount of tax required to be withheld and paid over to the
241 Tax Commissioner shall be considered the tax of the
242 partnership, estate, or trust, as the case may be, for purposes
243 of §11-9-1 *et seq.* and §11-10-1 *et seq.* of this code. Any

244 amount of tax withheld under this section shall be held in
245 trust for the Tax Commissioner. No partner, S corporation
246 shareholder, or beneficiary of a trust or estate, may have a
247 right of action against the partnership, S corporation, estate,
248 or trust, in respect to any moneys withheld from the person's
249 distributive share and paid over to the Tax Commissioner in
250 compliance with or in intended compliance with this
251 section.

252 (j) *Failure to withhold.* — If any partnership, S
253 corporation, estate or trust fails to deduct and withhold tax
254 as required by this section and thereafter the tax against
255 which the tax may be credited is paid, the tax so required to
256 be deducted and withheld under this section may not be
257 collected from the partnership, S corporation, estate, or
258 trust, as the case may be, but the partnership, S corporation,
259 estate, or trust may not be relieved from liability for any
260 penalties or interest on additions to tax otherwise applicable
261 in respect of the failure to withhold.

262 (k) *Distributee agreements.* —

263 (1) The Tax Commissioner shall permit a nonresident
264 distributee to file with a pass-through entity, on a form
265 prescribed by the Tax Commissioner, the agreement of the
266 nonresident distributee: (A) To timely file returns and make
267 timely payment of all taxes imposed by this article or §11-
268 24-1 *et seq.* of this code in the case of a C corporation, on
269 the distributee with respect to the effectively connected
270 taxable income of the pass-through entity; and (B) to be
271 subject to personal jurisdiction in this state for purposes of
272 the collection of any unpaid income tax under this article (or
273 §11-24-1 *et seq.* of this code in the case of a C corporation),
274 together with related interest, penalties, additional amounts
275 and additions to tax, owed by the nonresident distributee.

276 (2) A nonresident distributee electing to execute an
277 agreement under this subsection shall file a complete and
278 properly executed agreement with each pass-through entity
279 for which this election is made, on or before the last day of

280 the first taxable year of the pass-through entity in respect of
281 which the agreement applies. The pass-through entity shall
282 file a copy of that agreement with the Tax Commissioner as
283 provided in subdivision (5) of this subsection.

284 (3) After an agreement is filed with the pass-through
285 entity, that agreement may be revoked by a distributee only
286 in accordance with rules promulgated by the Tax
287 Commissioner.

288 (4) Upon receipt of such an agreement properly
289 executed by the nonresident distributee, the pass-through
290 entity may not withhold tax under this section for the taxable
291 year of the pass-through entity in which the agreement is
292 received by the pass-through entity and for any taxable year
293 subsequent thereto until either the nonresident distributee
294 notifies the pass-through entity, in writing, to begin
295 withholding tax under this section or the Tax Commissioner
296 directs the pass-through entity, in writing, to begin
297 withholding tax under this section because of the
298 distributee's continuing failure to comply with the terms of
299 the agreement.

300 (5) The pass-through entity shall file with the Tax
301 Commissioner a copy of all distributee agreements received
302 by the pass-through entity during any taxable year with this
303 annual information return filed under this article, or §11-24-
304 1 *et seq.* of this code if S corporations. If the pass-through
305 entity fails to timely file with the Tax Commissioner a copy
306 of an agreement executed by a distributee and furnished to
307 the pass-through entity in accordance with this section, then
308 the pass-through entity shall remit to the Tax Commissioner
309 an amount equal to the amount that should have been
310 withheld under this section from the nonresident distributee.
311 The pass-through entity may recover payment made
312 pursuant to the preceding sentence from the distributee on
313 whose behalf the payment was made.

314 (1) *Definitions.* — For purposes of this section, the
315 following terms mean:

316 (1) *Corporation.* — The term “corporation” includes
317 associations, joint stock companies, and other entities which
318 are taxed as corporations for federal income tax purposes.

319 (A) *C corporation.* — The term “C corporation” means
320 a corporation which is not an S corporation for federal
321 income tax purposes.

322 (B) *S corporation.* — The term “S corporation” means a
323 corporation for which a valid election under Section 1362(a)
324 of the Internal Revenue Code is in effect for the taxable
325 period. All other corporations are C corporations.

326 (2) *Distributee.* — The term “distributee” includes any
327 partner of a partnership, any shareholder of an S corporation
328 and any beneficiary of an estate or trust that is treated as a
329 pass-through entity for federal income tax purposes for the
330 taxable year of the entity, with respect to all or a portion of
331 its income.

332 (3) *Internal Revenue Code.* — The term “Internal
333 Revenue Code” means the Internal Revenue Code of 1986,
334 as amended, through the date specified in §11-21-9 of this
335 code.

336 (4) *Nonresident distributee.* — The term “nonresident
337 distributee” includes any individual who is treated as a
338 nonresident of this state under this article; and any
339 partnership, estate, trust, or corporation whose commercial
340 domicile is located outside this state.

341 (5) *Partner.* — The term “partner” includes a member
342 of a partnership as that term is defined in this section, and
343 an equity owner of any other pass-through entity.

344 (6) *Partnership.* — The term “partnership” includes a
345 syndicate, group, pool, joint venture, or other
346 unincorporated organization through or by means of which
347 any business, financial operation, or venture is carried on
348 and which is not a trust or estate, a corporation or a sole
349 proprietorship. “Partnership” does not include an

350 unincorporated organization which, under Section 761 of
351 the Internal Revenue Code, is not treated as a partnership
352 for the taxable year for federal income tax purposes.

353 (7) “Pass-through entity” means any partnership or
354 other business entity, that is not subject to tax under §11-24-
355 1 *et seq.* of this code, imposing tax on C corporations or
356 other entities taxable as a C corporation for federal income
357 tax purposes.

358 (8) *Taxable period.* — The term “taxable period” means,
359 if an S corporation, any taxable year or portion of a taxable
360 year during which a corporation is an S corporation.

361 (9) *Taxable year of the pass-through entity.* — The term
362 “taxable year of the pass-through entity” means the taxable
363 year of the pass-through entity for federal income tax
364 purposes. If a pass-through entity does not have a taxable
365 year for federal tax purposes, its tax year for purposes of this
366 article shall be the calendar year.

367 (m) *Effective date.* — The provisions of this section
368 shall first apply to taxable years of pass-through entities
369 beginning after December 31, 1991.

370 (n) This section as amended in the year 2019 shall apply,
371 without regard to the taxable year, to taxes owed attributable
372 to federal determinations that become final on or after the
373 effective date of this section enacted in the year 2019.

ARTICLE 21A. ADDITIONAL INCOME TAXES DUE TO FEDERAL PARTNERSHIP ADJUSTMENTS.

§11-21A-1. Definitions.

1 The following definitions apply for the purposes of this
2 article:

3 (1) “Administrative adjustment request” means an
4 administrative adjustment request filed by a partnership
5 under I.R.C. § 6227.

6 (2) “Audited partnership” means a partnership subject
7 to a federal adjustment resulting from a partnership level
8 audit resulting in a federal adjustment.

9 (3) “C corporation” means any corporation that is taxed
10 separately from its owners for federal income tax purposes
11 and included a pass-through entity that elects to be treated
12 as a corporation for federal income tax purposes.

13 (4) “Composite return partner” means a partner in a
14 partnership that was required to be included in a West
15 Virginia composite income tax return filed pursuant to §11-
16 21-51a of this code in the reviewed year.

17 (5) “Corporate partner” means a partner that is subject
18 to tax under §11-24-1 *et seq.* of this code.

19 (6) “Date of each final federal determination” means the
20 date on which each adjustment or resolution resulting from
21 an Internal Revenue Service (IRS) examination is assessed
22 pursuant to I.R.C. § 6203.

23 (7) “Direct partner” means a partner that holds an
24 interest directly in a partnership or pass-through entity.

25 (8) “Entity” means any person that is not an individual.

26 (9) “Exempt partner” means a partner that is exempt
27 from taxation under §11-21-1 *et seq.* or §11-24-1 *et seq.* of
28 this code except on unrelated business taxable income.

29 (10) “Federal adjustment” means a change to an item or
30 amount determined under the Internal Revenue Code that is
31 used by a taxpayer to compute West Virginia tax owed
32 whether that change results from action by the IRS,
33 including a partnership level audit, or the filing of an
34 amended federal return, federal refund claim, or an
35 administrative adjustment request by the taxpayer. A federal
36 adjustment is positive to the extent that it increases state
37 taxable income as determined under §11-21-1 *et seq.* or
38 §11-24-1 *et seq.* of this code, as applicable, and is negative

39 to the extent that it decreases state taxable income as
40 determined under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this
41 code, as applicable.

42 (11) “Federal adjustments report” includes methods or
43 forms required by the Tax Commissioner for use by a
44 taxpayer to report federal adjustments, including an
45 amended West Virginia tax return, information return, or a
46 uniform multistate report.

47 (12) “Federal election for alternative payment” refers to
48 the election described in I.R.C. § 6226, relating to the
49 alternative to payment of the imputed underpayment by
50 partnership.

51 (13) “Federal partnership representative” means the
52 person the partnership designates, for the taxable year, as
53 the partnership’s representative, or the person the IRS has
54 appointed to act as the federal partnership representative
55 pursuant to I.R.C. § 6223(a).

56 (14) “Final determination date” means the following:

57 (A) Except as provided in §11-21A-1(14)(B) and (C) of
58 this code, if the federal adjustment arises from an IRS audit,
59 or other action by the IRS, the final determination date is the
60 first day on which no federal adjustments arising from that
61 audit, or other action remain to be finally determined,
62 whether by IRS decision with respect to which all rights of
63 appeal have been waived or exhausted, by agreement, or, if
64 appealed or contested, by a final decision with respect to
65 which all rights of appeal have been waived or exhausted.
66 For agreements required to be signed by the IRS and the
67 taxpayer, the final determination date is the date on which
68 the last party signed the agreement.

69 (B) For federal adjustments arising from an IRS audit or
70 by other action of the IRS, if the taxpayer was included in a
71 combined report filed under §11-24-13a of this code, the
72 final determination date means the first day on which no

73 related federal adjustments arising from that audit remain to
74 be finally determined, as described in §11-21A-1(14)(A) of
75 this code for the entire group.

76 (C) If the federal adjustment results from filing an
77 amended federal return, a federal refund claim, or an
78 administrative adjustment request, or if a federal adjustment
79 reported is on an amended federal return or other similar
80 report filed pursuant to I.R.C. § 6225(c), the final
81 determination date is the day on which the amended return,
82 refund claim, or administrative adjustment request or other
83 similar report was filed.

84 (15) “Final federal adjustment” means a federal
85 adjustment after the final determination date for that federal
86 adjustment has passed.

87 (16) “Indirect partner” means a partner in a partnership
88 or other pass-through entity that itself holds an indirect
89 interest directly, or through another indirect partner, in a
90 partnership or other pass-through entity.

91 (17) “Interest” in an entity means an ownership or
92 beneficial interest in an entity.

93 (18) “Internal Revenue Code” or “I.R.C.” means the
94 Internal Revenue Code of 1986, as codified at 26 United
95 States Code (U.S.C.) Section 1, *et seq.*, as defined in §11-
96 21-9 or §11-24-3 of this code, as applicable, for the taxable
97 year, and any applicable regulations as promulgated by the
98 United States Department of the Treasury.

99 (19) “Internal Revenue Service” or “IRS” means the
100 Internal Revenue Service of the United States Department
101 of the Treasury.

102 (20) “Nonresident partner” means an individual, trust or
103 estate partner that is not a resident as defined in §11-21-7 of
104 this code.

105 (21) “Partner” means a person that holds an interest
106 directly or indirectly in a partnership or other pass-through
107 entity.

108 (22) “Partnership” means an entity subject to taxation
109 under Subchapter K of the Internal Revenue Code.

110 (23) “Partnership adjustment” means any adjustment to
111 a partnership-related item.

112 (24) “Partnership level audit” means an examination by
113 the IRS at the partnership level pursuant to Subchapter C of
114 Title 26, Subtitle F, Chapter 63 of the I.R.C., as enacted by
115 the Bipartisan Budget Act of 2015, Public Law 114-74,
116 which results in federal adjustments.

117 (25) “Partnership-related item” means:

118 (A) Any item or amount with respect to the partnership
119 (without regard to whether or not the item or amount
120 appears on the partnership’s return and including an
121 imputed underpayment and any item or amount relating to
122 any transaction with, basis in, or liability of, the partnership)
123 which is relevant (determined without regard to this article)
124 in determining the tax liability of any person under §11-21-
125 1 *et seq.* or §11-24-1 *et seq.* of this code; and

126 (B) Any partner’s distributive share of any item of
127 amount described in paragraph (A) of this subdivision.

128 (26) “Pass-through entity” means any partnership or
129 other business entity that is not subject to tax under §11-24-
130 1 *et seq.*, imposing tax on C corporations or other entities
131 taxable as a corporation.

132 (27) “Person” means and includes, but is not limited to,
133 any individual, firm, partnership, limited partnership,
134 copartnership, limited liability company, other pass-through
135 entity, joint venture, association, corporation, municipal
136 corporation, organization, receiver, estate, trust, guardian,
137 executor, administrator, any other group or combination

138 acting as a unit, and also any officer, employee or member
139 of any of the foregoing who, as an officer, employee or
140 member, is under a duty to perform or is responsible for the
141 performance of an act prescribed by the provisions of §11-
142 21-1 *et seq.*, §11-21A-1 *et seq.*, or §11-24-1 *et seq.* of this
143 code.

144 (28) “Publicly traded partnership” means either of the
145 following:

146 (A) A publicly traded partnership within the meaning of
147 I.R.C. § 7704; or

148 (B) Any other partnership where more than 10 percent
149 of the profits or capital interest is owned directly or
150 indirectly by a partnership described in §11-21A-1(28)(A)
151 of this code.

152 (29) “Reallocation adjustment” means a federal
153 adjustment resulting from a partnership level audit, or an
154 administrative adjustment request, that changes the shares
155 of one or more items of partnership income, gain, loss,
156 expense or credit allocated to direct partners. A positive
157 reallocation adjustment means the portion of a reallocation
158 adjustment that would increase federal taxable income for
159 one or more direct partners, and a negative reallocation
160 adjustment means the portion of a reallocation adjustment
161 that would decrease federal income for one or more direct
162 partners pursuant to regulations under I.R.C. § 6225.

163 (30) “Resident partner” means an individual, trust, or
164 estate partner that has his or her domicile in this state or is a
165 resident of this state for tax purposes, as defined in §11-21-
166 7 of this code, for the relevant period.

167 (31) “Reviewed year” means the taxable year of a
168 partnership that is subject to a partnership level audit from
169 which federal adjustments arise.

170 (32) “S corporation” means a corporation or pass-
171 through entity that makes a valid election to be taxed under
172 Subchapter S of Chapter 1 of the Internal Revenue Code.

173 (33) “State imputed underpayment” means the netting
174 of all final adjustments to partnership-related items at the
175 entity level for the reviewed year (excluding any
176 reallocations of income, expenses, gains, and losses among
177 partners), apportioned and allocated to West Virginia at the
178 entity level, and multiplied by the applicable West Virginia
179 income tax rate(s) set forth in §11-21-1 *et seq.* or §11-24-1
180 *et seq.* of this code, as applicable, for the taxable year.

181 (34) “State partnership adjustment report” means a form
182 prescribed by Tax Commissioner that identifies the
183 partnership’s direct partners, each partner’s share of
184 adjustments to partnership-related items, and any
185 reallocations of income, expenses, gains, and losses among
186 such partners, that arise directly or indirectly from a
187 partnership level audit.

188 (35) “State partnership audit” means an examination by
189 the Tax Commissioner at the partnership or pass-through
190 entity level which results in adjustments to partnership or
191 pass-through entity related items or reallocations of income,
192 expenses, gains, losses, credits, and other attributes among
193 the partners for the reviewed year.

194 (36) “State partnership representative” means the
195 person the partnership designates to be the partnership’s
196 representative for West Virginia tax purposes for the
197 reviewed year pursuant to §11-21A-3 of this code and shall
198 be the federal partnership representative in absence of the
199 partnership designating a West Virginia partnership
200 representative.

201 (37) “Subsequent affected year” means a tax year
202 subsequent to the reviewed year in which a federal
203 adjustment arising from an audit of that reviewed year
204 affects the West Virginia income tax owed by a taxpayer.

205 (38) “Tax Commissioner” means the Tax
206 Commissioner of the State of West Virginia or his or her
207 delegate, as provided in §11-1-1 of this code.

208 (39) “Taxpayer” means any person subject to the tax
209 imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code,
210 as applicable, unless the context clearly indicates otherwise,
211 including a partnership subject to a partnership level audit
212 or a partnership that has made an administrative adjustment
213 request, as well as a tiered partner of that partnership.

214 (40) “This state” or “state” means the State of West
215 Virginia.

216 (41) “Tiered partner” means any partner that is a
217 partnership or other pass-through entity.

218 (42) “Tiered partnership” means any partnership or
219 other pass-through entity that has one or more tiered
220 partners.

221 (43) “Unrelated business taxable income” has the same
222 meaning as defined in I.R.C. § 512.

223 (44) “West Virginia tax” means the tax imposed by §11-
224 21-1 *et seq.* or §11-24-1 *et seq.* of this code, as applicable,
225 plus interest and additions to tax imposed pursuant to §11-
226 10-1 *et seq.* of this code.

227 (45) “Withholding partner” means a partner in a
228 partnership for whom the partnership was required to
229 withhold West Virginia tax pursuant to §11-21-71a of this
230 code or administrative authority for the reviewed year.

§11-21A-2. Reporting adjustments to federal taxable income – General rule.

1 (a) Except in the case of final federal adjustments which
2 are required to be reported by a partnership and its partners
3 using the procedures in §11-21A-3 of this code, and final
4 federal adjustments required to be reported for federal

5 purposes under I.R.C. §6225(a)(2), a taxpayer shall report
6 and pay any West Virginia income tax due with respect to
7 final federal adjustments arising from an audit or other
8 action by the IRS or reported by the taxpayer on a timely
9 filed amended federal income tax return including a return
10 or similar document filed pursuant to I.R.C. §6225(c), or
11 federal claim for refund by filing a federal adjustments
12 report with the Tax Commissioner for the reviewed year
13 and, if applicable, pay the additional West Virginia tax
14 owed by the taxpayer not later than 180 days after the final
15 determination date.

16 (b) Notwithstanding §11-21-59 and §11-24-20 of this
17 code, if any item required to be shown on a federal
18 partnership return, including any gross income, deduction,
19 penalty, credit, or tax for any year of any partnership,
20 including any amount of any partner's distributive share, is
21 changed or corrected by the Commissioner of Internal
22 Revenue or other officer of the United States or other
23 competent authority, and the partnership is issued an
24 adjustment under I.R.C. § 6225, or makes a federal election
25 for alternative payment, by the Internal Revenue Service as
26 part of a partnership level audit, the partnership shall report
27 each change or correction with the Tax Commissioner for
28 the reviewed year within six months after the date of each
29 final federal determination. The report of adjustments or
30 return reporting the adjustments shall be sufficiently
31 detailed to allow computation of the West Virginia tax
32 change under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this
33 code, as applicable, resulting from the federal adjustment
34 and shall be reported in the form and manner as prescribed
35 by the Tax Commissioner.

**§11-21A-3. Reporting federal adjustments — partnership
level audit and administrative adjustment request.**

1 (a) *General.* — Except for adjustments required to be
2 reported for federal purposes pursuant to I.R.C. §
3 6225(a)(2), and the distributive share of adjustments that
4 have been reported as required by §11-21A-2 of this code,

5 partnerships and partners shall report final federal
6 adjustments arising from a partnership level adjustment, or
7 an administrative adjustment request, and make payments
8 as required by this section of the code.

9 (b) *State partnership representative.* —

10 (1) With respect to an action required or permitted to be
11 taken by a partnership under this section of the code and a
12 proceeding under §11-10A-1 *et seq.* of this code with
13 respect that action, the state partnership representative for
14 the reviewed year has the sole authority to act on behalf of
15 the partnership, and its direct partners and indirect partners
16 shall be bound by those actions.

17 (2) The state partnership representative for the reviewed
18 year is the partnership's federal partnership representative
19 unless the partnership designates in writing another person
20 as its state partnership representative.

21 (3) The Tax Commissioner may establish reasonable
22 qualifications for and procedures for designating a person,
23 other than the federal partnership representative, to be the
24 state partnership representative.

25 (c) *Reporting and payment requirements for*
26 *partnerships subject to a final federal adjustment and direct*
27 *partners.* — Final federal adjustments subject to the
28 requirements of §11-21A-3 of this code, except for those
29 subject to a properly made election under §11-21A-3(d) of
30 this code, shall be reported as follows:

31 (1) No later than 90 days after the final determination
32 date, the partnership shall:

33 (A) File a completed federal adjustment report with the
34 Tax Commissioner, including information as required by
35 the Tax Commissioner; and

36 (B) Notify each of its direct partners of their distributive
37 share of the final federal adjustments including information
38 as required by the Tax Commissioner; and

39 (C) File an amended composite return for direct partners
40 as permitted under §11-21-51a of this code and/or an
41 amended withholding return for direct partners under §11-
42 21-71a of this code and pay the additional amount due under
43 §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code, as
44 applicable, that would have been due had the final federal
45 adjustments been reported properly as required.

46 (2) Except as provided in §11-21A-4 of this code for
47 minimal tax liabilities, no later than 180 days after the final
48 determination date, each direct partner that is taxed under
49 §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, as
50 applicable, shall:

51 (A) File a federal adjustment report reporting their
52 distributive share of the adjustments reported to them under
53 §11-21A-3(c)(1)(B) of this code as required by West
54 Virginia law; and

55 (B) Pay any additional amount of tax due as if final
56 federal adjustments had been properly reported, plus any
57 additions to tax and interest due under §11-10-1 *et seq.* of
58 this code and less any credit for related amounts paid or
59 withheld and remitted on behalf of the direct partner under
60 §11-21A-3(c)(1)(C) of this code.

61 (d) *Election — partnership pays.* — Subject to the
62 limitations in this subsection, an audited partnership making
63 an election under §11-21A-3(d) of this code shall:

64 (1) No later than 90 days after the final determination
65 date, file a completed federal adjustment report, including
66 information as required by rule or instruction of the Tax
67 Commissioner, and notify the Tax Commissioner that it is
68 making the election under §11-21A-3(d) of this code;

69 (2) No later than 180 days after the final determination
70 date, pay an amount, determined as follows, in lieu of taxes
71 owed by its direct partners and indirect partners:

72 (A) Exclude from final federal adjustments the
73 distributive share of these adjustments reported to a direct
74 exempt partner not subject to tax under § 11-21-1 *et seq.* or
75 §11-24-1 *et seq.* of this code;

76 (B) For the total distributive shares of the remaining
77 final federal adjustments reported to direct corporate
78 partners subject to tax under §11-24-1 *et seq.* of this code,
79 and to direct exempt partners subject to tax under §11-24-1
80 *et seq.* of this code, apportion and allocate the adjustments
81 as provided in §11-24-7 of this code, as applicable, and
82 multiply the resulting amount by the highest tax rate under
83 §11-24-1 *et seq.* of this code;

84 (C) For the total distributive shares of the remaining
85 final federal adjustments reported to nonresident direct
86 partners subject to tax under §11-21-1 *et seq.* of this code,
87 determine the amount of the adjustments which is West
88 Virginia source income under §11-21-30 of this code, and
89 multiply the resulting amount by the highest tax rate under
90 §11-21-1 *et seq.* of this code;

91 (D) For the total distributive shares of the remaining
92 final federal adjustments reported to tiered partners:

93 (i) Determine the amount of the adjustments which is of
94 a type that it would not be subject to sourcing to West
95 Virginia under §11-21-1 *et seq.* of this code; allocate and
96 apportion the income as provided in §11-21-1 *et seq.* of this
97 code; and then determine the portion of this amount that
98 would be sourced to this state applying these rules.

99 (ii) Determine the amount of such adjustments which is
100 of a type that it would not be subject to sourcing to West
101 Virginia by a nonresident under §11-21-30 of this code.

102 (iii) Determine the portion of the amount determined in
103 §11-21A-3(c)(2)(D)(ii) of this code that can be established
104 under rule issued by the Tax Commissioner, to be properly
105 allocable to nonresident indirect partners or other partners
106 not subject tax on the adjustments; or that can be excluded
107 under procedures for modified reporting and payment
108 method allowed under §11-21A-3(f) of this code.

109 (E) Multiply the total of the amounts determined in §11-
110 21A-3(d)(2)(D)(i) and (ii) of this code reduced by the
111 amount determined in §11-21A-3(d)(2)(D)(iii) of this code
112 by the highest tax rate under §11-21-1 *et seq.* of this code
113 that applies to individuals and/or estates and trusts;

114 (F) For the total distributive shares of the remaining
115 final federal adjustments reported to resident direct partners
116 subject to tax under §11-21-1 *et seq.* of this code, multiply
117 that amount by the highest tax rate under §11-21-1 *et seq.*
118 of this code that applies to individuals and/or estates and
119 trusts;

120 (G) Add the amounts determined in §11-21A-
121 3(d)(2)(B), (D), (E), and (F) of this code;

122 (3) Final federal adjustments subject to this election
123 exclude:

124 (A) The distributive share of final audit adjustments that
125 under §11-24-1 *et seq.* of this code must be included in the
126 unitary business income of any direct or indirect corporate
127 partner, provided that the audited partnership can
128 reasonably determine this amount; and

129 (B) Any final federal adjustments resulting from an
130 administrative adjustment request.

131 (4) An audited partnership not otherwise subject to any
132 reporting or payment obligation to this state that makes an
133 election under §11-21A-3(d) of this code consents to be
134 subject to this state's laws related to reporting, assessment,

135 payment, and collection of West Virginia income tax
136 calculated under the election.

137 (e) *Tiered partners.* — The direct and indirect partners
138 of an audited partnership that are tiered partners, and all of
139 the partners of those tiered partners that are subject to tax
140 under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, as
141 appropriate, are subject to the reporting and payment
142 requirements of §11-21A-3(b) of this code and the tiered
143 partners are entitled to make the elections provided in §11-
144 21A-3(c) and (e) of this code. The tiered partners or their
145 partners shall make required reports and payments no later
146 than 90 days after the time for filing and furnishing
147 statements to tiered partners and their partners as
148 established under I.R.C. Section 6226 and the regulations
149 thereunder. The Tax Commissioner may promulgate rules
150 under §29A-3-1 *et seq.* of this code to establish procedures
151 and interim time periods for the reports and payments
152 required by tiered partners and their partners and for making
153 the elections under §11-21A-3 of this code.

154 (f) *Modified reporting and payment method.* — Under
155 procedures adopted by and subject to the approval of the
156 Tax Commissioner in his or her sole discretion, an audited
157 partnership or tiered partner may enter into an agreement
158 with the Tax Commissioner to utilize an alternative
159 reporting and payment method, including applicable time
160 requirements or any other provision of §11-21A-3 of this
161 code, if the audited partnership or tiered partner
162 demonstrates that the requested method will reasonably
163 provide for the reporting and payment of taxes, additions to
164 tax, and interest due under the provisions of §11-21A-3 of
165 this code. Application for approval of an alternative
166 reporting and payment method shall be made by the audited
167 partnership or tiered partner within the time for election as
168 provided in §11-21A-3(d) or §11-21A-3(e) of this code as
169 appropriate.

170 (g) *Effect of election by audited partnership or tiered*
171 *partner and payment of amount due.* — (1) The election

172 made pursuant to §11-21A-3(d) or §11-21A-3(f) of this
173 code is irrevocable, unless the Tax Commissioner, in his or
174 her sole discretion, determines otherwise.

175 (2) If properly reported and paid by the audited
176 partnership or tiered partner, the amount determined in §11-
177 21A-3(c) of this code, or similarly under an optional
178 election under §11-21A-3(f) of this code, will be treated as
179 paid in lieu of taxes owed by its direct and indirect partners,
180 to the extent applicable, on the same final federal
181 adjustments. The direct partners or indirect partners may not
182 take any deduction or credit for this amount or claim a
183 refund of this amount in this state. Nothing in §11-21A-3(f)
184 of this code may preclude a direct resident partner from
185 claiming a credit against taxes paid to this state pursuant to
186 §11-21-1 *et seq.* of this code, any amounts paid by the
187 audited partnership or tiered partner on the resident
188 partner's behalf to another state in accordance with the
189 provisions of §11-21-1 *et seq.* of this code allowing credit
190 for taxes paid to another state.

191 (h) *Failure of audited partnership or tiered partner to*
192 *report or pay.* — Nothing in §11-21A-3 of this code
193 prevents the Tax Commissioner from assessing direct
194 partners, or indirect partners, for taxes they owe, using the
195 best information available to the commissioner, if a
196 partnership or tiered partner fails to timely make any report
197 or payment required by §11-21A-3 of this code for any
198 reason.

§11-21A-4. De minimis exception.

1 The Tax Commissioner, in his or her discretion, may
2 promulgate rules, as provided in §29A-3-1 *et seq.* of this
3 code, to establish a de minimis amount upon which a
4 taxpayer shall not be required to comply with §11-21A-2
5 and §11-21A-3 of this code.

§11-21A-5. Assessments of additional West Virginia tax, interest, and additions to tax arising from adjustments to federal taxable income; statute of limitations.

1 The Tax Commissioner will assess additional West
2 Virginia tax, interest, and additions to tax arising from
3 federal adjustments arising from an audit by the Internal
4 Revenue Service, including a partnership level audit, or
5 reported by the taxpayer on an amended federal income tax
6 return or as part of an administrative adjustment request by
7 the following dates:

8 (1) *Timely reported federal adjustments.* — If a taxpayer
9 files with the Tax Commissioner a federal adjustments
10 report or an amended West Virginia tax return as required
11 within the period specified in §11-21A-2 or §11-21A-3 of
12 this code, the Tax Commissioner may assess any West
13 Virginia amounts, including in-lieu-of amounts, of taxes,
14 interest, and additions to tax arising from those federal
15 adjustments if the Tax Commissioner issues a notice of the
16 assessment to the taxpayer by a date which is the latest of
17 the following:

18 (A) The expiration of the limitations period specified in
19 §11-10-15 of this code setting forth normal limitations
20 period; or

21 (B) The expiration of the one-year period following the
22 date of filing with the Tax Commissioner of the federal
23 adjustments report under §11-21A-3 of this code.

24 (2) *Untimely reported federal adjustments.* — If the
25 taxpayer fails to file the federal adjustments report within
26 the period specified in §11-21A-2 or §11-21A-3 of this
27 code, as appropriate, or the federal adjustments report filed
28 by the taxpayer omits federal adjustments or understates the
29 correct amount of West Virginia tax owed, the Tax
30 Commissioner may assess amounts or additional amounts
31 including in-lieu-of amounts, taxes, interest, and additions
32 to tax arising from the final federal adjustments, if the Tax

33 Commissioner mails a notice of the assessment to the
34 taxpayer by a date which is the latest of the following:

35 (A) The expiration of the limitations period specified in
36 §11-10-15 of this code setting forth limitations periods; or

37 (B) The expiration of the one-year period following the
38 date the federal adjustments report was filed with the Tax
39 Commissioner; or

40 (C) Absent fraud, the expiration of the six-year period
41 following the final determination date.

**§11-21A-6. Estimated West Virginia tax payments during
course of federal audit.**

1 A taxpayer may make estimated payments to the Tax
2 Commissioner, following the process prescribed by the Tax
3 Commissioner, of the tax expected to result from a pending
4 Internal Revenue Service audit, prior to the due date of the
5 federal adjustments report, without having to file the report
6 with the Tax Commissioner. The estimated tax payments
7 shall be credited against any tax liability ultimately found to
8 be due to West Virginia (final West Virginia tax liability)
9 and shall limit the accrual of further statutory interest on that
10 amount. If the estimated tax payments exceed the final tax
11 liability and statutory interest ultimately determined to be
12 due, the taxpayer is entitled to a refund or credit for the
13 excess, provided the taxpayer files a federal adjustments
14 report or claim for refund or credit of tax pursuant to §11-
15 10-14 or §11-21A-7 of this code, no later than one year
16 following the final determination date.

**§11-21A-7. Claims for refund or credits of West Virginia tax
arising from federal adjustments made by the IRS.**

1 (a) Notwithstanding the reporting requirement
2 contained in §11-21A-2 or §11-21A-3 of this code, except
3 for final federal adjustments required to be reported for
4 federal income tax purposes under I.R.C. § 6225(a)(2), a
5 taxpayer may file a claim for refund or credit of West

6 Virginia tax arising from federal adjustments made by the
7 Internal Revenue Service on or before the later of:

8 (1) The expiration of the last day for filing a claim for
9 refund or credit of West Virginia tax pursuant to §11-10-14
10 of this code, including any extensions; or

11 (2) One year from the date a federal adjustments report
12 prescribed in §11-21A-2 or §11-21A-3 of this code, as
13 applicable, was due to the Tax Commissioner, including any
14 extensions pursuant to §11-21A-8 of this code.

15 (b) The federal adjustments report shall serve as the
16 means for the taxpayer to report additional West Virginia
17 tax due, report a claim for refund or credit of tax, and make
18 other adjustments (including, but not limited to, its net
19 operating losses) resulting from adjustments to the
20 taxpayer's federal taxable income.

§11-21A-8. Scope of adjustments and extensions of time.

1 (a) Unless otherwise agreed in writing by the taxpayer
2 and the Tax Commissioner, any adjustments by the Tax
3 Commissioner or by the taxpayer made after the expiration
4 of the statute of limitations for refund and assessment set
5 forth in §11-10-14 and §11-10-15 of this code, respectively,
6 are limited to changes to the taxpayer's tax liability arising
7 from federal adjustments.

8 (b) The time periods provided for in this section may be
9 extended:

10 (1) Automatically, upon written notice to the Tax
11 Commissioner, by 60 days for an audited partnership, or
12 tiered partner, which has 10,000 or more direct partners; or

13 (2) By written agreement between the taxpayer and the
14 Tax Commissioner pursuant to any rule issued under this
15 section.

16 (c) An extension granted under §11-21A-8 of this code
17 for filing the federal adjustment report extends the last day
18 prescribed by law for assessing any additional tax arising
19 from the adjustments to federal taxable income, as provided
20 in §11-21A-1 *et seq.* of this code, and the period for filing a
21 claim for refund of credit of taxes pursuant to §11-21A-1 *et*
22 *seq.* of this code.

§11-21A-9. Effective date.

1 This article enacted in 2019 shall apply to any
2 adjustments to a taxpayer's federal taxable income with a
3 final determination date occurring for a tax year beginning
4 after December 31, 2018.

§11-21A-10. Legislative, interpretive, and procedural rules.

1 The Tax Commissioner may propose for promulgation
2 pursuant to the provisions of §29A-3-1 *et seq.* of this code
3 such legislative, interpretive, and procedural rules as may
4 be necessary to carry out the purposes of this article
5 including, but not limited to, rules to determine the West
6 Virginia share of federal audit adjustments.

§11-21A-11. General procedure and administration.

1 Every provision of the West Virginia Tax Procedure and
2 Administration Act set forth in §11-10-1 *et seq.* of this code
3 applies to the taxes imposed by this article, except as
4 otherwise expressly provided in this article, with like effect
5 as if that act were applicable only to the taxes imposed by
6 this article and were set forth in extenso in this article.

§11-21A-12. Crimes and penalties.

1 Every provision of the West Virginia Tax Crimes and
2 Penalties Act set forth in §11-9-1 *et seq.* of this code applies
3 to the taxes imposed by this article with like effect as if that
4 act were applicable only to the taxes imposed by this article
5 and were set forth in extenso in this article.

ARTICLE 24. CORPORATION NET INCOME TAX.**§11-24-20. Report of change in federal taxable income.**

1 (a) Unless the provision of §11-21A-1 *et seq.* of this
2 code apply, if the amount of a taxpayer's federal taxable
3 income reported on its federal income tax return for any
4 taxable year is changed or corrected by the United States
5 internal revenue service or other competent authority, or as
6 the result of a renegotiation of a contract or subcontract with
7 the United States, the taxpayer shall report the change or
8 correction in federal taxable income within 90 days after the
9 final determination of the change, correction or
10 renegotiation, or as otherwise required by the Tax
11 Commissioner, and shall concede the accuracy of the
12 determination or state wherein it is erroneous. Any taxpayer
13 filing an amended federal income tax return shall also file
14 within 90 days thereafter an amended return under this
15 article, and shall give such information as the Tax
16 Commissioner may require. The Tax Commissioner may by
17 rule prescribe such exceptions to the requirements of this
18 section as he or she deems appropriate.

19 (b) (1) If a change or correction is made or allowed by
20 the Commissioner of Internal Revenue or other officer of
21 the United States, or other competent authority, a claim for
22 credit or refund resulting from the adjustment may be filed
23 by the taxpayer within two years from the date of the final
24 federal determination (as defined in §11-21A-2 of this
25 code), or within the period provided in §11-10-14 of this
26 code, whichever period expires later.

27 (2) Within two years of the date of the final
28 determination (as defined in §11-21A-2 of this code) or
29 within the period provided in §11-10-14 of this code,
30 whichever period expires later, the Tax Commissioner may
31 allow a credit, make a refund, or mail to the taxpayer a
32 notice of proposed overpayment resulting from the final
33 federal determination.

34 (c) For the purposes of this section, assessments under a
35 partial agreement, closing agreement covering specific
36 matters, jeopardy or advance payment are considered part
37 of the final determination and must be submitted to the Tax
38 Commissioner with the final determination.

39 (d) If a partial agreement, a closing agreement covering
40 specific matters, or any other agreement with the United
41 States Treasury Department would be final except for a
42 federal extension still open for flow-through adjustments
43 from other entities or other jurisdictions, the final
44 determination is the date the taxpayer signs the agreement.
45 Flow-through adjustments include, but are not limited to,
46 items of income gain, loss, and deduction that flow through
47 to equity owners of a partnership, or other pass-through
48 entity. Flow-through adjustments are finally determined
49 based on criteria specified in §11-24-20(g) of this code.

50 (e) The Tax Commissioner is not required to issue
51 refunds based on any agreement other than a final
52 determination.

53 (f) If a taxpayer has filed an amended federal return, and
54 no corresponding West Virginia amended return has been
55 filed with the Tax Commissioner, then the period of
56 limitations for issuing a notice of assessment shall be
57 reopened and shall not expire until three years from the date
58 of delivery to the Tax Commissioner by the taxpayer of the
59 amended federal return. However, upon the expiration of
60 the period of limitations as provided in §11-10-15 of this
61 code, then only those specific items of income, deductions,
62 gains, losses, or credits which were adjusted in the amended
63 federal return shall be subject to adjustment for purposes of
64 recomputing West Virginia income, deductions, gains,
65 losses, credits, and the effect of such adjustments on West
66 Virginia allocations and apportionments.

67 (g) For the purposes of this section, “final
68 determination” means the appeal rights of both parties have
69 expired or have been exhausted relative to the tax year for
70 federal income tax purposes.

71 (h) The amendments made to this section in the year
72 2019 shall apply, without regard to taxable year, to federal
73 determinations that become final on or after the effective
74 date of the amendments to this section in the year 2019.

CHAPTER 245

(Com. Sub. for S. B. 502 - By Senator Blair)

[Passed March 8, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-15-9r,
relating to exemptions for the sales of investment metal
bullion and investment coins.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9r. Exemption for precious metals.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the sale of investment metal bullion or investment
3 coins as defined in subsections (b) and (c) of this section are
4 exempted from the taxes imposed by this article and §11-
5 15A-1 *et seq.* of this code.

6 (b) “Investment metal bullion” means any elementary
7 precious metal which has been put through a process of
8 smelting or refining, including gold, silver, platinum, and
9 palladium, and which is in such a state or condition that its
10 value depends upon its content and not its form. “Investment
11 metal bullion” does not include precious metal which has been
12 assembled, fabricated, manufactured, or processed in one or
13 more industrial, professional, aesthetic, or artistic uses.

14 (c) “Investment coins” means numismatic coins or other
15 forms of money and legal tender manufactured of gold,
16 silver, platinum, palladium, or other metal and of the United
17 States or any foreign nation with a fair market value greater
18 than any nominal value of such coins. “Investment coins”
19 does not include jewelry or works of art made of coins, nor
20 does it include commemorative medallions.

CHAPTER 246

(Com. Sub. for S. B. 546 - By Senators Takubo,
Maroney and Stollings)

[Passed March 7, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-27-39, relating to creating a tax on certain acute care hospitals; defining terms; imposing a tax on eligible acute care hospitals; providing exceptions to the tax; creating a fund; providing for how the funds may be spent; permitting the tax to be eligible to be matched by federal funds; providing an effective date; and providing an expiration date for the tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-39. Contingent increase of tax rate on certain eligible acute care hospitals to increase practitioner payment fee schedules.

1 (a) In addition to the rate of the tax imposed by §11-27-
2 9, §11-27-15, and §11-27-38 of this code on providers of
3 inpatient and outpatient hospital services, there shall be
4 imposed on certain eligible acute care hospitals an

5 additional tax of 0.13 percent on the gross receipts received
6 or receivable by an eligible acute care hospital that provides
7 inpatient or outpatient hospital services in this state.

8 (b) For purposes of this section, the term “eligible acute
9 care hospital” means any inpatient or outpatient hospital
10 conducting operations in this state that is not:

11 (1) A state-owned or designated facility;

12 (2) A critical access hospital designated as a critical
13 access hospital after meeting all federal eligibility criteria;

14 (3) A licensed free-standing psychiatric or medical
15 rehabilitation hospital; or

16 (4) A licensed long-term acute care hospital.

17 (c) The provisions of this section are intended to
18 maximize federal funding to increase practitioner payment
19 fee schedules for practitioners employed by eligible acute
20 care hospitals as described in this section. For the purposes
21 of this section, the term “practitioner” means a physician
22 licensed pursuant to the provisions of §30-3-1 *et seq.* and
23 §30-14-1 *et seq.* of this code.

24 (d) The taxes imposed by this section may not be
25 imposed or collected until the occurrence of each of the
26 following:

27 (1) The West Virginia Bureau for Medical Services
28 incorporates the payment methodology into the appropriate
29 contracts and agreements; and

30 (2) The West Virginia Bureau for Medical Services
31 receives the necessary approvals from the Centers for
32 Medicare and Medicaid Services.

33 (e) There is hereby created a special fund known as the
34 Acute Care Clearing Fund. The amount of taxes collected
35 under this section and under §11-27-38 of this code,

36 including any interest, additions to tax, and penalties
37 collected under §11-10-1 *et seq.* of this code, less the
38 amount of allowable refunds, the amount of any interest
39 payable with respect to such refunds, and costs of
40 administration and collection, shall be deposited into the
41 Acute Care Clearing Fund created by this section. The Tax
42 Commissioner shall establish and maintain the funds
43 collected under this section and then periodically distribute
44 the same by the fifth day of the month following the end of
45 the calendar quarter in which the taxes were collected.
46 Provided, that notwithstanding any provision of the code to
47 the contrary, the portion attributable to the taxes, any
48 interest, additions to tax, and penalties associated with the
49 tax imposed under §11-27-38 of this code shall be
50 distributed into the Eligible Acute Care Provider
51 Enhancement Account created under that section and the
52 portion attributable to the taxes, any interest, additions to
53 tax, and penalties associated with the tax imposed under this
54 section shall be distributed into a new account to be created
55 under the Medicaid State Share Fund to be designated as the
56 Eligible Acute Care Practitioner Enhancement Account.
57 Disbursements from the Eligible Acute Care Practitioner
58 Enhancement Account within the Medicaid State Share
59 Fund may be used only to support increasing practitioner
60 payment fee schedules for practitioners employed by
61 eligible acute care hospitals.

62 (f) The imposition and collection of taxes imposed by
63 this section shall be suspended immediately upon the
64 occurrence of any of the following:

65 (1) The effective date of any action by Congress that
66 would disqualify the taxes imposed by this section from
67 counting towards state Medicaid funds available to be used
68 to determine the federal financial participation;

69 (2) The effective date of any decision, enactment, or
70 other determination by the Legislature or by any court,
71 officer, department, agency, or office of the state or federal
72 government that disqualifies the tax from counting towards

73 state Medicaid funds available to determine federal
74 financial participation for Medicaid matching funds or
75 creates for any reason a failure of the state to use the
76 assessment of the Medicaid program as described in this
77 section; and

78 (3) If the tax payments remitted by the eligible acute
79 care hospitals are not used to effectuate the provisions of
80 this section.

81 (g) Any funds remaining in the Eligible Acute Care
82 Practitioner Enhancement Account, upon the occurrence of
83 any of the events described in subsection (f) of this section, that
84 cannot be used to match eligible federal Medicaid funds for
85 this program, shall be transferred to the West Virginia Medical
86 Services Fund. These funds shall be used during the state fiscal
87 year in which they were transferred at the discretion of the
88 West Virginia Bureau for Medical Services.

89 (h) The provisions of this section are effective on or
90 after July 1, 2019.

91 (i) This section will expire on or after June 30, 2021,
92 unless otherwise extended by the Legislature.

CHAPTER 247

(S. B. 656 - By Senators Blair and Trump)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended, all relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; and raising to \$50,000 the tax liability

threshold amount at which taxpayers must file returns electronically or pay by electronic funds transfers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5t. Payment by electronic fund transfers.

1 (a) The term “electronic funds transfer” means and
2 includes automated clearinghouse debit, automated
3 clearinghouse credit, wire transfer, and any other means
4 recognized by the Tax Commissioner for payment of taxes.

5 (b) The Tax Commissioner may prescribe by emergency
6 rules, administrative notices, forms and instructions, and the
7 procedures and criteria to be followed by certain taxpayers
8 in order to pay taxes by electronic funds transfer methods.

9 (c) The rules shall set forth the following:

10 (1) Acceptable indicia of timely payment;

11 (2) Which type of electronic filing method or methods a
12 particular type of taxpayer may or may not use;

13 (3) Which types of taxes to which electronic filing
14 requirements apply for any given tax year and
15 implementation dates: *Provided*, That the type of tax to
16 which electronic funds transfer requirements apply during
17 the first tax year is personal income tax withholding by
18 employers;

19 (4) The dollar amount of tax liability per year which,
20 when exceeded, requires or permits electronic funds
21 transfer. Unless and until a legislative rule is promulgated
22 or this section is amended, no person may be required to pay
23 any tax by electronic funds transfer if the amount owed for
24 the tax during the preceding year was less than \$120,000:
25 *Provided*, That for tax years beginning on or after January
26 1, 2019, no person may be required to pay any tax by

27 electronic funds transfer if the amount owed for the tax
28 during the preceding tax year was less than \$50,000;

29 (5) What, if any, exceptions are allowable, and
30 alternative methods of payment to be used for any
31 exceptions;

32 (6) Procedures for making voluntary electronic funds
33 transfer payments;

34 (7) Any provisions needed to implement the civil
35 penalty created by this section; and

36 (8) Any other provisions necessary to ensure the timely
37 implementation of electronic funds transfer payments.

38 (d) In addition to any other additions and penalties
39 which may be applicable, there is a civil penalty for failing
40 or refusing to use an appropriate electronic funds transfer
41 method when required to do so. The amount of this penalty
42 is three percent of the total tax liability which is or was to
43 be paid by electronic funds transfer for any tax for which
44 electronic funds transfer methods are required to be used by
45 the taxpayer.

46 (e) The provisions of this section are not intended to
47 affect the provisions of other sections of this chapter
48 concerning filing of returns or any other provisions which
49 are not in direct conflict with this section.

50 (f) The State Treasurer shall adopt any procedures or
51 rules necessary or convenient for implementing electronic
52 funds transfers of tax payments authorized by this section
53 and rules adopted by the Tax Commissioner. The Treasurer
54 shall draft any procedures and rules adopted in consultation
55 with the Tax Commissioner and the procedures and rules
56 may not conflict with this section or rules adopted by the
57 Tax Commissioner.

58 (g) The provisions of this section become effective on
59 or after January 1, 1998.

§11-10-5z. Electronic filing for certain persons.

1 (a) (1) For tax years beginning on or after January 1,
2 2009, any person required to file a return for a tax
3 administered under the provisions of this article and who
4 had total annual remittance for any single tax equal to or
5 greater than \$100,000 during the immediately preceding
6 taxable year shall file electronically all returns for all taxes
7 administered under this article.

8 (2) For tax years beginning on or after January 1, 2011,
9 any person required to file a return for a tax administered
10 under the provisions of this article and who had total annual
11 remittance for any single tax equal to or greater than
12 \$10,000 during the immediately preceding tax year shall file
13 electronically all returns for all taxes administered under
14 this article.

15 (3) For tax years beginning on or after January 1, 2015:

16 (i) For returns that are required to be filed prior to
17 January 1, 2016, any person required to file a return for a
18 tax administered under the provisions of this article and who
19 had total annual remittance for any single tax equal to or
20 greater than \$10,000 during the immediately preceding tax
21 year shall file electronically all such returns for all taxes
22 administered under this article.

23 (ii) For returns that are required to be filed on or after
24 January 1, 2016, any person required to file a return for a
25 tax administered under the provisions of this article and who
26 had total annual remittance for any single tax equal to or
27 greater than \$25,000 during the immediately preceding tax
28 year shall file electronically all returns for all taxes
29 administered under this article.

30 (iii) For returns that are required to be filed on or after
31 January 1, 2019, any person required to file a return for a
32 tax administered under the provisions of this article and who
33 had total annual remittance for any single tax equal to or
34 greater than \$50,000 during the immediately preceding tax

35 year shall file electronically all returns for taxes
36 administered under this article.

37 (b) The Tax Commissioner shall implement the
38 provisions of this section using any combination of notices,
39 forms, instructions, and rules that he or she determines
40 necessary. All rules shall be promulgated pursuant to §29A-
41 3-1 *et seq.* of this code.

CHAPTER 248

(Com. Sub. for H. B. 2001 - By Delegates
Harshbarger, P. Martin, McGeehan, Atkinson,
Storch, Pack, Rowan, Hollen, Mandt, J. Kelly and
Sypolt)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exemptions from personal income tax; providing for an exemption for members of certain uniformed services; exempting social security benefits from personal income tax; clarifying that tier one railroad retirement benefits are not subject to personal income tax; specifying an effective date; and removing obsolete language.

Be it enacted by the Legislature of West Virginia:

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 §33-15-20 or §33-
37 16-15 of this code that are used for a purpose other than
38 payment of medical expenses, as defined in those sections.

39 (c) *Modifications reducing federal adjusted gross*
40 *income.* — There shall be subtracted from federal adjusted
41 gross income to the extent included therein:

42 (1) Interest income on obligations of the United States
43 and its possessions to the extent includable in gross income
44 for federal income tax purposes;

45 (2) Interest or dividend income on obligations or
46 securities of any authority, commission or instrumentality
47 of the United States or of the State of West Virginia to the
48 extent includable in gross income for federal income tax
49 purposes but exempt from state income taxes under the laws
50 of the United States or of the State of West Virginia,
51 including federal interest or dividends paid to shareholders
52 of a regulated investment company, under Section 852 of
53 the Internal Revenue Code for taxable years ending after
54 June 30, 1987;

55 (3) Any amount included in federal adjusted gross
56 income for federal income tax purposes for the taxable year
57 that is not included in federal adjusted gross income under
58 this article for the taxable year;

59 (4) The amount of any refund or credit for overpayment
60 of income taxes imposed by this state, or any other taxing
61 jurisdiction, to the extent properly included in gross income
62 for federal income tax purposes;

63 (5) Annuities, retirement allowances, returns of
64 contributions and any other benefit received under the West
65 Virginia Public Employees Retirement System, and the
66 West Virginia State Teachers Retirement System, including
67 any survivorship annuities derived therefrom, to the extent
68 includable in gross income for federal income tax purposes:

69 *Provided*, That notwithstanding any provisions in this code
70 to the contrary this modification shall be limited to the first
71 \$2,000 of benefits received under the West Virginia Public
72 Employees Retirement System, the West Virginia State
73 Teachers Retirement System and, including any
74 survivorship annuities derived therefrom, to the extent
75 includable in gross income for federal income tax purposes
76 for taxable years beginning after December 31, 1986; and
77 the first \$2,000 of benefits received under any federal
78 retirement system to which Title 4 U.S.C. §111 applies:
79 *Provided, however*, That the total modification under this
80 paragraph shall not exceed \$2,000 per person receiving
81 retirement benefits and this limitation shall apply to all
82 returns or amended returns filed after December 31, 1988;

83 (6) Retirement income received in the form of pensions
84 and annuities after December 31, 1979, under any West
85 Virginia police, West Virginia Firemen's Retirement
86 System or the West Virginia State Police Death, Disability
87 and Retirement Fund, the West Virginia State Police
88 Retirement System or the West Virginia Deputy Sheriff
89 Retirement System, including any survivorship annuities
90 derived from any of these programs, to the extent includable
91 in gross income for federal income tax purposes;

92 (7) (A) For taxable years beginning after December 31,
93 2000, and ending prior to January 1, 2003, an amount equal
94 to two percent multiplied by the number of years of active
95 duty in the Armed Forces of the United States of America
96 with the product thereof multiplied by the first \$30,000 of
97 military retirement income, including retirement income
98 from the regular Armed Forces, Reserves and National
99 Guard paid by the United States or by this state after
100 December 31, 2000, including any survivorship annuities,
101 to the extent included in gross income for federal income
102 tax purposes for the taxable year.

103 (B) For taxable years beginning after December 31,
104 2000, the first \$20,000 of military retirement income,
105 including retirement income from the regular Armed

106 Forces, Reserves and National Guard paid by the United
107 States or by this state after December 31, 2002, including
108 any survivorship annuities, to the extent included in gross
109 income for federal income tax purposes for the taxable year.

110 (C) For taxable years beginning after December 31,
111 2017, military retirement income, including retirement
112 income from the regular Armed Forces, Reserves and
113 National Guard paid by the United States or by this state
114 after December 31, 2017, including any survivorship
115 annuities, to the extent included in federal adjusted gross
116 income for the taxable year. For taxable years beginning
117 after December 31, 2018, retirement income from the
118 uniformed services, including the Army, Navy, Marines,
119 Air Force, Coast Guard, Public Health Service, National
120 Oceanic Atmospheric Administration, reserves, and
121 National Guard, paid by the United States or by this state
122 after December 31, 2018, including any survivorship
123 annuities, to the extent included in federal adjusted gross
124 income for the taxable year.

125 (D) In the event that any of the provisions of this
126 subdivision are found by a court of competent jurisdiction
127 to violate either the Constitution of this state or of the United
128 States, or is held to be extended to persons other than
129 specified in this subdivision, this subdivision shall become
130 null and void by operation of law.

131 (8) *Decreasing modification for social security income.*

132 (A) For taxable years beginning on and after January 1,
133 2020, 35 percent of the amount of social security benefits
134 received pursuant to Title 42 U.S.C., Chapter 7, including,
135 but not limited to, social security benefits paid by the Social
136 Security Administration as Old Age, Survivors and
137 Disability Insurance Benefits as provided in §42 U.S.C. 401
138 *et seq.* or as Supplemental Security Income for the Aged,
139 Blind, and Disabled as provided in §42 U.S.C. 1381 *et seq.*,
140 included in federal adjusted gross income for the taxable
141 year shall be allowed as a decreasing modification from

142 federal adjusted gross income when determining West
143 Virginia taxable income subject to the tax imposed by this
144 article, subject to the limitation in §11-21-12(c)(8)(D) of
145 this code.

146 (B) For taxable years beginning on or after January 1,
147 2021, 65 percent of the social security benefits received
148 pursuant to Title 42 U.S.C., Chapter 7, including, but not
149 limited to, social security benefits paid by the Social
150 Security Administration as Old Age, Survivors and
151 Disability Insurance Benefits as provided in §42 U.S.C. 401
152 *et seq.* or as Supplemental Security Income for the Aged,
153 Blind, and Disabled as provided in §42 U.S.C. 1381 *et seq.*,
154 included in federal adjusted gross income for the taxable
155 year shall be allowed as a decreasing modification from
156 federal adjusted gross income when determining West
157 Virginia taxable income subject to the tax imposed by this
158 article, subject to the limitation in §11-21-12(c)(8)(D) of
159 this code.

160 (C) For taxable years beginning on or after January 1,
161 2022, 100 percent of the social security benefits received
162 pursuant to Title 42 U.S.C., Chapter 7, including, but not
163 limited to, social security benefits paid by the Social
164 Security Administration as Old Age, Survivors and
165 Disability Insurance Benefits as provided in §42 U.S.C. 401
166 *et seq.* or as Supplemental Security Income for the Aged,
167 Blind, and Disabled as provided in §42 U.S.C. 1381 *et seq.*,
168 included in federal adjusted gross income for the taxable
169 year shall be allowed as a decreasing modification from
170 federal adjusted gross income when determining West
171 Virginia taxable income subject to the tax imposed by this
172 article, subject to the limitation in §11-21-12(c)(8)(D) of
173 this code.

174 (D) The deduction allowed by §11-21-12(c)(8)(A), §11-
175 21-12(c)(8)(B), and §11-21-12(c)(8)(C) of this code are
176 allowable only when the federal adjusted gross income of a
177 married couple filing a joint return does not exceed

178 \$100,000, or \$50,000 in the case of a single individual or a
179 married individual filing a separate return.

180 (9) Federal adjusted gross income in the amount of
181 \$8,000 received from any source after December 31, 1986,
182 by any person who has attained the age of 65 on or before
183 the last day of the taxable year, or by any person certified
184 by proper authority as permanently and totally disabled,
185 regardless of age, on or before the last day of the taxable
186 year, to the extent includable in federal adjusted gross
187 income for federal tax purposes: *Provided*, That if a person
188 has a medical certification from a prior year and he or she is
189 still permanently and totally disabled, a copy of the original
190 certificate is acceptable as proof of disability. A copy of the
191 form filed for the federal disability income tax exclusion is
192 acceptable: *Provided, however*, That:

193 (i) Where the total modification under subdivisions (1),
194 (2), (5), (6), (7), and (8) of this subsection is \$8,000 per
195 person or more, no deduction shall be allowed under this
196 subdivision; and

197 (ii) Where the total modification under subdivisions (1),
198 (2), (5), (6), (7), and (8) of this subsection is less than \$8,000
199 per person, the total modification allowed under this
200 subdivision for all gross income received by that person
201 shall be limited to the difference between \$8,000 and the
202 sum of modifications under subdivisions (1), (2), (5), (6),
203 (7), and (8) of this subsection;

204 (10) Federal adjusted gross income in the amount of
205 \$8,000 received from any source after December 31, 1986,
206 by the surviving spouse of any person who had attained the
207 age of 65 or who had been certified as permanently and
208 totally disabled, to the extent includable in federal adjusted
209 gross income for federal tax purposes: *Provided*, That:

210 (i) Where the total modification under subdivisions (1),
211 (2), (5), (6), (7), and (8) of this subsection is \$8,000 or more,
212 no deduction shall be allowed under this subdivision; and

213 (ii) Where the total modification under subdivisions (1),
214 (2), (5), (6), (7), and (8) of this subsection is less than \$8,000
215 per person, the total modification allowed under this
216 subdivision for all gross income received by that person shall
217 be limited to the difference between \$8,000 and the sum of
218 subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

219 (11) Contributions from any source to a medical savings
220 account established by or for the individual pursuant to §33-
221 15-20 or §33-16-15 of this code, plus interest earned on the
222 account, to the extent includable in federal adjusted gross
223 income for federal tax purposes: *Provided*, That the amount
224 subtracted pursuant to this subdivision for any one taxable
225 year may not exceed \$2,000 plus interest earned on the
226 account. For married individuals filing a joint return, the
227 maximum deduction is computed separately for each
228 individual; and

229 (12) Any other income which this state is prohibited
230 from taxing under the laws of the United States including,
231 but not limited to, tier I retirement benefits as defined in
232 Section 86(d)(4) of the Internal Revenue Code.

233 (d) *Modification for West Virginia fiduciary adjustment.*
234 — There shall be added to or subtracted from federal
235 adjusted gross income, as the case may be, the taxpayer's
236 share, as beneficiary of an estate or trust, of the West
237 Virginia fiduciary adjustment determined under §11-21-19
238 of this code.

239 (e) *Partners and S corporation shareholders.* — The
240 amounts of modifications required to be made under this
241 section by a partner or an S corporation shareholder, which
242 relate to items of income, gain, loss or deduction of a
243 partnership or an S corporation, shall be determined under
244 §11-21-17 of this code.

245 (f) *Husband and wife.* — If husband and wife determine
246 their federal income tax on a joint return but determine their
247 West Virginia income taxes separately, they shall determine

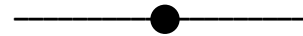
248 their West Virginia adjusted gross incomes separately as if
249 their federal adjusted gross incomes had been determined
250 separately.

251 (g) *Effective date.* –

252 (1) Changes in the language of this section enacted in
253 the year 2000 shall apply to taxable years beginning after
254 December 31, 2000.

255 (2) Changes in the language of this section enacted in
256 the year 2002 shall apply to taxable years beginning after
257 December 31, 2002.

258 (3) Changes in the language of this section enacted in
259 the year 2019 shall apply to taxable years beginning after
260 December 31, 2018.



CHAPTER 249

(H. B. 2311 - By Delegate Howell)

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-1-9, relating
to exempting short-term license holders to submit information
to the Tax Commissioner once the term of the permit has
expired; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. SUPERVISION.

**§11-1-9. Holders of short-term permits and licenses to sell;
rulemaking.**

1 (a) Notwithstanding any provision of this chapter to the
2 contrary, holders of short-term permits or licenses to sell
3 specific items, e.g., fireworks, beer, food, or wine at
4 festivals, may not be required to submit any information to
5 the Tax Commissioner after the term of the permit or license
6 has expired: *Provided*, That the permit or license holder has
7 filed with the Tax Commissioner all necessary information
8 specific to the time period the permit or license was
9 authorized and remitted to the Tax Commissioner and the
10 permit or license holder has remitted all taxes and fees that
11 are due under this code. This section does not prevent the
12 Tax Commissioner from auditing the books and records of
13 the license or permit holder for compliance with the
14 provisions of this code.

15 (b) The Tax Commissioner shall propose rules for
16 legislative approval in accordance with §29A-3-1 *et seq.* of
17 this code to implement this section.

CHAPTER 250

**(Com. Sub. for H. B. 2405 - By Delegates Ellington,
Summers, Pack, Atkinson, Hollen, Rohrbach,
Pushkin, Walker and Fleischauer)**

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to repeal §11-26-1, §11-26-2, §11-26-3, §11-26-4, §11-26-5, §11-26-6, §11-26-7, §11-26-8, §11-26-9, §11-26-10, §11-26-11, §11-26-12, §11-26-13, §11-26-14, §11-26-15, §11-26-16, §11-26-17, §11-26-19 and §11-26-20 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-27-3 of said code; and to amend said code by adding thereto a new section, designated §11-27-10a, all relating to imposing a health care related provider tax on certain health

care organizations; repealing an outdated tax; defining terms; establishing tax rates; requiring federal approval of tax; setting effective date; and setting a termination date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.

§11-26-1. Legislative findings.

1 [Repealed]

§11-26-2. Short title; arrangement and classification.

1 [Repealed]

§11-26-3. Definitions.

1 [Repealed]

§11-26-4. Imposition of excise tax; rate and application of tax.

1 [Repealed]

§11-26-5. Administration.

1 [Repealed]

§11-26-6. Accounting periods and methods of accounting.

1 [Repealed]

§11-26-7. Tax return and payment.

1 [Repealed]

§11-26-8. Extension of time for filing returns.

1 [Repealed]

§11-26-9. Extension of time for paying tax.

1 [Repealed]

§11-26-10. Place for filing returns or other documents.

1 [Repealed]

§11-26-11. Signing of returns and other documents.

1 [Repealed]

§11-26-12. Records.

1 [Repealed]

§11-26-13. Refunds and credits.

1 [Repealed]

§11-26-14. Cancellation of Medicaid certification for failure to pay delinquent tax.

1 [Repealed]

§11-26-15. General procedure and administration.

1 [Repealed]

§11-26-16. Crimes and penalties.

1 [Repealed]

§11-26-17. Effective dates.

1 [Repealed]

§11-26-19. Severability.

1 [Repealed]

§11-26-20. Transition rules; penalties; effective date.

1 [Repealed]

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-3. Definitions.

1 (a) *General.* — When used in this article, words defined
2 in subsection (b) of this section have the meaning ascribed
3 to them in this section, except in those instances where a

4 different meaning is distinctly expressed or the context in
5 which the word is used clearly indicates that a different
6 meaning is intended.

7 (b) *Definitions.* —

8 “Business” includes all health care activities engaged in,
9 or caused to be engaged in, with the object of gain or
10 economic benefit, direct or indirect, and whether engaged in
11 for profit, or not for profit, or by a governmental entity.
12 “Business” does not include services rendered by an
13 employee within the scope of his or her contract of
14 employment. Employee services, services by a partner on
15 behalf of his or her partnership, and services by a member
16 of any other business entity on behalf of that entity, are the
17 business of the employer, or partnership, or other business
18 entity, as the case may be, and reportable as such for
19 purposes of the taxes imposed by this article.

20 “Broad-based health care related tax” means a broad-
21 based health care related tax as defined in Section 1903 of
22 the Social Security Act, including a health-care related tax
23 for which a waiver from the broad-based or uniformity
24 requirements has been granted and is in effect by the federal
25 Centers for Medicare and Medicaid Services pursuant to the
26 provisions of Section 1903 of the Social Security Act and
27 implementing regulations.

28 “Corporation” includes associations, joint-stock
29 companies and insurance companies. It also includes
30 governmental entities when and to the extent such
31 governmental entities engaged in activities taxable under
32 this article.

33 “Department” means the West Virginia Department of
34 Health and Human Resources.

35 “Includes” and “including” when used in a definition
36 contained in this article shall not be deemed to exclude other
37 things otherwise within the meaning of the term being
38 defined.

39 “Partner” includes a member in a “partnership”, as
40 defined in this section.

41 “Partnership” includes a syndicate, group, pool, joint
42 venture or other unincorporated organization through or by
43 means of which any privilege taxable under this article is
44 exercised, and which is not within the meaning of this article
45 a trust or estate or corporation. It includes a limited liability
46 company when such company is treated as a partnership for
47 federal income tax purposes.

48 “Person” means any individual, partnership,
49 association, company, corporation or other entity engaging
50 in a privilege taxed under this article.

51 “Secretary” means the Secretary of West Virginia
52 Department of Health and Human Resources.

53 “Social Security Act” means the Social Security Act of
54 the United States, as amended by Public Law 109-171, and
55 codified in Title 42, Section 1396b of the United States
56 Code.

57 “Tax” means any tax imposed by this article and, for
58 purposes of administration and collection of such tax,
59 includes any interest, additions to tax or penalties imposed
60 with respect thereto under article 10 of this chapter.

61 “Taxable year” means the calendar year, or the fiscal
62 year ending during such calendar year, upon the basis of
63 which the tax imposed by this article is computed. In the
64 case of a return made under this article, or regulations of the
65 Tax Commissioner, for a fractional part of a year, the term
66 “taxable year” means the period for which such return is
67 made.

68 “Taxpayer” means any person subject to any tax
69 imposed by this article.

70 “This code” means the Code of West Virginia, 1931, as
71 amended.

72 “This state” means the State of West Virginia.

§11-27-10a. Imposition of tax on managed care organizations.

1 (a) Imposition of tax. — For the privilege of holding a
2 certificate of authority within this state to establish or
3 operate a “health maintenance organization” pursuant to
4 §33-25A-4 of this code (hereinafter “certified HMO”), there
5 is hereby levied and shall be collected from every such
6 certified HMO an annual broad-based health-care related
7 tax.

8 (b) *Rate and measure of tax.* — The tax imposed by this
9 section shall be based on the following rates applied to each
10 taxable health plan’s total Medicaid member months within
11 tiers I, II and III, and to non-Medicaid member months
12 within tiers IV and V:

13 (1) Tier I — \$17.00 for each Medicaid member month
14 under 250,000;

15 (2) Tier II — \$15.00 for each Medicaid member month
16 between 250,000 and 500,000;

17 (3) Tier III — \$7.00 for each Medicaid member month
18 greater than 500,000;

19 (4) Tier IV — \$0.25 for each non-Medicaid member
20 month under 150,000; and

21 (5) Tier V — \$0.10 for each non-Medicaid member
22 month of 150,000 or more.

23 (c) Definitions.

24 (1) “Managed care organization” or “MCO” means a
25 certified HMO that provides health care services to
26 Medicaid members pursuant to an agreement or contract
27 with the department.

28 (2) “Managed care plan” means an agreement or
29 contract between the secretary and an MCO under which the

30 MCO agrees to provide health care services to Medicaid
31 members.

32 (3) “Medicaid member” means an individual enrolled in
33 a taxable health plan who is a Medicaid beneficiary on
34 whose behalf the department directly pays the health plan a
35 capitated payment.

36 (4) “Medicaid member months” means the number of
37 Medicaid members in a taxable health plan in each month
38 or part of a month over the course of the tax year.

39 (5) “Non-Medicaid enrollee” means an individual who
40 is an “enrollee”, “subscriber”, or “member”, as those terms
41 are defined in §33-25A-2(8) of this code, in a taxable health
42 plan who is not a Medicaid member: *Provided*, That this
43 definition does not include Public Employees Retirement
44 Agency members or Medicare Advantage members.

45 (6) “Non-Medicaid member months” means the number
46 of non-Medicaid enrollees in a taxable health plan in each
47 month or part of a month over the course of the tax year, but
48 does not include persons enrolled in either a health plan
49 issued by the West Virginia Public Employees Insurance
50 Agency or a plan issued pursuant to the Federal Employees
51 Health Benefits Act of 1959 (Public Law 86-382) to the
52 extent the imposition of the tax under this section is
53 preempted pursuant to Section 8909(f) of Title 5 of the
54 United States Code.

55 (7) “Taxable health plan” means: (i) An agreement or
56 contract under which a certified HMO agrees to provide
57 health care services to a non-Medicaid member in
58 accordance with §33-25A-1 *et seq.* of this code and (ii) a
59 managed care plan.

60 (d) *Effective date.* –

61 (i) Subject to an earlier termination pursuant to the terms
62 of paragraph (ii), the tax imposed by this section shall be
63 effective for three years beginning on the first day of the

64 state fiscal year following a 30-day period after the secretary
65 has posted notice on the department Internet website that
66 approval had been received from the federal Centers for
67 Medicare and Medicaid Services that the tax imposed by
68 this section is a permissible health care related tax in
69 accordance with Section 433.68 of Title 42 of the Code of
70 Federal Regulations and is therefore eligible for federal
71 financial participation.

72 (ii) The tax imposed by this section shall be
73 administered in accordance with the provisions of this
74 article and the tax administration and procedures act in §11-
75 10-1 *et seq.*: *Provided*, That the tax imposed by this section
76 shall be automatically void if the Centers for Medicare and
77 Medicaid Services determines that it is no longer a
78 permissible health care related tax that is eligible for federal
79 financial participation. Subject to the terms of this
80 paragraph, the tax imposed by this section shall remain in
81 effect only until June 30, 2022, and as of June 30, 2022, is
82 repealed.

83 (e) *Time for Paying Tax.* — Notwithstanding the
84 provisions of §11-27-25 of this code no taxes may be
85 collected under this article until the department receives
86 written notice that the federal Centers for Medicare and
87 Medicaid Services has approved proposed Medicaid rates as
88 actuarially sound for the taxable year in which the tax will
89 be imposed.

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CHAPTER 251

**(H. B. 2515 - By Delegates Butler, Cadle, Wilson,
Ellington, Shott, Howell, Hardy, Kump, Pack, Storch
and Fast)**

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §11-15-9i of the Code of West Virginia, 1931, as amended, relating to exempting from state sales and use tax the sale and installation of mobility enhancing equipment installed in a new or used motor vehicle for the use of a person with physical disabilities and the sale and installation for the repair or replacement parts of mobility enhancing equipment; and establishing a definition for mobility enhancing equipment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

1 (a) Notwithstanding any provision of this article, article
2 15A or article 15B of this chapter, the purchase by a health
3 care provider of drugs, durable medical equipment, mobility
4 enhancing equipment and prosthetic devices, all as defined
5 in §11-15B-2 of this code, to be dispensed upon prescription
6 and intended for use in the diagnosis, cure, mitigation,
7 treatment or prevention of injury or disease are exempt from
8 the tax imposed by this article: *Provided*, That the
9 exemption provided for the purchase by a health care
10 provider of durable medical equipment is suspended for the
11 period beginning on and after July 1, 2016, and continuing

12 until June 30, 2018. On and after July 1, 2018, the
13 exemption is reestablished.

14 (b) Notwithstanding any provision of this article, article
15 15A or article 15B of this chapter, the purchase of durable
16 medical equipment, as defined in §11-15B-2 of this code, to
17 be dispensed upon prescription by a health care provider and
18 intended for use in the diagnosis, cure, mitigation, treatment
19 or prevention of injury or disease is exempt from the tax
20 imposed by this article: *Provided*, That the durable medical
21 equipment is purchased by an individual for exclusive use
22 by the purchaser or another individual and used
23 predominantly by the recipient individual in his or her home
24 environment.

25 (1) *Effective Dates.* — The provisions of this subsection
26 shall apply to purchases made on and after July 1, 2016.

27 (2) *Per se exemption.* — The exemption set forth by this
28 subsection shall be given without the necessity of an
29 exemption certificate, direct pay permit or refund or credit
30 request.

31 (c) Notwithstanding any provision of this article, article
32 15A, or article 15B of this chapter, the sale and installation
33 of mobility enhancing equipment, as defined in §11-15B-2
34 of this code, installed in a new or used motor vehicle for the
35 use of a person with physical disabilities are exempt from
36 the taxes imposed by this article. Any sale and installation
37 for the repair or replacement parts of mobility enhancing
38 equipment, whether the repair or replacement parts are
39 purchased separately or in conjunction with the mobility
40 enhancing equipment, and whether the parts continue the
41 original function or enhance the functionality of the
42 mobility enhancing equipment, are exempt from the taxes
43 imposed by this article.

44 (d) *Definitions.* — The following definitions shall apply:

45 (1) For purposes of this section, “used predominantly by
46 the recipient individual in his or her home environment”,

47 with reference to durable medical equipment, means that the
48 equipment is sold to an individual for use by the individual
49 purchaser or by another individual at home, regardless of
50 where the individual resides. For purposes of this definition,
51 the term “home” means and includes facilities such as
52 nursing homes, assisted care centers and school dormitories,
53 of which a user or purchaser is a resident. A purchase of
54 such equipment shall not be disqualified from the
55 exemption because the equipment is incidentally used on
56 the streets, in commercial establishments, in public places
57 and in locations other than the home, so long as use in the
58 home is the predominant use. For purposes of this
59 definition, the term “individual” means and is limited to a
60 single, separate human being and specifically excludes any
61 health care provider, or provider of nursing services,
62 personal care services, behavioral care services, residential
63 care or assisted living care, or any entity or organization
64 other than a human being.

65 (2) When the equipment is sold to a facility such as a
66 hospital, nursing home, medical clinic, dental office,
67 chiropractor, or optician office, then this shall not constitute
68 a use of the equipment by the recipient individual in his or
69 her home environment. The fact that a nursing home may
70 use the equipment only for its residents does not make the
71 equipment exempt for home use: *Provided*, That nothing in
72 this section shall be interpreted to void or abrogate lawful
73 assertion and application of the purchases for resale
74 exemption as it may apply to any purchaser of durable
75 medical equipment.

76 (3) For purposes of this section, “health care provider”
77 means any person licensed to prescribe drugs, durable
78 medical equipment, mobility enhancing equipment and
79 prosthetic devices intended for use in the diagnosis, cure,
80 mitigation, treatment, or prevention of injury or disease. For
81 purposes of this section, the term “health care provider”
82 includes any hospital, medical clinic, nursing home or
83 provider of inpatient hospital services and any provider of

84 outpatient hospital services, physician services, nursing
85 services, ambulance services, surgical services, or
86 veterinary services: *Provided*, That the amendment to this
87 subsection enacted during the 2009 regular legislative
88 session shall be effective on or after July 1, 2009.

89 (4) The term “durable medical goods”, as used in this
90 article, means “durable medical equipment” as defined in
91 §11-15B-2 of this code.

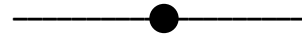
92 (5) For purposes of this section, the term “nursing home
93 or facility” means any institution, residence or place, or any
94 part or unit thereof, however named, in this state which is
95 advertised, offered, maintained, or operated by the
96 ownership or management, whether for a consideration or
97 not, for the express or implied purpose of providing
98 accommodations and care, for a period of more than 24
99 hours, for four or more persons who are ill or otherwise
100 incapacitated and in need of extensive, ongoing nursing care
101 due to physical or mental impairment, or which provides
102 services for the rehabilitation of persons who are
103 convalescing from illness or incapacitation: *Provided*, That
104 the care or treatment in a household, whether for
105 compensation or not, of any person related by blood or
106 marriage, within the degree of consanguinity of second
107 cousin to the head of the household, or his or her spouse,
108 may not be deemed to constitute a nursing home within the
109 meaning of this article.

110 (6) For purposes of this section, the term “assisted care
111 center” means any living facility, residence or place of
112 accommodation, however named, available for four or more
113 residents, in this state which is advertised, offered,
114 maintained or operated by the ownership or management,
115 whether for a consideration or not, for the express or implied
116 purpose of having personal assistance or supervision, or
117 both, provided to any residents therein who are dependent
118 upon the services of others by reason of physical or mental
119 impairment, and who may also require nursing care at a
120 level that is not greater than limited and intermittent nursing

121 care: *Provided*, That the care or treatment in a household,
122 whether for compensation or not, of any person related by
123 blood or marriage, within the degree of consanguinity of
124 second cousin to the head of the household, or his or her
125 spouse, may not be deemed to constitute an assisted living
126 residence within the meaning of this article.

127 (7) For purposes of this section, the term “school
128 dormitory” means housing or a unit of housing provided
129 primarily for students as a temporary or permanent dwelling
130 place or abode and owned, operated, or controlled by an
131 institution of higher education, and shall be synonymous
132 with the term “residence hall”.

133 (8) For purposes of this section, the term “mobility
134 enhancing equipment” means “mobility enhancing
135 equipment” as defined in §11-15B-2 of this code.



CHAPTER 252

**(Com. Sub. for H. B. 2813 - By Delegates
Householder and Criss)
[By Request of The State Tax Division]**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §11-15A-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-15A-6b, all relating generally to collection of use tax; defining terms, requiring collection of use tax by marketplace facilitators, remote sellers, and referrers satisfying certain economic nexus requirements; and specifying internal effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. USE TAX.**§11-15A-1. Definitions.**

1 (a) *General.* — When used in this article and article
2 fifteen of this chapter, terms defined in subsection (b) of this
3 section have the meanings ascribed to them in this section,
4 except in those instances where a different meaning is
5 provided in this article or the context in which the word is
6 used clearly indicates that a different meaning is intended
7 by the Legislature:

8 (b) *Definitions.* —

9 (1) “Affiliated person” means a person that, with respect
10 to another person:

11 (A) Has an ownership interest of more than five percent,
12 whether direct or indirect, in the other person; or

13 (B) Is related to the other person because a third person,
14 or group of third persons who are affiliated persons with
15 respect to each other, holds an ownership interest of more
16 than five percent, whether direct or indirect, in the related
17 persons.

18 (2) “Business” means any activity engaged in by any
19 person, or caused to be engaged in by any person, with the
20 object of direct or indirect economic gain, benefit or
21 advantage, and includes any purposeful revenue generating
22 activity in this state;

23 (3) “Consumer” means any person purchasing tangible
24 personal property, custom software or a taxable service
25 from a retailer as defined in §11-15A-1(b)(23), or from a
26 seller as defined in §11-15B-2 of this code;

27 (4) “Electronic” means relating to technology having
28 electrical, digital, magnetic, wireless, optical,
29 electromagnetic or similar capabilities;

30 (5) “Fiat currency” means government-issued currency
31 that is designated as legal tender in its country of issuance
32 through government decree, regulation, or law;

33 (6) “Lease” includes rental, hire and license;

34 (7) “Marketplace” includes any means by which any
35 marketplace seller sells or offers for sale tangible personal
36 property, custom software, or services, for delivery into this
37 state, regardless of whether the marketplace seller has a
38 physical presence in this state;

39 (8) “Marketplace facilitator” means a person that
40 contracts with one or more sellers to facilitate for
41 consideration, regardless of whether deducted as fees from
42 the transaction, the sale of the seller’s products through a
43 physical or electronic marketplace operated by the person,
44 and engages:

45 (A) Directly, or indirectly, through one or more
46 affiliated persons, in any of the following:

47 (i) Transmitting or otherwise communicating the offer
48 or acceptance between the buyer and seller;

49 (ii) Owning or operating the infrastructure, electronic or
50 physical, or technology that brings buyers and sellers
51 together;

52 (iii) Providing a virtual currency that buyers are allowed
53 or required to use to purchase products from the seller; or

54 (iv) Software development or research and development
55 activities related to any of the activities described in §11-
56 15A-1(b)(7)(B) of this code, if such activities are directly
57 related to a physical or electronic marketplace operated by
58 the person or an affiliated person; and

59 (B) In any of the following activities with respect to the
60 seller’s products:

- 61 (i) Payment processing services;
- 62 (ii) Fulfillment or storage services;
- 63 (iii) Listing products for sale;
- 64 (iv) Setting prices;
- 65 (v) Branding sales as those of the marketplace
66 facilitator;
- 67 (vi) Order taking;
- 68 (vii) Advertising or promotion; or
- 69 (viii) Providing customer service or accepting or
70 assisting with returns or exchanges.

71 (C) This term does not include a payment processor
72 business appointed by a merchant to handle payment
73 transactions from various channels, such as credit cards and
74 debit cards, and whose sole activity with respect to
75 marketplace sales is to handle payment transactions
76 between two parties.

77 (9) “Marketplace seller” means a seller that makes retail
78 sales through any physical or electronic marketplaces
79 operated by a marketplace facilitator or directly resulting
80 from a referral by a referrer, regardless of whether the seller
81 is required to be registered with the Tax Commissioner as
82 provided in §11-12-1 *et seq.* of this code.

83 (10) “Newspaper” means a paper that is printed and
84 distributed usually daily or weekly and that contains news,
85 articles of opinion, features, and advertising.

86 (11) “Person” includes any individual, firm,
87 partnership, joint venture, joint stock company, association,
88 public or private corporation, limited liability company,
89 limited liability partnership, cooperative, estate, trust,
90 business trust, receiver, executor, administrator, any other
91 fiduciary, any representative appointed by order of any

92 court or otherwise acting on behalf of others, or any other
93 group or combination acting as a unit, and the plural as well
94 as the singular number;

95 (12) “Platform” means an electronic or physical
96 medium, including, but not limited to, a website or catalog,
97 operated by a referrer.

98 (13) “Product” has the same meaning as provided in
99 §11-15B-15 of this code.

100 (14) “Purchase” means any transfer, exchange or barter,
101 conditional or otherwise, in any manner or by any means
102 whatsoever, for a consideration;

103 (15) “Purchase price” means the measure subject to the
104 tax imposed by this article and has the same meaning as
105 sales price;

106 (16) “Purchaser” means any consumer who purchases
107 or leases a product or service sourced to this state under §11-
108 15B-1 *et seq.* of this code.

109 (17) “Referral” means the transfer by a referrer of a
110 potential customer to a marketplace seller who advertises or
111 lists products for sale on the referrer’s platform.

112 (18) (A) “Referrer” means a person, other than a person
113 engaging in the business of printing a newspaper or
114 publishing a newspaper as defined in §11-15A-1(b)(10) of
115 this code, who contracts or otherwise agrees with a seller to
116 list or advertise for sale one or more items in any medium,
117 including a website or catalog; receives a commission, fee,
118 or other consideration from the seller for the listing or
119 advertisement; transfers, via telephone, internet link, or
120 other means, a purchaser to a seller or an affiliated person
121 to complete the sale; and does not collect receipts from the
122 purchasers for the transaction.

123 (B) “Referrer” does not include a person that:

124 (i) Provides internet advertising services; and

125 (ii) Does not ever provide either the marketplace seller's
126 shipping terms or advertise whether a marketplace seller
127 charges sales and use taxes.

128 (19) "Related person" has the same meaning prescribed
129 by section 267 or 707(b) of the Internal Revenue Code, as
130 defined in §11-21-9 of this code.

131 (20) "Remote seller" means any seller, other than a
132 marketplace facilitator or referrer, who does not have a
133 physical presence in this state that, through a platform, sells
134 tangible personal property or services to persons in this
135 state, the sale or use of which is subject to the tax imposed
136 by this article. The term does not include an employee who
137 in the ordinary scope of employment renders services to his
138 or her employer in exchange for wages and salaries.

139 (21) "Resident" means any person that resides, is
140 located, has a place of business, or is conducting business in
141 West Virginia;

142 (22) "Retail sale" and "sale" have the same meaning as
143 provided in §11-15B-1 *et seq.* of this code.

144 (23) "Retailer" means and includes every person
145 engaging in the business of selling, leasing or renting
146 tangible personal property or custom software or furnishing
147 a taxable service for use within the meaning of this article,
148 or in the business of selling, at auction, tangible personal
149 property or custom software owned by the person or others
150 for use in this state: *Provided*, That when in the opinion of
151 the Tax Commissioner it is necessary for the efficient
152 administration of this article to regard any salespersons,
153 representatives, truckers, peddlers or canvassers as the
154 agents of the dealers, distributors, supervisors, employees
155 or persons under whom they operate or from whom they
156 obtain the tangible personal property sold by them,
157 irrespective of whether they are making sales on their own

158 behalf or on behalf of the dealers, distributors, supervisors,
159 employers or persons, the Tax Commissioner may so regard
160 them and may regard the dealers, distributors, supervisors,
161 employers, or persons as retailers for purposes of this
162 article;

163 (24) “Retailer engaging in business in this state” or any
164 like term, unless otherwise limited by federal statute, means
165 and includes, but is not limited to:

166 (A) Any retailer having or maintaining, occupying or
167 using, within this state, directly or by a subsidiary, an office,
168 distribution house, sales house, warehouse, or other place of
169 business, or any agent (by whatever name called) operating
170 within this state under the authority of the retailer or its
171 subsidiary, irrespective of whether the place of business or
172 agent is located here permanently or temporarily, or whether
173 the retailer or subsidiary is admitted to do business within
174 this state pursuant §31D-15-1 *et seq.* of this code or §31E-
175 14-1 *et seq.* of this code; or

176 (B) On and after January 1, 2014, any retailer that is
177 related to, or part of a unitary business with, a person, entity
178 or business that, without regard to whether the retailer is
179 admitted to do business in this state pursuant to §31D-15-1
180 *et seq.* of this code or §31E-14-1 *et seq.* of this code, is a
181 subsidiary of the retailer, or is related to, or unitary with, the
182 retailer as a related entity, a related member or part of a
183 unitary business, all as defined in §11-24-3a of this code;

184 (i) That, pursuant to an agreement with or in cooperation
185 with the related retailer, maintains an office, distribution
186 house, sales house, warehouse or other place of business in
187 this state;

188 (ii) That performs services in this state in connection
189 with tangible personal property or services sold by the
190 retailer, or any related entity, related member or part of the
191 unitary business;

192 (iii) That, by any agent, or representative (by whatever
193 name called), or employee, performs services in this state in
194 connection with tangible personal property or services sold
195 by the retailer, or any related entity, related member or part
196 of the unitary business; or

197 (iv) That directly, or through or by an agent,
198 representative or employee located in, or present in, this
199 state, solicits business in this state for or on behalf of the
200 retailer, or any related entity, related member or part of the
201 unitary business.

202 (C) For purposes of paragraph (B) of this subdivision,
203 the term “service” means and includes, but is not limited to,
204 customer support services, help desk services, call center
205 services, repair services, engineering services, installation
206 service, assembly service, delivery service by means other
207 than common carrier or the United States Postal Service,
208 technical assistance services, the service of investigating,
209 handling or otherwise assisting in resolving customer issues
210 or complaints while in this state, the service of operating a
211 mail order business or telephone, Internet or other remote
212 order business from facilities located within this state, the
213 service of operating a website or Internet-based business
214 from a location within the state, or any other service.

215 (25) “Sale” means any transaction resulting in the
216 purchase or lease of tangible personal property, custom
217 software or a taxable service from a retailer;

218 (26) “Seller” means a retailer, and includes every person
219 selling or leasing tangible personal property or custom
220 software or furnishing a taxable service in a transaction that
221 is subject to the tax imposed by this article;

222 (27) “Solicitor” means a person that directly or
223 indirectly solicits business for a retailer.

224 (28) “Streamlined sales and use tax agreement” or
225 “agreement”, when used in this article, has the same

226 meaning as when used in §11-15B-1 *et seq.*, except when
227 the context in which the word agreement is used clearly
228 indicates that a different meaning is intended by the
229 Legislature;

230 (29) “Tangible personal property” means personal
231 property that can be seen, weighed, measured, felt, or
232 touched, or that is in any manner perceptible to the senses.
233 “Tangible personal property” includes, but is not limited to,
234 electricity, water, gas, and prewritten computer software;

235 (30) “Tax commissioner” or “commissioner” means the
236 State Tax Commissioner, or his or her delegate. The term
237 “delegate” in the phrase “or his or her delegate”, when used
238 in reference to the Tax Commissioner, means any officer or
239 employee of the State Tax Division duly authorized by the
240 Tax Commissioner directly, or indirectly by one or more
241 redelegations of authority, to perform the functions
242 mentioned or described in this article or rules promulgated
243 for this article;

244 (31) “Taxpayer” includes any person within the
245 meaning of this section, who is subject to a tax imposed by
246 this article, whether acting for himself or herself or as a
247 fiduciary; and

248 (32) “Use” means and includes:

249 (A) The exercise by any person of any right or power
250 over tangible personal property or custom software incident
251 to the ownership, possession or enjoyment of the property,
252 or by any transaction in which possession of or the exercise
253 of any right or power over tangible personal property,
254 custom software or the result of a taxable service is acquired
255 for a consideration, including any lease, rental or
256 conditional sale of tangible personal property or custom
257 software; or

258 (B) The use or enjoyment in this state of the result of a
259 taxable service. As used in this subdivision, “enjoyment”

260 includes a purchaser's right to direct the disposition of the
261 property or the use of the taxable service, whether or not the
262 purchaser has possession of the property.

263 The term "use" does not include the keeping, retaining
264 or exercising any right or power over tangible personal
265 property, custom software or the result of a taxable service
266 for the purpose of subsequently transporting it outside the
267 state for use thereafter solely outside this state.

268 (33)(A) "Virtual currency" means any type of digital
269 unit that is used as a medium of exchange or a form of
270 digitally stored value. "Virtual currency" shall be broadly
271 construed to include digital units of exchange that (i) have a
272 centralized repository or administrator; (ii) are
273 decentralized and have no centralized repository or
274 administrator; or (iii) may be created or obtained by
275 computing or manufacturing effort.

276 (B) "Virtual currency" shall not be construed to include
277 any of the following:

278 (i) Digital units that (I) are used solely within online
279 gaming platforms, (II) have no market or application outside
280 of those gaming platforms, (III) cannot be converted into, or
281 redeemed for, fiat currency or virtual currency, and (IV)
282 may or may not be redeemable for real-world goods,
283 services, discounts, or purchases;

284 (ii) Digital units that can be redeemed for goods,
285 services, discounts, or purchases as part of a customer
286 affinity or rewards program with the issuer and/or other
287 designated merchants or can be redeemed for digital units in
288 another customer affinity or rewards program, but cannot be
289 converted into, or redeemed for, fiat currency or virtual
290 currency; or

291 (iii) Digital units used as part of prepaid cards.

292 (34) "West Virginia gross revenue" means gross
293 receipts from all sales sourced to West Virginia, as provided

294 in §11-15B-1 *et seq.* of this code, whether the sale is taxable
295 or exempt from tax.

296 (c) *Additional definitions.* — Other terms used in this
297 article are defined in articles fifteen and fifteen-b of this
298 chapter, which definitions are incorporated by reference
299 into article fifteen-a. Additionally, other sections of this
300 article may define terms primarily used in the section in
301 which the term is defined.

§11-15A-6b. Collection of tax by marketplace facilitators and referrers.

1 (a) *Duty to collect tax.* — For purposes of §11-15A-1 *et*
2 *seq.* of this code and for collection of use tax required under
3 §11-15A-6 and §11-15A-6b of this code, the phrase retailer
4 engaging in business in this state also means and includes a
5 remote seller, marketplace facilitator, or referrer that meets
6 the requirements of subsection (e) of this section. A
7 marketplace facilitator or referrer is required to collect and
8 remit the use tax on all taxable sales of tangible personal
9 property, [custom software] or services: (i) Made by the
10 marketplace facilitator or referrer; or (ii) facilitated for
11 marketplace sellers, to purchasers in this state.

12 (b) *Agency.* — For purposes of §11-15A-6b of this code,
13 a marketplace facilitator or referrer is deemed to be an agent
14 of any marketplace seller making retail sales through the
15 marketplace facilitator's physical or electronic marketplace
16 or directly resulting from a referral of the purchaser by the
17 referrer.

18 (c) *Sales made through a solicitor in this state.* — A
19 retailer is deemed to have a solicitor in this state if the
20 retailer enters into an agreement with a resident under which
21 the resident, for a commission, fee, or other similar
22 consideration, directly or indirectly refers potential
23 customers, whether by link on an internet site, or otherwise,
24 to the retailer. This determination may be rebutted by a
25 showing of proof that the resident with whom the retailer

26 has an agreement did not engage in any solicitation in this
27 state on behalf of the retailer that would satisfy the nexus
28 requirement of the United States Constitution during the
29 calendar year in question.

30 (d) *Record keeping.* — In addition to other applicable
31 record keeping requirements, the Tax Commissioner may
32 require a marketplace facilitator or referrer to provide or
33 make available to the Tax Commissioner any information
34 the commissioner determines is reasonably necessary to
35 enforce the provisions of §11-15A-1 *et seq.* of this code.
36 Such information may include documentation of sales made
37 by marketplace sellers through the marketplace facilitator's
38 physical or electronic marketplace or directly resulting from
39 a referral by the referrer. The Tax Commissioner may
40 prescribe by procedural rule promulgate, as provided in
41 §29A-3-1 *et seq.* of this code, the form and manner for
42 providing this information.

43 (e) *Economic nexus.* — A marketplace facilitator,
44 referrer, or remote seller shall collect the tax imposed by
45 §11-15A-2 of the code when:

46 (1) The marketplace facilitator, referrer, or remote seller
47 makes or facilitates West Virginia sales on its own behalf or
48 on behalf of one or more marketplace sellers equal to or
49 exceeding \$100,000 in gross revenue for an immediately
50 preceding calendar year, or a current calendar year; or

51 (2) The marketplace facilitator, referrer, or remote seller
52 makes or facilitates West Virginia sales on its own behalf or
53 on behalf of one or more marketplace sellers in 200 or more
54 separate transactions for an immediately preceding calendar
55 year or a current calendar year.

56 (f) *Effective date.* — This section enacted in 2019 shall
57 apply to sales by a marketplace facilitator, or referrer, made
58 on and after July 1, 2019.

●

CHAPTER 253

**(H. B. 2829 - By Delegates Nelson, Householder,
Shott, Ellington, Atkinson, Jennings, Sypolt,
Hartman, Campbell, Cooper and Cowles)**

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating to termination and expiration of the taxes imposed upon persons exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use limestone or sandstone on and after July 1, 2019.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

***§11-13A-3. Imposition of tax on privilege of severing coal; reduction of severance rate for coal mined by underground methods based on seam thickness; termination of severance tax on healthcare services; termination of severance taxes on limestone and sandstone.**

- 1 (a) *Imposition of tax.* — Upon every person exercising
- 2 the privilege of engaging or continuing within this state in
- 3 the business of severing, extracting, reducing to possession
- 4 and producing for sale, profit or commercial use coal,
- 5 limestone or sandstone, or in the business of furnishing
- 6 certain health care services, there is hereby levied and shall
- 7 be collected from every person exercising such privilege an
- 8 annual privilege tax.

***NOTE:** This section was also amended by H. B. 3142, which passed subsequent to this act.

9 (b) *Rate and measure of tax.* — Subject to the provisions
10 of §11-13A-3(g) of this code, the tax imposed in §11-13A-
11 3(a) of this code shall be five percent of the gross value of
12 the natural resource produced or the health care service
13 provided, as shown by the gross income derived from the
14 sale or furnishing thereof by the producer or the provider of
15 the health care service, except as otherwise provided in this
16 article. In the case of coal, this five percent rate of tax
17 includes the thirty-five one hundredths of one percent
18 additional severance tax on coal imposed by the state for the
19 benefit of counties and municipalities as provided in §11-
20 13A-6 of this code.

21 (c) *“Certain health care services” defined.* — For
22 purposes of this section, the term “certain health care
23 services” means, and is limited to, behavioral health
24 services.

25 (d) *Tax in addition to other taxes.* — The tax imposed
26 by this section shall apply to all persons severing or
27 processing, or both severing and processing, in this state
28 natural resources enumerated in §11-13A-3(a) of this code
29 and to all persons providing certain health care services in
30 this state as enumerated in §11-13A-3(c) of this code and
31 shall be in addition to all other taxes imposed by law.

32 (e) *Effective date.* — This section, as amended in 1993,
33 shall apply to gross proceeds derived after May 31, 1993.
34 The language of this section, as in effect on January 1, 1993,
35 shall apply to gross proceeds derived prior to June 1, 1993
36 and, with respect to such gross proceeds, shall be fully and
37 completely preserved.

38 (f) *Reduction of severance tax rate.* — For tax years
39 beginning after the effective date of this subsection, any
40 person exercising the privilege of engaging within this state
41 in the business of severing coal for the purposes provided in
42 §11-13A-3(a) of this code shall be allowed a reduced rate of
43 tax on coal mined by underground methods in accordance
44 with the following:

45 (1) For coal mined by underground methods from seams
46 with an average thickness of 37 inches to 45 inches, the tax
47 imposed in §11-13A-3(a) of this code shall be two percent
48 of the gross value of the coal produced. For coal mined by
49 underground methods from seams with an average thickness
50 of less than 37 inches, the tax imposed in §11-13A-3(a) of
51 this code shall be one percent of the gross value of the coal
52 produced. Gross value is determined from the sale of the
53 mined coal by the producer. This rate of tax includes the
54 thirty-five one hundredths of one percent additional
55 severance tax imposed by the state for the benefit of
56 counties and municipalities as provided in §11-13A-6 of
57 this code.

58 (2) This reduced rate of tax applies to any new
59 underground mine producing coal after the effective date of
60 this subsection, from seams of less than 45 inches in average
61 thickness or any existing mine that has not produced coal
62 from seams 45 inches or less in thickness in the 180 days
63 immediately preceding the effective date of this subsection.

64 (3) The seam thickness shall be based on the weighted
65 average isopach mapping of actual coal thickness by mine
66 as certified by a professional engineer.

67 (g)(1) *Termination and expiration of the behavioral*
68 *health severance and business privilege tax.* — The tax
69 imposed upon providers of health care services under the
70 provisions of this article shall expire, terminate and cease to
71 be imposed with respect to privileges exercised on or after
72 July 1, 2016. Expiration of the tax as provided in this
73 subsection shall not relieve any person from payment of any
74 tax imposed with respect to privileges exercised before the
75 expiration date.

76 (2) *Refunds made.* — The Tax Commissioner will issue
77 a requisition on the Treasury for any amount finally,
78 administratively or judicially determined to be an
79 overpayment of the tax terminated under this subsection.
80 The Auditor shall issue a warrant on the Treasurer for any

81 refund requisitioned under this subsection payable to the
82 taxpayer entitled to the refund, and the Treasurer shall pay
83 the warrant out of the fund into which the amount refunded
84 was originally paid.

85 (h) *Termination and expiration of the privilege tax on*
86 *limestone or sandstone.* — The taxes imposed under this
87 section for persons exercising the privilege of engaging or
88 continuing within this state in the business of severing,
89 extracting, reducing to possession and producing for sale,
90 profit or commercial use limestone or sandstone shall cease,
91 terminate and be of no further force or effect on and after
92 July 1, 2019. Termination of the taxes imposed under this
93 section do not relieve any person of any liability or duty to
94 pay tax imposed under this article with respect to privileges
95 exercised before the effective date of the termination.

CHAPTER 254

(Com. Sub. for H. B. 2854 - By Delegate Householder) [By Request of the State Tax Division]

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9q, relating to exempting sales by not-for-profit volunteer school support organizations for the purpose of raising funds for their schools from the consumers sales and service tax and use tax; specifying time limitations for fundraisers; specifying that the exemption applies without regard to whether the organization holds, or does not hold, an exemption under §501(c)(3) or §501(c)(4) of the Internal Revenue Code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**§11-15-9q. Exemption for sales by schools and volunteer school support groups.**

1 Notwithstanding any other provisions of this code to the
 2 contrary, sales of tangible personal property and services by
 3 not-for-profit volunteer school support groups for
 4 elementary or secondary schools located in this state, which
 5 hold fund raisers for their schools that last no more than 14
 6 consecutive days and are held not more than 18 times during
 7 any 12-month period, are exempt from the taxes imposed by
 8 §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code, if the
 9 sole purpose of the sales is to obtain revenue for the
 10 functions and activities of an elementary or secondary
 11 school located in this state. This exemption applies to such
 12 sales without regard to whether the volunteer school support
 13 organizations holds, or does not hold, an exemption under
 14 §501(c)(3) or §501(c)(4) of the Internal Revenue Code of
 15 1986, as amended.

CHAPTER 255

**(H. B. 3045 - By Delegates Cowles, Maynard, Barrett,
 Skaff, Boggs, Williams and Porterfield)**

[Passed March 5, 2019; in effect ninety days from passage.]
 [Approved by the Governor on March 19, 2019.]

AN ACT to amend and reenact §7-18-2 of the Code of West Virginia, 1931, as amended, relating to exempting certain complimentary hotel rooms from hotel occupancy tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-2. Rate of tax.

1 (a) The rate of tax imposed shall be three percent of the
2 consideration paid for the use or occupancy of a hotel room.

3 (b) On and after July 1, 2005, a municipality may by
4 ordinance increase the rate of tax imposed in this section to
5 not more than six percent of the consideration paid for the
6 use or occupancy of a hotel room: *Provided*, That
7 notwithstanding any other provision of this article to the
8 contrary, a municipality may not impose any tax authorized
9 by this article on a hotel located within its corporate limits
10 upon which a county was imposing a tax authorized by this
11 article on or after January 1, 2005, and continuously
12 thereafter to and including the effective date of annexation
13 of the territory in which the hotel is located pursuant to
14 article six, chapter eight of this code and, as to that hotel,
15 the county is authorized to continue to impose and collect
16 the tax authorized by this article at the rate of three percent
17 of the consideration paid for the use or occupancy of a hotel
18 room: *Provided, however*, That after June 30, 2007, the
19 county is authorized to continue to impose and collect the
20 tax authorized by this article at the rate of not more than six
21 percent of the consideration paid for the use or occupancy
22 of a hotel room: *Provided further*, That prior to any increase
23 in the rate of tax, the county shall comply with the
24 requirements of subsection (c) of this section: *And provided*
25 *further*, That in the event the county commission duly enters
26 an order of record that ceases to impose the tax authorized
27 by this article on that hotel, then, as to that hotel, the
28 municipality in which the hotel is located by reason of the
29 annexation may impose the tax authorized by this article.
30 Prior to the second reading of an ordinance proposed by a
31 municipality to increase the rate of tax, the municipality
32 shall conduct a properly noticed public hearing on the issue.

33 (c) On and after July 1, 2007, a county may by ordinance
34 increase the rate of tax imposed in this section to not more
35 than six percent of the consideration paid for the use or
36 occupancy of a hotel room. At least 10 days prior to the final

37 vote of a county commission on an ordinance proposed by
38 a county commission to increase the rate of tax, the county
39 commission shall conduct a properly noticed public hearing
40 on the issue.

41 (d) The consideration paid for the use or occupancy of a
42 hotel room may not include the amount of tax imposed on
43 the transaction under §11-15-1 *et seq.* of this code or
44 charges for meals, valet service, room service, telephone
45 service or other charges or consideration not paid for use or
46 occupancy of a hotel room.

47 (e) The tax may not be imposed on complimentary hotel
48 rooms provided without charge by a hotel operator to
49 guests.



CHAPTER 256

(H. B. 3142 - By Delegates Householder, Criss, Rowan, Linville and Maynard)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §11-13A-3, §11-13A-6 and §11-13A-6a of the Code of West Virginia, 1931, as amended, all relating to severance taxes; reducing the severance tax on thermal or steam coal to incrementally over three years; providing for a total reduction of two percent of the coal severance tax at the conclusion of the three year period; providing for a reduction of thirty-five percent of the two percent reduction in the first year; providing for a reduction of sixty-five percent of the two percent reduction in the second year; providing for a full two percent reduction in the third year; providing for an elimination of the severance tax on limestone or sandstone; and establishing minimum amounts

of distribution of portion of severance taxes on coal dedicated for use and benefit of coal-producing counties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

***§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.**

1 (a) *Imposition of tax.* — Upon every person exercising
2 the privilege of engaging or continuing within this state in
3 the business of severing, extracting, reducing to possession
4 and producing for sale, profit or commercial use coal,
5 limestone or sandstone, or in the business of furnishing
6 certain health care services, there is hereby levied and shall
7 be collected from every person exercising such privilege an
8 annual privilege tax.

9 (b) *Rate and measure of tax.* — Subject to the provisions
10 of subsection (h) of this section, the tax imposed in
11 subsection (a) of this section is five percent of the gross
12 value of the natural resource produced or the health care
13 service provided, as shown by the gross income derived
14 from the sale or furnishing thereof by the producer or the
15 provider of the health care service, except as otherwise
16 provided in this article: *Provided*, That effective July 1,
17 2019, the tax rate imposed by this subsection on the gross
18 value of thermal or steam coal produced shall be reduced
19 incrementally over the next three tax years for a total
20 reduction of two percent by July 1, 2021. That on July 1,
21 2019, the reduction shall occur at the rate of 35 percent of
22 the two percent reduction, on July 1, 2020, the reduction
23 shall occur at the rate of 65 percent of the two percent
24 reduction, and on July 1, 2021, at the rate of 100 percent of

*NOTE: This section was also amended by H. B. 2829, which passed prior to this act.

25 the two percent reduction. In the case of coal, the rate of tax
26 includes the thirty-five one hundredths of one percent
27 additional severance tax on coal imposed by the state for the
28 benefit of counties and municipalities as provided in §11-
29 13A-6 of this code and the additional severance tax on coal
30 imposed by the state for the benefit of coal-producing
31 counties as provided in §11-13A-6a of this code.

32 (c) “Thermal or steam coal” defined. - For purposes of
33 this section the term “thermal or steam coal” means coal
34 sold for the purpose of generating electricity.

35 (d) “*Certain health care services*” defined. — For
36 purposes of this section, the term “certain health care
37 services” means, and is limited to, behavioral health
38 services.

39 (e) *Tax in addition to other taxes.* — The tax imposed
40 by this section applies to all persons severing or processing,
41 or both severing and processing, in this state natural
42 resources enumerated in subsection (a) of this section and
43 to all persons providing certain health care services in this
44 state as enumerated in subsection (d) of this section and
45 shall be in addition to all other taxes imposed by law.

46 (f) *Effective date.* — This section, as amended in 1993,
47 shall apply to gross proceeds derived after May 31, 1993.
48 The language of this section, as in effect on January 1, 1993,
49 shall apply to gross proceeds derived prior to June 1, 1993
50 and, with respect to such gross proceeds, shall be fully and
51 completely preserved.

52 (g) *Reduction of severance tax rate.* — For tax years
53 beginning after the effective date of this subsection, any
54 person exercising the privilege of engaging within this state
55 in the business of severing coal for the purposes provided in
56 subsection (a) of this section shall be allowed a reduced rate
57 of tax on coal mined by underground methods in accordance
58 with the following:

59 (1) For coal mined by underground methods from seams
60 with an average thickness of 37 inches to 45 inches, the tax
61 imposed in subsection (a) of this section shall be two percent
62 of the gross value of the coal produced. For coal mined by
63 underground methods from seams with an average thickness
64 of less than 37 inches, the tax imposed in subsection (a) of
65 this section shall be one percent of the gross value of the
66 coal produced. Gross value is determined from the sale of
67 the mined coal by the producer. This rate of tax includes the
68 thirty-five one hundredths of one percent additional
69 severance tax imposed by the state for the benefit of
70 counties and municipalities as provided in §11-13A-6 of
71 this code.

72 (2) This reduced rate of tax applies to any new
73 underground mine producing coal after the effective date of
74 this subsection, from seams of less than 45 inches in average
75 thickness or any existing mine that has not produced coal
76 from seams 45 inches or less in thickness in the 180 days
77 immediately preceding the effective date of this subsection.

78 (3) The seam thickness shall be based on the weighted
79 average isopach mapping of actual coal thickness by mine
80 as certified by a professional engineer.

81 (h)(1) *Termination and expiration of the behavioral*
82 *health severance and business privilege tax.* — The tax
83 imposed upon providers of health care services under the
84 provisions of this article shall expire, terminate and cease to
85 be imposed with respect to privileges exercised on or after
86 July 1, 2016. Expiration of the tax as provided in this
87 subsection does not relieve any person from payment of any
88 tax imposed with respect to privileges exercised before the
89 expiration date.

90 (2) *Refunds made.* — The Tax Commissioner shall issue
91 a requisition on the Treasury for any amount finally,
92 administratively or judicially determined to be an
93 overpayment of the tax terminated under this subsection.
94 The Auditor shall issue a warrant on the Treasurer for any

95 refund requisitioned under this subsection payable to the
96 taxpayer entitled to the refund, and the Treasurer shall pay
97 the warrant out of the fund into which the amount refunded
98 was originally paid.

99 (i) *Termination and expiration of the privilege tax on*
100 *limestone or sandstone.* — The taxes imposed under this
101 section for persons exercising the privilege of engaging or
102 continuing within this state in the business of severing,
103 extracting, reducing to possession and producing for sale,
104 profit or commercial use limestone or sandstone shall cease,
105 terminate and be of no further force or effect on and after
106 July 1, 2019. Termination of the taxes imposed under this
107 section do not relieve any person of any liability or duty to
108 pay tax imposed under this article with respect to privileges
109 exercised before the effective date of the termination.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; special funds in office of State Treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

1 (a) Additional coal severance tax. — Upon every person
2 exercising the privilege of engaging or continuing within
3 this state in the business of severing coal, or preparing coal
4 (or both severing and preparing coal), for sale, profit or
5 commercial use, there is hereby imposed an additional
6 severance tax, the amount of which shall be equal to the
7 value of the coal severed or prepared (or both severed and
8 prepared), against which the tax imposed by section three of
9 this article is measured as shown by the gross proceeds
10 derived from the sale of the coal by the producer, multiplied
11 by thirty-five one hundredths of one percent. The tax

12 imposed by this subsection is in addition to the tax imposed
13 by section three of this article, and this additional tax is
14 referred to in this section as the "additional tax on coal".

15 (b) This additional tax on coal is imposed pursuant to
16 the provisions of section six-a, article ten of the West
17 Virginia Constitution. Seventy-five percent of the net
18 proceeds of this additional tax on coal shall be distributed
19 by the State Treasurer in the manner specified in this section
20 to the various counties of this state in which the coal upon
21 which this additional tax is imposed was located at the time
22 it was severed from the ground. Those counties are referred
23 to in this section as the "coal-producing counties". The
24 remaining twenty-five percent of the net proceeds of this
25 additional tax on coal shall be distributed among all the
26 counties and municipalities of this state in the manner
27 specified in this section.

28 (c) The additional tax on coal shall be due and payable,
29 reported and remitted as elsewhere provided in this article
30 for the tax imposed by section three of this article, and all of
31 the enforcement and other provisions of this article shall
32 apply to the additional tax. In addition to the reports and
33 other information required under the provisions of this
34 article and the tonnage reports required to be filed under the
35 provisions of section seventy-seven, article two, chapter
36 twenty-two-a of this code, the Tax Commissioner is hereby
37 granted plenary power and authority to promulgate
38 reasonable rules requiring the furnishing by producers of
39 such additional information as may be necessary to compute
40 the allocation required under the provisions of subsection (f)
41 of this section. The Tax Commissioner is also hereby
42 granted plenary power and authority to promulgate such
43 other reasonable rules as may be necessary to implement the
44 provisions of this section: *Provided*, That notwithstanding
45 any language contained in this code to the contrary, the
46 gross amount of additional tax on coal collected under this
47 article shall be paid over and distributed without the
48 application of any credits against the tax imposed by this
49 section.

50 (d) In order to provide a procedure for the distribution
51 of seventy-five percent of the net proceeds of the additional
52 tax on coal to the coal-producing counties, the special fund
53 known as the "county coal revenue fund" established in the
54 State Treasurer's office by chapter one hundred sixty-two,
55 acts of the Legislature, 1985 regular session, as amended
56 and reenacted in subsequent acts of the Legislature, is
57 hereby continued. In order to provide a procedure for the
58 distribution of the remaining twenty-five percent of the net
59 proceeds of the additional tax on coal to all counties and
60 municipalities of the state, without regard to coal having
61 been produced therein, the special fund known as the "all
62 counties and municipalities revenue fund" established in the
63 State Treasurer's office by chapter one hundred sixty-two,
64 acts of the Legislature, 1985 regular session, as amended
65 and reenacted in subsequent acts of the Legislature, is
66 hereby redesignated as the "all counties and municipalities
67 coal revenue fund" and is hereby continued.

68 Seventy-five percent of the net proceeds of such
69 additional tax on coal shall be deposited in the county coal
70 revenue fund and twenty-five percent of the net proceeds
71 shall be deposited in the all counties and municipalities coal
72 revenue fund, from time to time, as the proceeds are
73 received by the Tax Commissioner. The moneys in the
74 funds shall be distributed to the respective counties and
75 municipalities entitled to the moneys in the manner set forth
76 in subsection (e) of this section.

77 (e) The moneys in the county coal revenue fund and the
78 moneys in the all counties and municipalities coal revenue
79 fund shall be allocated among and distributed quarterly to
80 the counties and municipalities entitled to the moneys by the
81 State Treasurer in the manner specified in this section. On
82 or before each distribution date, the State Treasurer shall
83 determine the total amount of moneys in each fund which
84 will be available for distribution to the respective counties
85 and municipalities entitled to the moneys on that
86 distribution date. The amount to which a coal-producing

87 county is entitled from the county coal revenue fund shall
88 be determined in accordance with subsection (f) of this
89 section, and the amount to which every county and
90 municipality is entitled from the all counties and
91 municipalities coal revenue fund shall be determined in
92 accordance with subsection (g) of this section. After
93 determining as set forth in subsection (f) and subsection (g)
94 of this section the amount each county and municipality is
95 entitled to receive from the respective fund or funds, a
96 warrant of the State Auditor for the sum due to each county
97 or municipality shall issue and a check drawn thereon
98 making payment of such amount shall thereafter be
99 distributed to each such county or municipality.

100 (f) The amount to which a coal-producing county is
101 entitled from the county coal revenue fund shall be
102 determined by: (1) Dividing the total amount of moneys in
103 the fund then available for distribution by the total number
104 of tons of coal mined in this state during the preceding
105 quarter; and (2) multiplying the quotient thus obtained by
106 the number of tons of coal removed from the ground in the
107 county during the preceding quarter.

108 (g) The amount to which each county and municipality
109 is entitled from the all counties and municipalities coal
110 revenue fund shall be determined in accordance with the
111 provisions of this subsection. For purposes of this
112 subsection "population" means the population as
113 determined by the most recent decennial census taken under
114 the authority of the United States:

115 (1) The treasurer shall first apportion the total amount
116 of moneys available in the all counties and municipalities
117 coal revenue fund by multiplying the total amount in the
118 fund by the percentage which the population of each county
119 bears to the total population of the state. The amount thus
120 apportioned for each county is the county's "base share".

121 (2) Each county's base share shall then be subdivided
122 into two portions. One portion is determined by multiplying

123 the base share by that percentage which the total population
124 of all unincorporated areas within the county bears to the
125 total population of the county, and the other portion is
126 determined by multiplying the base share by that percentage
127 which the total population of all municipalities within the
128 county bears to the total population of the county. The
129 former portion shall be paid to the county and the latter
130 portion is the "municipalities' portion" of the county's base
131 share. The percentage of the latter portion to which each
132 municipality in the county is entitled shall be determined by
133 multiplying the total of the latter portion by the percentage
134 which the population of each municipality within the county
135 bears to the total population of all municipalities within the
136 county.

137 (h) All counties and municipalities shall create a "coal
138 severance tax revenue fund" which shall be the depository
139 for moneys distributed to any county or municipality under
140 the provisions of this section, from either or both special
141 funds. Moneys in the coal severance tax revenue fund, in
142 compliance with subsection (i) of this section, may be
143 expended by the county commission or governing body of
144 the municipality for such public purposes as the county
145 commission or governing body shall determine to be in the
146 best interest of the people of its respective county or
147 municipality.

148 (i) All unexpended balances remaining in coal
149 severance tax revenue fund at the close of a fiscal year shall
150 be reappropriated to the budget of the county commission
151 or governing body for the subsequent fiscal year. The
152 reappropriation shall be entered as an amendment to the new
153 budget and submitted to the Tax Commissioner on or before
154 July 15, of the current budget year.

155 (j) The State Tax Commissioner shall retain for the
156 benefit of the state from the additional taxes on coal
157 collected the amount of \$35,000 annually as a fee for the
158 administration of such additional tax by the Tax
159 Commissioner.

§11-13A-6a. Reallocation and dedication of percentage of severance tax for benefit of coal-producing counties; phase-in period; permissible uses of distributed revenues; duties of State Treasurer and State Tax Commissioner; audits; rulemaking.

1 (a) The purpose of this section is to provide for the
2 reallocation and dedication of a portion of the tax
3 attributable to the severance of coal imposed by section
4 three of this article for the use and benefit of the various
5 counties of this state in which the coal upon which that tax
6 is imposed was located at the time it was severed from the
7 ground. Those counties are referred to in this section as the
8 coal-producing counties or, in the singular, as a coal-
9 producing county.

10 (b)(1) Effective July 1, 2012, one percent of the tax
11 attributable to the severance of coal imposed by section
12 three of this article is dedicated and shall be distributed for
13 the use and benefit of the coal-producing counties as
14 provided in this section. Effective July 1, 2013, two percent
15 of the tax attributable to the severance of coal imposed by
16 section three of this article is dedicated and shall be
17 distributed for the use and benefit of the coal-producing
18 counties as provided in this section. Effective July 1, 2014,
19 three percent of the tax attributable to the severance of coal
20 imposed by section three of this article is dedicated and shall
21 be distributed for the use and benefit of the coal-producing
22 counties as provided in this section. Effective July 1, 2015,
23 four percent of the tax attributable to the severance of coal
24 imposed by section three of this article is dedicated and shall
25 be distributed for the use and benefit of the coal-producing
26 counties as provided in this section. Effective July 1, 2016,
27 and thereafter, five percent of the tax attributable to the
28 severance of coal imposed by section three of this article is
29 dedicated and shall be distributed for the use and benefit of
30 the coal-producing counties as provided in this section.
31 Effective July 1, 2019, and thereafter, the portion of the
32 severance tax on coal imposed by §11-13A-3 of this code
33 dedicated and to be distributed for the use and benefit of the

34 coal-producing counties as provided in this subsection shall
35 not be less than the amount distributed pursuant to this
36 subsection for the fiscal year beginning July 1, 2018.

37 (2) In no fiscal year may the proceeds dedicated in
38 subdivision (1) of this subsection exceed the sum of \$20
39 million.

40 (3) For purposes of this subsection, the tax attributable
41 to the severance of coal imposed by section three of this
42 article does not include the thirty-five one hundredths of one
43 percent additional severance tax on coal imposed by the
44 state for the benefit of counties and municipalities as
45 provided in section six of this article.

46 (c) The amounts of the tax dedicated in subsection (b)
47 of this section shall be deposited, from time to time, into a
48 special fund known as the Coal County Reallocated
49 Severance Tax Fund, which is hereby established in the
50 State Treasury, as the proceeds are received by the State Tax
51 Commissioner.

52 (d) The net proceeds of the deposits made into the Coal
53 County Reallocated Severance Tax Fund shall be allocated
54 among and distributed quarterly to the coal-producing
55 counties by the State Treasurer in the manner specified in
56 this section. On or before each distribution date, the State
57 Treasurer shall determine the total amount of moneys that
58 will be available for distribution to the respective counties
59 entitled to the moneys on that distribution date. The amount
60 to which a coal-producing county is entitled from the Coal
61 County Reallocated Severance Tax Fund shall be
62 determined in accordance with subsection (e) of this section.
63 After determining as set forth in subsection (e) of this
64 section the amount each coal-producing county is entitled to
65 receive from the fund, a warrant of the State Auditor for the
66 sum due to each coal-producing county shall be issued and
67 a check drawn thereon making payment of that amount shall
68 thereafter be distributed to each such coal-producing county

69 by hand, mail commercial delivery or electronic
70 transmission.

71 (e) The amount to which a coal-producing county is
72 entitled from the Coal County Reallocated Severance Tax
73 Fund shall be determined by:

74 (1) Dividing the total amount of moneys in the fund then
75 available for distribution by the total number of tons of coal
76 mined in this state during the preceding quarter; and

77 (2) Multiplying the quotient thus obtained by the
78 number of tons of coal removed from the ground in the
79 county during the preceding quarter.

80 (f) (1) No distribution made to a county under this
81 section may be deposited into the county's general revenue
82 fund. The county commission of each county receiving a
83 distribution under this section shall establish a special
84 account to be known as the "(Name of County) Coal County
85 Reallocated Severance Tax Fund" into which all
86 distributions made to that county under this section shall be
87 deposited.

88 (2) Moneys in the county's Coal County Reallocated
89 Severance Tax Fund shall be expended by the county
90 commission solely for economic development projects and
91 infrastructure projects.

92 (3) For purposes of this section:

93 (A) "Economic development project" means a project in
94 the state which is likely to foster economic growth and
95 development in the area in which the project is developed
96 for commercial, industrial, community improvement or
97 preservation or other proper purposes.

98 (B) "Infrastructure project" means a project in the state
99 which is likely to foster infrastructure improvements
100 including, but not limited to, post-mining land use, any
101 water or wastewater facilities or any part thereof, storm

102 water systems, steam, gas, telephone and
103 telecommunications, broadband development, electric lines
104 and installations, roads, bridges, railroad spurs, drainage
105 and flood control facilities, industrial park development or
106 buildings that promote job creation and retention.

107 (4) A county commission may not expend any of the
108 funds available in its Coal County Reallocated Severance
109 Tax Fund for personal services, for the costs of issuing
110 bonds, or for the payment of bond debt service, and shall
111 direct the total funds available in its coal county reallocated
112 severance tax fund to project development, which may
113 include the costs of architectural and engineering plans, site
114 assessments, site remediation, specifications and surveys,
115 and any other expenses necessary or incidental to
116 determining the feasibility or practicability of any economic
117 development project or infrastructure project.

118 (5) On or before December 31, 2013, and December 1
119 of each year thereafter, the county commission of each
120 county receiving a distribution of funds under this section
121 shall deliver to the Joint Committee on Government and
122 Finance a written report setting forth the specific projects
123 for which those funds were expended during the next
124 preceding fiscal year, a detailed account of those
125 expenditures, and a showing that the expenditures were
126 made for the purposes required by this section.

127 (g) An audit of any funds distributed under this section
128 may be authorized at any time by the Joint Committee on
129 Government and Finance to be conducted by the Legislative
130 Auditor at no cost to the county commission or county
131 commissions audited.

132 (h) The State Tax Commissioner shall propose for
133 promulgation legislative rules pursuant to article three,
134 chapter twenty-nine-a of this code for the administration of
135 the provisions of this section, and is authorized to
136 promulgate emergency rules for those purposes pursuant to
137 that article.

●

CHAPTER 257

**(H. B. 3144 - By Delegates Hartman, Storch, Skaff,
Graves, Espinosa, Rowan, Maynard, Hill, Longstreth
and Barrett)**

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-6, §11-13EE-7, §11-13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12, §11-13EE-13, §11-13EE-14, §11-13EE-15, and §11-13EE-16, all relating generally to Coal Severance Tax Rebate; findings and purpose; defining terms; providing for rebate of severance tax when capital investment made in new machinery, equipment, or improvements to real property directly used in severance of coal, or in coal preparation and processing plants; providing rules and procedures for claiming rebate and transfer to successors; imposing recapture tax in certain circumstance; providing rules for interpretation and construction; requiring periodic rebate reports; authorizing rulemaking; and providing for severability and effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13EE. COAL SEVERANCE TAX REBATE.

§11-13EE-1. Findings and purpose.

1 The Legislature finds that the encouragement of
2 economic growth and development in this state is in the
3 public interest and promotes the general welfare of the
4 people of this state. In order to encourage capital investment

5 in the coal industry in this state and thereby increase
6 economic development, there is hereby provided a coal
7 severance tax rebate.

§11-13EE-2. Definitions.

1 (a) *General*—When used in this article, or in the
2 administration of this article, terms defined in subsection (b)
3 shall have the meanings ascribed to them by this section,
4 unless a different meaning is clearly required by either the
5 context in which the term is used, or by specific definition,
6 in this article.

7 (b) *Terms defined*—

8 (1) “Affiliated group” means one or more chains of
9 corporations, limited liability entities, or partnerships, or
10 any combination thereof, connected through the ownership
11 of stock or ownership interests with a common parent which
12 is a corporation, limited liability entity, or partnership, but
13 only if the common parent owns directly, or indirectly, a
14 controlling interest in each of the members of the group.

15 (2) “Business” means and is limited to the activity of
16 producing coal for sale, profit or commercial use including
17 coal preparation and processing.

18 (3) “Capital investment in new machinery, equipment,
19 or improvements to real property” means:

20 (A) Tangible personal property in the form of
21 machinery and equipment that is purchased on or after the
22 effective date of this article and placed in service for direct
23 use in the production of coal, when the original or first use
24 of the machinery or equipment commences in this state on
25 or after the effective date of this article;

26 (B) Tangible personal property in the form of machinery
27 and equipment that is leased by the taxpayer and placed in
28 service for direct use in the production of coal by the
29 taxpayer on or after the effective date of this article, if the

30 original or first use of the machinery or equipment
31 commences in this state, with the taxpayer, on or after the
32 effective date of this article and the machinery or equipment
33 is depreciable, or amortizable, for federal income tax
34 purposes and has a useful life of five or more years for
35 federal income tax purposes;

36 (C) Improvements to real property having a useful life
37 or 5 or more years, that are depreciable or amortizable for
38 federal income tax purposes, purchased on or after the
39 effective date of this article, if the original or first use of
40 such improvements commences in this state on or after the
41 effective date of this article and the improvements are
42 placed in service for direct use in the production of coal.

43 (4) "Coal mine" or "mine" includes:

44 (A) A "surface mine," or "surface mining operation"
45 which means:

46 (i) Activities conducted on the surface of lands for the
47 removal of coal, or, subject to the requirements of §11-
48 13EE-14 of this code, surface operations and surface
49 impacts incident to an underground coal mine, including the
50 drainage and discharge from the mine. The activities
51 include: Excavation for the purpose of obtaining coal,
52 including, but not limited to, common methods as contour,
53 strip, auger, mountaintop removal, box cut, open pit and
54 area mining; the uses of explosives and blasting;
55 reclamation; in situ distillation or retorting, leaching or
56 other chemical or physical processing; the cleaning,
57 concentrating or other processing or preparation and loading
58 of coal for commercial purposes at or near the mine site; and

59 (ii) The areas upon which the above activities occur or
60 where the activities disturb the natural land surface. The
61 areas also include any adjacent land, the use of which is
62 incidental to the activities; all lands affected by the
63 construction of new roads or the improvement or use of
64 existing roads to gain access to the site of the activities and

65 for haulage; and excavations, workings, impoundments,
66 dams, ventilation shafts, entryways, refuse banks, dumps,
67 stockpiles, overburden piles, spoil banks, culm banks,
68 tailings, holes or depressions, repair areas, storage areas,
69 processing areas, shipping areas and other areas upon which
70 are sited structures, facilities, or other property or materials
71 on the surface, resulting from or incident to the activities:
72 *Provided*, That the activities do not include the extraction of
73 coal incidental to the extraction of other minerals where coal
74 does not exceed 16 and two-thirds percent of the tonnage of
75 minerals removed for purposes of commercial use or sale,
76 or coal prospecting. Surface mining does not include any of
77 the following:

78 (I) Coal extraction authorized pursuant to a government-
79 financed reclamation contract;

80 (II) Coal extraction authorized as an incidental part of
81 development of land for commercial, residential, industrial
82 or civic use; or

83 (III) The reclamation of an abandoned or forfeited mine
84 by a no cost reclamation contract; and

85 (B) An “underground mine” which includes the shafts,
86 slopes, drifts or inclines connected with, or intended in the
87 future to be connected with, excavations penetrating coal
88 seams or strata, which excavations are ventilated by one
89 general air current or divisions thereof, and connected by
90 one general system of mine haulage over which coal may be
91 delivered to one or more points outside the mine, and the
92 surface structures or equipment connected or associated
93 therewith which contribute directly or indirectly to the
94 mining, preparation or handling of coal.

95 (5) “Coal mining operation” includes the mine and the
96 coal preparation and processing plant.

97 (6) “Coal preparation and processing plant” means any
98 facility (excluding underground mining operations) which

99 prepares coal by one or more of the following processes:
100 breaking, crushing, screening, wet or dry cleaning, and
101 thermal drying.

102 (7) “Coal production” means the privilege of severing,
103 extracting, reducing to possession and producing coal for
104 sale, profit or commercial use and includes the processing
105 of coal at a coal preparation and processing plant.

106 (8) “Commissioner” or “Tax Commissioner” are used
107 interchangeably herein and mean the Tax Commissioner of
108 the State of West Virginia, or his or her delegate.

109 (9) “Controlled group” means one or more chains of
110 corporations connected through stock ownership with a
111 common parent corporation if stock possessing at least 50
112 percent of the voting power of all classes of stock of each of
113 the corporations is owned, directly or indirectly, by one or
114 more of the corporations; and the common parent owns
115 directly stock possessing at least 50 percent of the voting
116 power of all classes of stock of at least one of the other
117 corporations.

118 (10) “Controlling interest” means:

119 (A) For a corporation, either more than 50 percent
120 ownership, directly or indirectly, of the total combined
121 voting power of all classes of stock of the corporation, or
122 more than 50 percent ownership, directly or indirectly, of
123 the beneficial ownership interest in the voting stock of all
124 classes of stock of the corporation;

125 (B) For a partnership, association, trust or other entity
126 other than a limited liability company, more than 50 percent
127 ownership, directly or indirectly, of the capital, profits, or
128 beneficial interest in the partnership, association, trust, or
129 other entity;

130 (C) For a limited liability company, either more than 50
131 percent ownership, directly or indirectly, of the total
132 membership interest of the limited liability company, or

133 more than 50 percent ownership, directly or indirectly, of
134 the beneficial ownership interest in the membership interest
135 of the limited liability company.

136 (11) “Corporation” means any corporation, joint-stock
137 company or association, and any business conducted by a
138 trustee or trustees wherein interest or ownership is
139 evidenced by a certificate of interest or ownership or similar
140 written instrument.

141 (12) “Delegate” used in the phrase “or his delegate”,
142 when used in reference to the Tax Commissioner, means
143 any officer or employee of the State Tax Department duly
144 authorized by the Tax Commissioner directly, or indirectly
145 by one or more redelegations of authority, to perform the
146 functions mentioned or described in this article.

147 (13) “Directly used or consumed in the production of
148 coal” means used or consumed in those activities or
149 operations which constitute an integral and essential part of
150 the production of coal, as contrasted with and distinguished
151 from those activities or operations which are simply
152 incidental, convenient or remote to the production of coal.

153 (A) Uses of tangible personal property or improvements
154 to real property which constitute direct use or consumption
155 in the production of coal include only:

156 (i) New machinery, equipment, or improvements to real
157 property that are depreciable, or amortizable, and have a
158 useful life of five or more years for federal income tax
159 purposes, and that are directly used in the production of coal
160 in this state;

161 (ii) Transportation of coal within the coal mine from the
162 coal face or coal deposit to the exterior of the mine or to a
163 point where the extracted coal is transported away from the
164 mine;

165 (iii) Directly and physically recording the flow of coal
166 during the production of coal including those coal treatment
167 processes specified in §11-13A-4 of this code;

168 (iv) Safety equipment and apparatus directly used in the
169 production of coal, or to secure the safety of mine personnel
170 in direct use in the production of coal;

171 (v) Controlling or otherwise regulating atmospheric
172 conditions required for the production of coal;

173 (vi) Transformers, pumps, rock dusting equipment and
174 other property used to supply electricity or water, or to
175 supply or apply rock dust directly used in the production of
176 coal;

177 (vii) Storing, removal or transportation of economic
178 waste, including coal gob, resulting from the production of
179 coal;

180 (viii) Engaging in pollution control or environmental
181 quality or protection activity directly relating to the
182 production of coal; or

183 (ix) Otherwise using as an integral and essential part of
184 the production of coal.

185 (B) Uses of tangible personal property or improvements
186 to real property which do not constitute direct use or
187 consumption in the production of coal include, but are not
188 limited to:

189 (i) Heating and illumination of office buildings;

190 (ii) Janitorial or general cleaning activities;

191 (iii) Personal comfort of personnel: *Provided*, That
192 safety equipment and apparatus directly used in the
193 production of coal or to secure the safety of mine personnel
194 is direct use in the production of coal when the tangible
195 personal property is depreciable, or amortizable, for federal

196 income tax purposes and has a useful life of five or more
197 years for federal income tax purposes when it is placed in
198 service or use;

199 (iv) Production planning, scheduling of work or
200 inventory control;

201 (v) Marketing, general management, supervision,
202 finance, training, accounting and administration;

203 (vi) Measuring or determining weight, and ash content,
204 water content and other physical and chemical
205 characteristics of the coal after production;

206 (vii) An activity or function incidental or convenient to
207 the production of coal, rather than an integral and essential
208 part of these activities.

209 (14) “Eligible taxpayer” means:

210 (A) Any person who pays the tax imposed by §11-13A-
211 3 of this code on the privilege of producing coal for sale,
212 profit or commercial use for at least two years before the
213 capital investment in new machinery, equipment, or
214 improvements to real property is placed in service or use in
215 this state; or

216 (B) A taxpayer that has experienced a change in
217 business composition through merger, acquisition, split-up,
218 spin-off or other ownership changes or changes in the form
219 of the business organization from limited liability company
220 to C corporation, or partnership, or from one form of
221 business organization to a different form of business
222 organization, may constitute an eligible taxpayer if the
223 entity currently operating in this state was operating in a
224 different form of business organization in this state at least
225 two years before the capital investment in new machinery,
226 equipment, or improvements to real property is placed in
227 service or use in this state. In the case of business
228 composition change through merger, acquisition, split-up,
229 spin-off or other ownership changes the current business

230 may constitute an eligible taxpayer if at least 50 percent of
231 the business assets of such component were actively and
232 directly used in coal production activity in this state for such
233 two-year period. If less than 50 percent of the assets of the
234 current entity were not actively and directly used in coal
235 production activity in this state for such two-year period,
236 then the current entity resulting from a business
237 composition change through merger, acquisition, split-up,
238 spin-off or other ownership shall not constitute an eligible
239 taxpayer.

240 (15) “Includes” and “including” when used in a
241 definition contained in this article, shall not be deemed to
242 exclude other things otherwise within the generally
243 understood meaning of the term defined.

244 (16) “Original use” means the first use to which the
245 property is put by anyone.

246 (17) “Partnership” includes a syndicate, group, pool,
247 joint venture or other unincorporated organization through
248 or by means of which any business, operation or venture is
249 carried on, which is taxed under Subchapter K of the
250 Internal Revenue Code, as defined in §11-24-3 of this code,
251 and which is not a trust or estate, a corporation or a sole
252 proprietorship. The term “partner” includes a member in
253 such a syndicate, group, pool, joint venture or other
254 unincorporated organization taxed under Subchapter K of
255 the Internal Revenue Code.

256 (18) “Person” includes any natural person, corporation,
257 partnership, limited liability company or other business
258 entity.

259 (19) “Production of coal” means the privilege of
260 severing, extracting, reducing to possession and producing
261 coal for sale, profit or commercial use and includes the
262 processing of coal at the coal preparation and processing
263 plant.

264 (20) “Property” means new machinery, equipment, or
265 improvements to real property that are depreciable or
266 amortizable for federal income tax purposes and that have a
267 useful life of five or more years for federal income tax
268 purposes.

269 (21) “Property purchased or leased for business
270 expansion” means:

271 (A) *Included property*—Except as provided in
272 subparagraph (B), the term “property purchased or leased
273 for business expansion” means tangible personal property,
274 or improvements to real property but only if the property
275 was purchased, or leased and placed in service or use by the
276 taxpayer in West Virginia. This term includes only:

277 (i) Tangible personal property placed in service or use
278 by the taxpayer on or after the effective date of this article,
279 with respect to which depreciation, or amortization in lieu
280 of depreciation, is allowable in determining the personal or
281 corporation net income tax liability of the business, or its
282 equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of
283 this code, and which has a useful economic life at the time
284 the property is placed in service or use in this state, of five
285 or more years.

286 (ii) Tangible personal property acquired by written lease
287 having a primary term of 5 years or more, that is depreciable
288 or amortizable by the lessor, or lessee, for federal income
289 tax purposes and that has a useful life of five or more years
290 for federal income purposes when it is placed in service or
291 use, and when the lease commences and was executed by
292 the parties thereto on or after the effective date of this
293 article, if used as a component part of a new or expanded
294 coal mining operation in this state shall be included within
295 this definition.

296 (iii) Improvements to real property having a useful life
297 of five or more years, that are depreciable or amortizable for
298 federal income tax purposes, purchased on or after the

299 effective date of this article, if the original or first use of
300 such improvements commences in this state on or after the
301 effective date of this article and the improvements are
302 placed in service as a component part of a new or expanded
303 coal mining operation in this state.

304 (B) *Excluded property*—The term “property purchased
305 or leased for business expansion” shall not include:

306 (i) Machinery and equipment owned or leased by the
307 taxpayer and improvements to real property owned by a
308 taxpayer for which credit was taken or is claimed under any
309 other article of this chapter;

310 (ii) Repair costs, including materials used in the repair,
311 unless for federal income tax purposes, must be capitalized
312 and not expensed;

313 (iii) Motor vehicles licensed by the West Virginia
314 Division of Motor Vehicles;

315 (iv) Airplanes;

316 (v) Off-premise transportation equipment;

317 (vi) Machinery, equipment, or improvements to real
318 property that are primarily used outside this state;

319 (vii) Machinery, equipment, or improvements to real
320 property that are acquired incident to the purchase of the
321 stock or assets of the seller; and

322 (viii) Used machinery, equipment, or improvements to
323 real property.

324 (C) *Purchase date*—New machinery, equipment, or
325 improvements to real property shall be deemed to have been
326 purchased prior to a specified date only if:

327 (i) The machinery, equipment, or improvements to real
328 property were owned by the taxpayer prior to the effective
329 date of this article or were acquired by the taxpayer pursuant

330 to a binding purchase contract which was in effect prior to
331 the effective date of this article; or

332 (ii) In the case of leased machinery and equipment, there
333 was a binding written lease or contract to lease identifiable
334 machinery or equipment in effect prior to the effective date
335 of this article.

336 (22) “Purchase” means any acquisition of new
337 machinery, equipment, or improvements to real property,
338 but only if:

339 (A) The property or the improvement to the property is
340 not acquired from a person whose relationship to the person
341 acquiring it would result in the disallowance of deductions
342 under Section 267 or 707 (b) of the United States Internal
343 Revenue Code, as defined in §11-24-3 of this code;

344 (B) The property or the improvement to the property is
345 not acquired by one component member of a controlled
346 group from another component member of the same
347 controlled group; and

348 (C) The basis of the property or improvements to
349 property for federal income tax purposes, in the hands of the
350 person acquiring it, is not determined:

351 (i) In whole or in part by reference to the federal
352 adjusted basis of the property or the improvements to
353 property in the hands of the person from whom it was
354 acquired; or

355 (ii) Under Section 1014 (e) of the United States Internal
356 Revenue Code.

357 (23) “Qualified coal mining activity” means any
358 business or other activity subject to the tax imposed by §11-
359 13A-3 of this code on the privilege of severing, extracting,
360 reducing to possession and producing coal for sale, profit or
361 commercial use including the treatment process described
362 as mining in §11-13A-4(a)(1) of this code.

363 (24) “Qualified investment” means capital investment
364 in new machinery, equipment, or improvements to real
365 property directly used in the production of coal in this state
366 that is depreciable, or amortizable, for federal income tax
367 purposes and has a useful life for federal income tax
368 purposes of five or more years when it is placed in service
369 or use in this state.

370 (25) “Rebate” means the amount of rebate allowable
371 under §11-13EE-3 of this code.

372 (26) “Related person” means:

373 (A) A corporation, partnership, association or trust
374 controlled by the taxpayer;

375 (B) An individual, corporation, partnership, association,
376 or trust that is in control of the taxpayer;

377 (C) A corporation, partnership, association, or trust
378 controlled by an individual, corporation, partnership,
379 association, or trust that is in control of the taxpayer; or

380 (D) A member of the same controlled group as the
381 taxpayer.

382 For purposes of this subdivision, the term “control”,
383 with respect to a corporation, means ownership, directly or
384 indirectly, of stock possessing 50 percent or more of the
385 total combined voting power of all classes of the stock of
386 the corporation entitled to vote. “Control,” with respect to a
387 trust, means ownership, directly or indirectly, of 50 percent
388 or more of the beneficial interest in the principal or income
389 of the trust. The ownership of stock in a corporation, of a
390 capital or profits interest in a partnership or association, or
391 of a beneficial interest in a trust is determined in accordance
392 with the rules for constructive ownership of stock provided
393 in section 267 (c) of the United States Internal Revenue
394 Code, other than paragraph (3) of that section.

395 (27) “State portion of severance taxes paid” means the
396 portion of severance taxes due under §11-13A-3 of this code
397 when computed at the 4.65 percent rate of tax.

398 (28) “Tangible personal property” means, and is limited
399 to, new machinery and equipment that is depreciable, or
400 amortizable, for federal income tax purposes and that has a
401 useful life of five or more years for federal income tax
402 purposes when it is placed in service or use in this state.

403 (29) “Taxpayer” means any person exercising the
404 privilege of severing, extracting, reducing to possession,
405 and producing coal for sale, profit, or commercial use coal,
406 which privilege is taxable under §11-13A-3 of this code.

407 (30) “This code” means the Code of West Virginia,
408 1931, as amended.

409 (31) “This state” means the State of West Virginia.

410 (32) “United States Internal Revenue Code” or “Internal
411 Revenue Code” means the Internal Revenue Code as
412 defined in §11-24-3 of this code.

§11-13EE-3. Rebate allowable.

1 (a) *Rebate allowable*—Eligible taxpayers shall be
2 allowed a rebate for a portion of state severance taxes
3 imposed by §11-13A-3 of this code on the privilege of
4 severing, extracting, reducing to possession and producing
5 coal for sale, profit, or commercial use that is attributable to
6 the increase in the production of coal that is attributable to
7 and the consequence of the taxpayer’s capital investment in
8 new machinery, equipment, or improvements to real
9 property used at the coal mine, or coal preparation and
10 processing facility. The amount of this rebate shall be
11 determined and applied as hereinafter provided in this
12 article.

13 (b) *Amount of rebate*—The amount of rebate allowable
14 is determined by multiplying the amount of the taxpayer’s

15 capital investment in new machinery, equipment, or
16 improvements to real property directly used in the
17 production of coal at a coal mining operation in this state by
18 35 percent. The product of this computation establishes the
19 maximum amount of rebate allowable under this article for
20 the capital investment in new machinery, equipment, or
21 improvements to real property.

22 (c) *Application of rebate amount*—The amount of rebate
23 allowable is determined by applying the rebate amount
24 determined in subsection (b) of this section against 80
25 percent of the state portion of the severance tax paid on the
26 privilege of severing, extracting, reducing to possession,
27 and producing coal for sale, profit, or commercial use that
28 is directly attributable to the increased production of coal at
29 the mine due to taxpayer's capital investment in new
30 machinery, equipment, or improvements to real property at
31 the mine or coal processing and preparation plant.

32 (d) The amount of severance tax attributable to the
33 increase in coal production at a mine due to the capital
34 investment in new machinery, equipment, or improvements
35 to real property shall be determined by comparing (1) the
36 state portion of the severance tax due under §11-13A-3 of
37 this code on coal produced from the mine during calendar
38 year 2018, or if the taxpayer has produced coal for five years
39 at the mine at which its capital investment in new
40 machinery, equipment, or improvements to real property are
41 placed in service or use the average of the state portion of
42 the severance tax due under §11-13A-3 of this code on coal
43 produced from the mine during the five year period ending
44 on December 31, 2018, whichever is less, before allowance
45 of any tax credits, except as provided in subsection (e) of
46 §11-13EE-3 of this code (2) with the state severance tax due
47 on coal produced at the mine during the then current
48 calendar year in which the rebate amount is claimed, before
49 allowance for any tax credits. When the amount in (2) of
50 this section is greater than the amount in (1) of this section,
51 the difference is the amount of state severance tax due to the

52 increase in coal production at the mine that is attributable to
53 the capital investment in new machinery, equipment, or
54 improvements to real property: *Provided*, That when the
55 producer of the coal operates more than one mine in this
56 state, or is a member of a controlled or affiliated group that
57 operates one or more coal mines in this state, no credit shall
58 be allowed unless the total coal production from all mines
59 operated by the taxpayer or by members of the affiliated or
60 controlled group in this state has increased: *Provided*,
61 *however*, That in no case shall the severance tax attributable
62 to any mine other than the specific mine at which capital
63 investment in new machinery, equipment, or improvements
64 to real property is directly used in a coal mining operation
65 has been placed in service or use be offset by this rebate.

66 (e) When the eligible taxpayer is a new business that has
67 produced coal in this state for two years before making the
68 capital investment in new machinery, equipment, or
69 improvements to real property then, for purposes of
70 subdivision (1) in subsection (d) of this section, the base
71 shall be the average amount of state severance tax due under
72 §11-13A-3 of this code on coal produced in this state during
73 this two-year period.

74 (f) No rebate shall be allowed under this article when
75 credit is claimed under any other article of this chapter for
76 capital investment in the new machinery, equipment, or
77 improvements to real property. No credit shall be allowed
78 under any other article of this chapter when rebate is
79 allowed under this article for the capital investment in new
80 machinery, equipment, or improvements to real property.

**§11-13EE-4. Information required to determine amount of
rebate allowable.**

1 (a) A taxpayer claiming rebate under this article who
2 operates more than one coal mine in this state shall provide
3 a schedule with the annual severance tax return filed under
4 §11-13A-1 *et seq.* of this code that shows, for each coal
5 mine, the number of tons of coal produced and the gross

6 value of the coal produced at each mine during the taxable
7 year.

8 (b) When a taxpayer claiming rebate under this article is
9 a member of an affiliated or controlled group, as the case
10 may be, that operates more than one coal mine in this state
11 the group shall provide a schedule with its annual severance
12 tax return filed under §11-13A-1 *et seq.* of this code for the
13 taxable year that shows for each coal mine operated in this
14 state by the affiliated or controlled group, as the case may
15 be, the number of tons of coal produced at each mine and
16 the gross value of the coal produced at each mine during the
17 taxable year.

§11-13EE-5. Claim for rebate.

1 (a) After the severance taxes due for the taxable year are
2 paid, a taxpayer may file a claim under this article for rebate
3 of up to 80 percent of the state portion of the additional
4 severance taxes paid under §11-13A-3 of this code that are
5 directly attributable to the taxpayer's capital investment in
6 new machinery, equipment, or improvements on real
7 property placed in service or use during that taxable year as
8 set forth in §11-13EE-3 of this code.

9 (b) When the amount of rebate claimed exceeds 80
10 percent of the additional state severance tax paid as
11 provided in subsection (a) of this section, the unused portion
12 of the rebate amount may be carried forward and rebated by
13 the Tax Commissioner after severance taxes due in
14 subsequent years are paid: *Provided*, That the carryforward
15 period may not exceed 10 years from the date the capital
16 investment in new machinery, equipment, or improvements
17 to real property is placed in service or use in this state.

§11-13EE-6. Suspension of payment of rebate.

1 (a) No rebate may be paid under this article when the
2 taxpayer, or any member of the taxpayer's combined or
3 affiliated group, as the case may be, is delinquent in the
4 payment of severance taxes imposed pursuant to §11-13A-

5 3 of this code and any local, state, or federal tax or fee until
6 such time as the delinquency is cured.

7 (b) For purposes of this section, a taxpayer is not
8 delinquent if the taxpayer is contesting an assessment in the
9 Office of Tax Appeals or in any court of this state or of the
10 appropriate federal agency or court, or is complying with
11 the terms of any payment plan agreement.

12 (c) In the case of a taxpayer that files a combined tax
13 return as a member of a unitary group, no rebate under this
14 article that is earned by one member of the combined group,
15 but not fully used by or allowed to that member, may be
16 claimed, in whole or in part, by another member of the
17 group.

**§11-13EE-7. Burden of proof; application required; failure to
make timely application.**

1 (a) *Burden of proof*—The burden of proof is on the
2 taxpayer to establish by clear and convincing evidence that
3 the taxpayer is entitled to the benefits allowed by this article.

4 (b) *Application for rebate required*—

5 (1) Notwithstanding any provision of this article to the
6 contrary, no rebate shall be paid under this article for any
7 capital investment in new machinery, equipment, or
8 improvements to real property placed in service or use until
9 the person asserting a claim for the allowance of rebate
10 under this article makes written application to the Tax
11 Commissioner for allowance of rebate as provided in this
12 section.

13 (2) An application for rebate shall be filed, in the form
14 prescribed by the Tax Commissioner, no later than the last
15 day for filing the severance tax return, determined by
16 including any authorized extension of time for filing the
17 return, for the taxable year in which the machinery,
18 equipment, or improvements to which the rebate relates is

19 placed in service or use and all information required by the
20 form is provided.

21 (3) A separate application for rebate is required for each
22 taxable year during which the taxpayer places new
23 machinery, equipment, or improvements in service or use in
24 a mine or coal preparation and processing facility in this
25 state.

26 (c) *Failure to make timely application.* — The failure to
27 timely apply for the rebate results in the forfeiture of 25
28 percent of the rebate amount otherwise allowable under this
29 article. This penalty applies annually until the application is
30 filed.

§11-13EE-8. Identification of capital investment property.

1 Every taxpayer who claims a rebate pursuant to the
2 provisions of this article shall maintain sufficient records to
3 establish the following facts for each item of qualified
4 investment property:

5 (1) Its identity;

6 (2) Its actual or reasonably determined cost;

7 (3) Its useful life for federal income tax purposes;

8 (4) The month and taxable year in which it was placed
9 in service;

10 (5) The amount of rebate claimed; and

11 (6) The date it was disposed of or otherwise ceased to
12 be qualified capital investment property.

§11-13EE-9. Failure to keep records of capital investment property.

1 A taxpayer who does not keep the records required for
2 identification of investment credit property is subject to the
3 following rules:

4 (1) A taxpayer is treated as having disposed of, during
5 the taxable year, any machinery, equipment or
6 improvements to real property that the taxpayer cannot
7 establish was still on hand, in this state, at the end of that
8 year.

9 (2) If a taxpayer cannot establish when capital
10 investment in new machinery, equipment, or improvements
11 to real property was reported for purposes of claiming this
12 credit during the taxable year, or the machinery, equipment,
13 or improvements to real property were placed in service or
14 use, the taxpayer is treated as having placed it in service or
15 use in the most recent prior taxable year in which similar
16 machinery, equipment, or improvements to real property
17 were placed in service or use, unless the taxpayer can
18 establish that the machinery, equipment, or improvements
19 to real property were placed in service or use in the most
20 recent taxable year is still on hand. In that event, the
21 taxpayer will be treated as having placed the returned
22 machinery, equipment, or improvements to real property in
23 service or use in the next most recent taxable year.

§11-13EE-10. Transfer of qualified investment property to successors.

1 (a) *Mere change in form of business*—Machinery,
2 equipment, or improvements to real property may not be
3 treated as disposed of under §11-13EE-9 of this code, by
4 reason of a mere change in the form of conducting the
5 business as long as the machinery, equipment, or
6 improvements to real property is retained in the successor
7 business in this state, and the transferor business retains a
8 controlling interest in the successor business. In this event,
9 the successor business is allowed to claim the rebate amount
10 of credit still available with respect to the machinery and
11 equipment transferred, and the transferor business may not
12 be required to redetermine the amount of rebate allowed in
13 earlier years.

14 (b) *Transfer or sale to successor*—Machinery,
15 equipment, or improvements to real property is not treated
16 as disposed of under §11-13EE-11 of this code by reason of
17 any transfer or sale to a successor business which continues
18 to operate machinery, equipment, or improvements to real
19 property at the mine in this state at which the machinery,
20 equipment, or improvements to real property were first
21 placed in service or use. Upon transfer or sale, the successor
22 shall acquire the amount of rebate, if any, that remains
23 available under this article, and the transferor business is not
24 required to redetermine the amount of rebate allowed in
25 earlier years.

§11-13EE-11. Recapture of rebate; recapture tax imposed.

1 (a) *When recapture tax applies*—

2 (1) Any person who places machinery, equipment, or
3 improvements to real property in service or use for purposes
4 of this credit and who fails to use the machinery, equipment,
5 or improvements to real property for at least five years in
6 the production of coal in this state shall pay the recapture
7 tax imposed by subsection (b) of this section.

8 (2) This section does not apply when §11-13EE-10 of
9 this code applies: *Provided*, That, the successor, or the
10 successors, and the person, or persons, who previously
11 claimed credit under this article with respect to the
12 machinery, equipment, or improvements to real property,
13 are jointly and severally liable for payment of any recapture
14 tax subsequently imposed under this section with respect to
15 the machinery, equipment, or improvements to real property
16 used to qualify for rebate under this article.

17 (b) *Recapture tax imposed*—The recapture tax imposed
18 by this subsection is the amount determined as follows. If
19 the taxpayer prematurely removes machinery, equipment,
20 or improvements to real property placed in service when
21 considered as a class from economic service in the
22 taxpayer's coal production activity in this state, the taxpayer

23 shall recapture the amount of rebate claimed under this
24 article for the taxable year, and all preceding taxable years,
25 attributable to the machinery, equipment, or improvements
26 to real property which has been prematurely removed from
27 service. The amount of tax due under this subsection is an
28 amount equal to the amount of rebate that is recaptured
29 pursuant to this subsection.

30 (c) *Payment of recapture tax*—The amount of tax
31 recaptured under this section is due and payable on the day
32 the person's annual return is due for the taxable year, in
33 which this section applies, under §11-13A-1 *et seq.* of this
34 code. When the employer is a partnership, limited liability
35 company or an S corporation for federal income tax
36 purposes, the recapture tax shall be paid by those persons
37 who are partners in the partnership, members in the
38 company, or shareholders in the S corporation, in the
39 taxable year in which recapture tax is imposed under this
40 section.

§11-13EE-12. Interpretation and construction.

1 (a) No inference, implication, or presumption of
2 legislative construction or intent may be drawn or made by
3 reason of the location or grouping of any particular section,
4 provision, or portion of this article; and no legal effect may
5 be given to any descriptive matter or heading relating to any
6 section, subsection, or paragraph of this article.

7 (b) The provisions of this article shall be reasonably
8 construed in order to effectuate the legislative intent recited
9 in §11-13EE-1 of this code.

§11-13EE-13. Rebate report.

1 (a) The Tax Commissioner shall provide to the Joint
2 Committee on Government and Finance by July 1, 2022,
3 and on the first day of July of each year thereafter, a report
4 detailing the amount of rebate claimed pursuant to this
5 article. The report is to include the amount of rebate claimed

6 against the severance tax imposed pursuant to §11-13A-2 of
7 this code.

8 (b) Taxpayers claiming the rebate shall provide the
9 information the Tax Commissioner may require to prepare
10 the report: *Provided*, That the information provided is
11 subject to the confidentiality and disclosure provisions of
12 §11-10-5d and §11-10-5s of this code.

13 (c) The Tax Commissioner shall identify any issues he
14 or she has in the administration and enforcement of this
15 rebate and make any suggestions the Commissioner may
16 have for improving the credit or the administration of the
17 rebate.

§11-13EE-14. Rules.

1 The Tax Commissioner may promulgate such
2 interpretive, legislative, and procedural rules as the
3 commissioner deems to be useful or necessary to carry out
4 the purpose of this article and to implement the intent of the
5 Legislature. The Tax Commissioner may promulgate
6 emergency rules if they are filed in the West Virginia
7 Register before January 1, 2020. All rules shall be
8 promulgated in accordance with the provisions of §29A-3-
9 1 *et seq.* of this code.

§11-13EE-15. Severability.

1 (a) If any provision of this article or the application
2 thereof is for any reason adjudged by any court of competent
3 jurisdiction to be invalid, the judgment may not affect,
4 impair, or invalidate the remainder of the article, but shall
5 be confined in its operation to the provision thereof directly
6 involved in the controversy in which the judgment shall
7 have been rendered, and the applicability of the provision to
8 other persons or circumstances may not be affected thereby.

9 (b) If any provision of this article or the application
10 thereof is made invalid or inapplicable by reason of the
11 repeal, or any other invalidation of any statute therein

12 addressed or referred to, such invalidation or inapplicability
 13 may not affect, impair, or invalidate the remainder of the
 14 article, but shall be confined in its operation to the provision
 15 thereof directly involved with, pertaining to, addressing, or
 16 referring to the statute, and the application of the provision
 17 with regard to other statutes or in other instances not
 18 affected by any such repealed or invalid statute may not be
 19 abrogated or diminished in any way.

§11-13EE-16. Effective date.

1 The rebate allowed by this article is allowed for capital
 2 investment in new machinery, equipment, or improvements
 3 to real property placed in service or use in this state on or
 4 after the effective date of this article.

CHAPTER 258

(Com. Sub. for S. B. 90 - By Senator Rucker)

[Passed March 9, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §17B-3-3c of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-3 and §17C-5A-3a of said code, all relating to the Safety and Treatment Program; transferring the program from the Department of Health and Human Resources to the Division of Motor Vehicles; waiving license reinstatement fees in some circumstances; and providing for a method to reduce the license revocation period.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSE.

ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.**§17B-3-3c. Suspending license for failure to pay fines or penalties imposed as the result of criminal conviction or for failure to appear in court.**

1 (a) The Division shall suspend the license of any
2 resident of this state or the privilege of a nonresident to drive
3 a motor vehicle in this state upon receiving notice from a
4 circuit court, magistrate court, or municipal court of this
5 state, pursuant to §50-3-2b, §8-10-2b, or §62-4-17 of this
6 code, that the person has defaulted on the payment of costs,
7 fines, forfeitures, penalties, or restitution imposed on the
8 person by the circuit court, magistrate court, or municipal
9 court upon conviction for any criminal offense by the date
10 the court had required the person to pay the same, or that the
11 person has failed to appear in court when charged with an
12 offense. For the purposes of this section, §50-3-2b, §8-10-
13 2b, and §62-4-17 of this code, "criminal offense" shall be
14 defined as any violation of the provisions of this code, or the
15 violation of any municipal ordinance, for which the
16 violation of the offense may result in a fine, confinement in
17 jail, or imprisonment in a correctional facility of this state:
18 *Provided*, That any parking violation or other violation for
19 which a citation may be issued to an unattended vehicle
20 shall not be considered a criminal offense for the purposes
21 of this section, §8-10-2b, §50-3-2b, or §62-4-17 of this
22 code.

23 (b) A copy of the order of suspension shall be forwarded
24 to the person by certified mail, return receipt requested. No
25 order of suspension becomes effective until 10 days after
26 receipt of a copy of the order. The order of suspension shall
27 advise the person that because of the receipt of notice of the
28 failure to pay costs, fines, forfeitures, or penalties, or the
29 failure to appear, a presumption exists that the person
30 named in the order of suspension is the same person named
31 in the notice. The commissioner may grant an
32 administrative hearing which substantially complies with

33 the requirements of the provisions §17C-5A-2 of this code
34 upon a preliminary showing that a possibility exists that the
35 person named in the notice of conviction is not the same
36 person whose license is being suspended. The request for
37 hearing shall be made within 10 days after receipt of a copy
38 of the order of suspension. The sole purpose of this hearing
39 shall be for the person requesting the hearing to present
40 evidence that he or she is not the person named in the notice.
41 In the event the commissioner grants an administrative
42 hearing, the commissioner shall stay the license suspension
43 pending the commissioner's order resulting from the
44 hearing.

45 (c) A suspension under this section and section three-a
46 of this chapter will continue until the person provides proof
47 of compliance from the municipal, magistrate, or circuit
48 court and pays the reinstatement fee as provided in §17B-3-
49 9 of this code. The reinstatement fee is assessed upon
50 issuance of the order of suspension regardless of the
51 effective date of suspension.

52 (d) Upon notice from an appropriate state official that
53 the person is successfully participating in an approved
54 treatment and job program as prescribed in §61-11-26a of
55 this code and that the person is believed to be safe to drive,
56 the Division of Motor Vehicles shall stay or supersede the
57 imposition of any suspension under this section or §17B-3-
58 3a of this code. The Division of Motor Vehicles shall waive
59 the reinstatement fee established by the provisions §17B-3-
60 9 upon receipt of proper documentation of the person's
61 successful completion of a program under §61-11-26a of
62 this code and proof of compliance from the municipal,
63 magistrate, or circuit court. The stay or supersedeas shall be
64 removed by the Division of Motor Vehicles upon receipt of
65 notice from an appropriate state official of a participant's
66 failure to complete or comply with the approved treatment
67 and job program as established under §61-11-26a of this
68 code.

**CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS
OF THE ROAD.**

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR
SUSPENSION AND REVOCATION OF LICENSES FOR
DRIVING UNDER THE INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES, OR DRUGS.**

**§17C-5A-3. Safety and Treatment Program; reissuance of
license.**

1 (a) The Division of Motor Vehicles shall administer a
2 comprehensive Safety and Treatment Program for persons
3 whose licenses have been revoked under the provisions of
4 this article, or §17C-5-7 or §17B-3-5(6) of this code and
5 shall also establish the minimum qualifications for mental
6 health facilities, day report centers, community corrections
7 centers, or other public agencies or private entities
8 conducting the Safety and Treatment Program: *Provided,*
9 That the Division of Motor Vehicles may establish
10 standards whereby the division will accept or approve
11 participation by violators in another treatment program
12 which provides the same or substantially similar benefits as
13 the Safety and Treatment Program established pursuant to
14 this section.

15 (b) The program shall include, but not be limited to,
16 treatment of alcoholism, alcohol and drug abuse,
17 psychological counseling, educational courses on the
18 dangers of alcohol and drugs as they relate to driving,
19 defensive driving or other safety driving instruction, and
20 other programs designed to properly educate, train, and
21 rehabilitate the offender: *Provided,* That successful
22 compliance with the substance abuse and counseling
23 program prescribed in §61-11-26a of this code is sufficient
24 to meet the requirements of this section.

25 (c) The Division of Motor Vehicles shall provide for the
26 preparation of an educational and treatment the program for
27 each person whose license has been revoked under the

28 provisions of this article, or §17C-5-7 or §17B-3-5(6) of this
29 code which shall contain the following: (1) A listing and
30 evaluation of the offender's prior traffic record; (2) the
31 characteristics and history of alcohol or drug use, if any; (3)
32 his or her amenability to rehabilitation through the alcohol
33 safety program; and (4) a recommendation as to treatment
34 or rehabilitation and the terms and conditions of the
35 treatment or rehabilitation. The program shall be prepared
36 by persons knowledgeable in the diagnosis of alcohol or
37 drug abuse and treatment.

38 (d) There is hereby created a special revenue account
39 within the State Treasury known as the Division of Motor
40 Vehicles Safety and Treatment Fund. The account shall be
41 administered by the Commissioner of the Division of Motor
42 Vehicles for the purpose of administering the
43 comprehensive Safety and Treatment Program established
44 by subsection (a) of this section. The account may be
45 invested and all earnings and interest accruing shall be
46 retained in the account. The Auditor shall conduct an audit
47 of the fund at least every three fiscal years.

48 Effective July 1, 2019, all moneys held in the
49 Department of Health and Human Resources Safety and
50 Treatment Fund shall be transferred to the Division of
51 Motor Vehicles Safety and Treatment Fund.

52 (e) (1) The program provider shall collect the
53 established fee from each participant upon enrollment
54 unless the division has determined that the participant is an
55 indigent based upon criteria established pursuant to
56 legislative rule authorized in this section.

57 (2) If the division determined that a participant is an
58 indigent based upon criteria established pursuant to the
59 legislative rule authorized by this section, the department
60 shall provide the applicant with proof of its determination
61 regarding indigency, which proof the applicant shall present
62 to the interlock provider as part of the application process

63 provided in §17C-5A-3a of this code and/or the rules
64 promulgated pursuant thereto.

65 (3) Program providers shall remit to the Division of
66 Motor Vehicles a portion of the fee collected, which shall
67 be deposited by the Commissioner of the Division of Motor
68 Vehicles into the Division of Motor Vehicles Safety and
69 Treatment Fund. The Division of Motor Vehicles shall
70 reimburse enrollment fees to program providers for each
71 eligible indigent offender.

72 (f) On or before January 15 of each year, the
73 Commissioner of the Division of Motor Vehicles shall
74 report to the Legislature on:

75 (1) The total number of offenders participating in the
76 Safety and Treatment Program during the prior year;

77 (2) The total number of indigent offenders participating
78 in the Safety and Treatment Program during the prior year;

79 (3) The total number of program providers during the
80 prior year; and

81 (4) The total amount of reimbursements paid to program
82 providers during the prior year.

83 (g) The Commissioner of the Division of Motor
84 Vehicles, after giving due consideration to the program
85 developed for the offender, shall prescribe the necessary
86 terms and conditions for the reissuance of the license to
87 operate a motor vehicle in this state revoked under this
88 article, or §17C-5-7 or §17B-3-5(6) of this code which shall
89 include successful completion of the educational, treatment,
90 or rehabilitation program, subject to the following:

91 (1) When the period of revocation is six months, the
92 license to operate a motor vehicle in this state may not be
93 reissued until: (A) At least 90 days have elapsed from the
94 date of the initial revocation, during which time the
95 revocation was actually in effect; (B) the offender has

96 successfully completed the program; (C) all costs of the
97 program and administration have been paid; and (D) all
98 costs assessed as a result of a revocation hearing have been
99 paid.

100 (2) When the period of revocation is for a period of one
101 year or for more than a year, the license to operate a motor
102 vehicle in this state may not be reissued until: (A) At least
103 one half of the time period has elapsed from the date of the
104 initial revocation, during which time the revocation was
105 actually in effect; (B) the offender has successfully
106 completed the program; (C) all costs of the program and
107 administration have been paid; and (D) all costs assessed as
108 a result of a revocation hearing have been paid.
109 Notwithstanding any provision in this code, a person whose
110 license is revoked for refusing to take a chemical test as
111 required by §17C-5-7 of this code for a first offense is not
112 eligible to reduce the revocation period by completing the
113 Safety and Treatment Program.

114 (3) When the period of revocation is for life, the license
115 to operate a motor vehicle in this state may not be reissued
116 until: (A) At least 10 years have elapsed from the date of the
117 initial revocation, during which time the revocation was
118 actually in effect; (B) the offender has successfully
119 completed the program; (C) all costs of the program and
120 administration have been paid; and (D) all costs assessed as
121 a result of a revocation hearing have been paid.

122 (4) Notwithstanding any provision of this code or any
123 rule, any mental health facilities or other public agencies or
124 private entities conducting the Safety and Treatment
125 Program when certifying that a person has successfully
126 completed a Safety and Treatment Program shall only have
127 to certify that the person has successfully completed the
128 program.

129 (h) (1) The Division of Motor Vehicles shall provide for
130 the preparation of an educational program for each person
131 whose license has been suspended for 60 days pursuant to

132 the provisions of §17C-5A-2(n) of this code. The
133 educational program shall consist of not less than 12 nor
134 more than 18 hours of actual classroom time.

135 (2) When a 60-day period of suspension has been
136 ordered, the license to operate a motor vehicle may not be
137 reinstated until: (A) At least 60 days have elapsed from the
138 date of the initial suspension, during which time the
139 suspension was in effect; (B) the offender has successfully
140 completed the educational program; (C) all costs of the
141 program and administration have been paid; and (D) all
142 costs assessed as a result of a suspension hearing have been
143 paid.

144 (i) A required component of the treatment program
145 provided in §17C-5A-3(b) of this code and the education
146 program provided for in §17C-5A-3(c) of this code shall be
147 participation by the violator with a victim impact panel
148 program providing a forum for victims of alcohol and drug-
149 related offenses and offenders to share first-hand
150 experiences on the impact of alcohol and drug-related
151 offenses in their lives. The Division of Motor Vehicles
152 shall propose and implement a plan for victim impact panels
153 where appropriate numbers of victims are available and
154 willing to participate and shall establish guidelines for other
155 innovative programs which may be substituted where the
156 victims are not available to assist persons whose licenses
157 have been suspended or revoked for alcohol and drug-
158 related offenses to gain a full understanding of the severity
159 of their offenses in terms of the impact of the offenses on
160 victims and offenders. The plan shall require, at a minimum,
161 discussion and consideration of the following:

162 (1) Economic losses suffered by victims or offenders;

163 (2) Death or physical injuries suffered by victims or
164 offenders;

165 (3) Psychological injuries suffered by victims or
166 offenders;

167 (4) Changes in the personal welfare or familial
168 relationships of victims or offenders; and

169 (5) Other information relating to the impact of alcohol
170 and drug-related offenses upon victims or offenders.

171 The Division of Motor Vehicles shall ensure that any
172 meetings between victims and offenders shall be
173 nonconfrontational and ensure the physical safety of the
174 persons involved.

175 (j)(1) The Commissioner of the Division of Motor
176 Vehicles shall promulgate a rule for legislative approval in
177 accordance with §29A-3-1 *et seq.* of this code to administer
178 the provisions of this section and establish a fee to be
179 collected from each offender enrolled in the Safety and
180 Treatment Program. The rule shall include: (A) A
181 reimbursement mechanism to program providers of
182 required fees for the safety and treatment program for
183 indigent offenders, criteria for determining eligibility of
184 indigent offenders, and any necessary application forms;
185 and (B) program standards that encompass provider criteria
186 including minimum professional training requirements for
187 providers, curriculum approval, minimum course length
188 requirements, and other items that may be necessary to
189 properly implement the provisions of this section.

190 (2) The Legislature finds that an emergency exists and,
191 therefore, the commissioner shall file by July 1, 2019, an
192 emergency rule to implement this section pursuant to the
193 provisions of §29A-3-15 of this code.

194 (k) Nothing in this section may be construed to prohibit
195 day report or community corrections programs, authorized
196 pursuant to §62-11C-1 *et seq.* of this code, from
197 administering a comprehensive Safety and Treatment
198 Program pursuant to this section.

§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program.

1 (a) (1) The Division of Motor Vehicles shall control and
2 regulate a Motor Vehicle Alcohol Test and Lock Program
3 for persons whose licenses have been revoked pursuant to
4 this article or the provisions of §17C-5-1 *et seq.* of this code
5 or have been convicted under §17C-5-2 of this code, or who
6 are serving a term of a conditional probation pursuant to
7 §17C-5-2b of this code.

8 (2) The program shall include the establishment of a
9 user's fee for persons participating in the program which
10 shall be paid in advance and deposited into the Driver's
11 Rehabilitation Fund: *Provided*, That on and after July 1,
12 2007, any unexpended balance remaining in the Driver's
13 Rehabilitation Fund shall be transferred to the Motor
14 Vehicle Fees Fund created under the provisions of §17A-2-
15 21 of this code and all further fees collected shall be
16 deposited in that fund.

17 (3) (A) Except where specified otherwise, the use of the
18 term "program" in this section refers to the Motor Vehicle
19 Alcohol Test and Lock Program.

20 (B) The Commissioner of the Division of Motor
21 Vehicles shall propose legislative rules for promulgation in
22 accordance with the provisions of §29A-1-1 of this code for
23 the purpose of implementing the provisions of this section.
24 The rules shall also prescribe those requirements which, in
25 addition to the requirements specified by this section for
26 eligibility to participate in the program, the commissioner
27 determines must be met to obtain the commissioner's
28 approval to operate a motor vehicle equipped with a motor
29 vehicle alcohol test and lock system.

30 (C) Nothing in this section may be construed to prohibit
31 day report or community corrections programs authorized
32 pursuant to §62-11C-1 *et seq.*, or a home incarceration
33 program authorized pursuant to §62-11B-1 *et seq.* of this

34 code, from being a provider of motor vehicle alcohol test
35 and lock systems for eligible participants as authorized by
36 this section.

37 (4) For purposes of this section, a “motor vehicle
38 alcohol test and lock system” means a mechanical or
39 computerized system which, in the opinion of the
40 commissioner, prevents the operation of a motor vehicle
41 when, through the system’s assessment of the blood alcohol
42 content of the person operating or attempting to operate the
43 vehicle, the person is determined to be under the influence
44 of alcohol.

45 (5) The fee for installation and removal of ignition
46 interlock devices shall be waived for persons determined to
47 be indigent by the Division of Motor Vehicles pursuant to
48 §17C-5A-3 of this code. The commissioner shall establish
49 by legislative rule, proposed pursuant to §29A-3-1 *et seq.* of
50 this code, procedures to be followed with regard to persons
51 determined by the Division of Motor Vehicles to be
52 indigent. The rule shall include, but is not limited to,
53 promulgation of application forms, establishment of
54 procedures for the review of applications, and the
55 establishment of a mechanism for the payment of
56 installations for eligible offenders.

57 (6) On or before January 15 of each year, the
58 Commissioner of the Division of Motor Vehicles shall
59 report to the Legislature on:

60 (A) The total number of offenders participating in the
61 program during the prior year;

62 (B) The total number of indigent offenders participating
63 in the program during the prior year;

64 (C) The terms of any contracts with the providers of
65 ignition interlock devices; and

66 (D) The total cost of the program to the state during the
67 prior year.

68 (b) (1) Any person whose license is revoked for the first
69 time pursuant to this article or the provisions of §17C-5-1 *et*
70 *seq.* of this code is eligible to participate in the program
71 when the person's minimum revocation period as specified
72 by §17C-5A-3a(c) of this code has expired and the person
73 is enrolled in or has successfully completed the Safety and
74 Treatment Program or presents proof to the commissioner
75 within 60 days of receiving approval to participate by the
76 commissioner that he or she is enrolled in a Safety and
77 Treatment Program: *Provided*, That anyone whose license
78 is revoked for the first time for driving with a blood alcohol
79 concentration of 0.15 percent or more, by weight, must
80 participate in the program when the person's minimum
81 revocation period as specified by §17C-5A-3a(c) of this
82 code has expired and the person is enrolled in or has
83 successfully completed the Safety and Treatment Program
84 or presents proof to the commissioner within 60 days of
85 receiving approval to participate by the commissioner that
86 he or she is enrolled in a Safety and Treatment Program.

87 (2) Any person whose license has been suspended for
88 driving a motor vehicle while under the age of 21 years with
89 an alcohol concentration in his or her blood 0.02 percent or
90 more, by weight, but less than 0.08 percent, by weight, is
91 eligible to participate in the program after 30 days have
92 elapsed from the date of the initial suspension, during which
93 time the suspension was actually in effect: *Provided*, That
94 in the case of a person under the age of 18, the person is
95 eligible to participate in the program after 30 days have
96 elapsed from the date of the initial suspension, during which
97 time the suspension was actually in effect or after the
98 person's 18th birthday, whichever is later. Before the
99 commissioner approves a person to operate a motor vehicle
100 equipped with a motor vehicle alcohol test and lock system,
101 the person must agree to comply with the following
102 conditions:

103 (A) If not already enrolled, the person shall enroll in and
104 complete the educational program provided in §17C-5A-

105 3(d) of this code at the earliest time that placement in the
106 educational program is available, unless good cause is
107 demonstrated to the commissioner as to why placement
108 should be postponed;

109 (B) The person shall pay all costs of the educational
110 program, any administrative costs, and all costs assessed for
111 any suspension hearing.

112 (3) Notwithstanding the provisions of this section to the
113 contrary, a person eligible to participate in the program
114 under this subsection may not operate a motor vehicle
115 unless approved to do so by the commissioner.

116 (c) A person who participates in the program under
117 §17C-5A-3a(b)(1) of this code is subject to a minimum
118 revocation period and minimum period for the use of the
119 ignition interlock device as follows:

120 (1) For a person whose license has been revoked for a
121 first offense for six months for driving under the influence
122 of alcohol, or a combination of alcohol and any controlled
123 substance or other drug, or with a blood alcohol
124 concentration of 0.08 percent, by weight, but less 0.15
125 percent, by weight, the minimum period of revocation for
126 participation in the test and lock program is 15 days and the
127 minimum period for the use of the ignition interlock device
128 is 125 days;

129 (2) For a person whose license has been revoked for a
130 first offense for refusing a secondary chemical test, the
131 minimum period of revocation for participation in the test
132 and lock program is 45 days and the minimum period for
133 the use of the ignition interlock device is one year;

134 (3) For a person whose license has been revoked for a
135 first offense for driving with a blood alcohol concentration
136 of 0.15 percent or more, by weight, the minimum period of
137 revocation for participation in the test and lock program is

138 45 days and the minimum period for the use of the ignition
139 interlock device is 270 days;

140 (4) For a person whose license has been revoked for a
141 first offense for driving under the influence of alcohol, or a
142 combination of alcohol and any controlled substance or
143 other drug, or with a blood alcohol concentration of 0.08
144 percent or more, by weight, or did drive a motor vehicle
145 while under the age of 21 years with an alcohol
146 concentration in his or her blood of 0.02 percent or more, by
147 weight, but less than 0.08 percent, by weight, and while
148 driving does any act forbidden by law or fails to perform
149 any duty imposed by law, which act or failure proximately
150 causes the death of any person within one year next
151 following the act or failure, and commits the act or failure
152 in reckless disregard of the safety of others and when the
153 influence of alcohol, controlled substances or drugs is
154 shown to be a contributing cause to the death, the minimum
155 period of revocation before the person is eligible for
156 participation in the test and lock program is 12 months and
157 the minimum period for the use of the ignition interlock
158 device is two years;

159 (5) For a person whose license has been revoked for a
160 first offense for driving under the influence of alcohol, or a
161 combination of alcohol and any controlled substance or
162 other drug, or with a blood alcohol concentration of 0.08
163 percent or more, by weight, and while driving does any act
164 forbidden by law or fails to perform any duty imposed by
165 law in the driving of the vehicle, which act or failure
166 proximately causes the death of any person within one year
167 next following the act or failure, the minimum period of
168 revocation is six months and the minimum period for the
169 use of the ignition interlock device is two years;

170 (6) For a person whose license has been revoked for a
171 first offense for driving under the influence of alcohol, or a
172 combination of alcohol and any controlled substance or
173 other drug, or with a blood alcohol concentration of 0.08
174 percent or more, by weight, and while driving does any act

175 forbidden by law or fails to perform any duty imposed by
176 law in the driving of the vehicle, which act or failure
177 proximately causes bodily injury to any person other than
178 himself or herself, the minimum period of revocation for
179 participation in the program is two months and the
180 minimum period for the use of the ignition interlock device
181 is one year;

182 (7) For a person whose license has been revoked for a
183 first offense for driving under the influence of alcohol, or a
184 combination of alcohol and any controlled substance or
185 other drug, or with a blood alcohol concentration of 0.08
186 percent or more, by weight, and while driving has on or
187 within the motor vehicle one or more other persons who are
188 unemancipated minors who have not reached their 16th
189 birthday, the minimum period of revocation for
190 participation in the program is two months and the
191 minimum period for the use of the ignition interlock device
192 is 10 months.

193 (d) Notwithstanding any provision of the code to the
194 contrary, a person shall participate in the program if the
195 person is convicted under §17C-5-2 of this code or the
196 person's license is revoked under §17C-5A-2 or §17C-5-7
197 of this code and the person was previously either convicted
198 or his or her license was revoked under any provision cited
199 in this subsection within the past 10 years. The minimum
200 revocation period for a person required to participate in the
201 program under this subsection is one year and the minimum
202 period for the use of the ignition interlock device is two
203 years, except that the minimum revocation period for a
204 person required to participate because of a violation for
205 driving while under the age of 21 with a blood alcohol
206 concentration of 0.02 percent, or more, by weight, but less
207 than 0.08 percent, or more, by weight, is two months and
208 the minimum period of participation is one year. The
209 division shall add an additional two months to the minimum
210 period for the use of the ignition interlock device if the
211 offense was committed while a minor was in the vehicle.

212 The division shall add an additional six months to the
213 minimum period for the use of the ignition interlock device
214 if a person other than the driver received injuries. The
215 division shall add an additional two years to the minimum
216 period for the use of the ignition interlock device if a person
217 other than the driver is injured and the injuries result in that
218 person's death. The division shall add one year to the
219 minimum period for the use of the ignition interlock device
220 for each additional previous conviction or revocation within
221 the past 10 years. Any person required to participate under
222 this subsection must have an ignition interlock device
223 installed on every vehicle he or she owns or operates.

224 (e)(1) If a person applies for and is accepted into the
225 Motor Vehicle Alcohol Test and Lock Program prior to the
226 effective date of the revocation, the commissioner shall
227 defer the revocation period of such person under the
228 provisions of this section. Such deferral shall continue
229 throughout the applicable minimum period for the use of the
230 ignition interlock device plus an additional period equal to
231 the applicable minimum revocation period. If a person
232 successfully completes all terms of the Motor Vehicle
233 Alcohol Test and Lock Program for a period equal to the
234 minimum period for the use of the ignition interlock device
235 pursuant to §17C-5A-3a(c) of this code, plus any applicable
236 minimum revocation period, the commissioner shall waive
237 the revocation period.

238 (2) The application and acceptance of a person into the
239 Motor Vehicle Alcohol Test and Lock Program pursuant to
240 §17C-5A-3(e)(1) of this code constitutes an automatic
241 waiver of their right to an administrative hearing. The
242 Office of Administrative Hearings may not conduct a
243 hearing on a matter which is the basis for a person actively
244 participating in the Motor Vehicle Alcohol Test and Lock
245 Program.

246 (f) Notwithstanding any other provision in this code, a
247 person whose license is revoked for driving under the
248 influence of drugs is not eligible to participate in the Motor

249 Vehicle Alcohol Test and Lock Program: *Provided*, That the
250 Division of Motor Vehicles may reduce any revocation
251 period required of a person with a second or subsequent
252 offense for driving under the influence of drugs to a
253 minimum of one year and thereafter issue a restricted
254 license on the conditions that the person is in the treatment
255 and job program prescribed in §61-11-26a of this code, has
256 satisfactorily performed in the treatment component of the
257 program and that the person submits to two years of monthly
258 drug testing. If the person is otherwise required to
259 participate in the Alcohol Test and Lock Program for
260 another offense, he or she may do so while meeting the
261 conditions described in this subsection. If the person fails to
262 submit to a drug test or submits to a test that reveals the
263 presence of controlled substances or drugs, then the full
264 revocation period is reinstated, and the person is only
265 credited with revocation time actually served prior to
266 receiving restricted privileges. The Commissioner of the
267 Division of Motor Vehicles is hereby authorized to
268 promulgate emergency rules to implement the provisions of
269 this article.

270 (g) An applicant for the test and lock program may not
271 have been convicted of any violation of §17B-4-3 of this
272 code for driving while the applicant's driver's license was
273 suspended or revoked within the six-month period
274 preceding the date of application for admission to the test
275 and lock program unless such is necessary for employment
276 purposes.

277 (h) Upon permitting an eligible person to participate in
278 the program, the commissioner shall issue to the person, and
279 the person is required to exhibit on demand, a driver's
280 license which shall reflect that the person is restricted to the
281 operation of a motor vehicle which is equipped with an
282 approved motor vehicle alcohol test and lock system.

283 (i) The commissioner may extend the minimum period
284 of revocation and the minimum period of participation in
285 the program for a person who violates the terms and

286 conditions of participation in the program as found in this
287 section, or legislative rule, or any agreement or contract
288 between the participant and the division or program service
289 provider. If the commissioner finds that any person
290 participating in the program pursuant to §17C-5-2b of this
291 code must be removed therefrom for violation(s) of the
292 terms and conditions thereof, he or she shall notify the
293 person, the court that imposed the term of participation in
294 the program and the prosecuting attorney in the county
295 wherein the order imposing participation in the program
296 was entered.

297 (j) A person whose license has been suspended for a first
298 offense of driving while under the age of 21 with a blood
299 alcohol concentration of 0.02 percent, or more, by weight,
300 but less than 0.08 percent, or more, by weight, who has
301 completed the educational program and who has not
302 violated the terms required by the commissioner of the
303 person's participation in the program is entitled to the
304 reinstatement of his or her driver's license six months from
305 the date the person is permitted to operate a motor vehicle
306 by the commissioner. When a license has been reinstated
307 pursuant to this subsection, the records ordering the
308 suspension, records of any administrative hearing, records
309 of any blood alcohol test results, and all other records
310 pertaining to the suspension shall be expunged by operation
311 of law: *Provided*, That a person is entitled to expungement
312 under the provisions of this subsection only once. The
313 expungement shall be accomplished by physically marking
314 the records to show that the records have been expunged and
315 by securely sealing and filing the records. Expungement has
316 the legal effect as if the suspension never occurred. The
317 records may not be disclosed or made available for
318 inspection and in response to a request for record
319 information, the commissioner shall reply that no
320 information is available. Information from the file may be
321 used by the commissioner for research and statistical
322 purposes so long as the use of the information does not
323 divulge the identity of the person.

324 (k) In addition to any other penalty imposed by this
325 code, any person who operates a motor vehicle not equipped
326 with an approved motor vehicle alcohol test and lock system
327 during that person's participation in the Motor Vehicle
328 Alcohol Test and Lock Program is guilty of a misdemeanor
329 and, upon conviction thereof, shall be confined in jail for a
330 period not less than one month nor more than six months
331 and fined not less than \$100 nor more than \$500. Any
332 person who attempts to bypass the alcohol test and lock
333 system is guilty of a misdemeanor and, upon conviction
334 thereof, shall be confined in jail not more than six months
335 and fined not less than \$100 nor more than \$1,000:
336 *Provided*, That notwithstanding any provision of this code
337 to the contrary, a person enrolled and participating in the
338 test and lock program may operate a motor vehicle solely at
339 his or her job site if the operation is a condition of his or her
340 employment. For the purpose of this section, "job site" does
341 not include any street or highway open to the use of the
342 public for purposes of vehicular traffic.



CHAPTER 259

**(Com. Sub. for S. B. 238 - By Senators Baldwin,
Cline, Jeffries and Lindsay)**

[Passed March 7, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §17C-12-7 of the Code of West Virginia, 1931, as amended, relating to increasing certain penalties for illegally passing a stopped school bus; increasing driver's license suspension periods for violators; and requiring forward and rear-facing exterior cameras on all county school buses purchased after July 1, 2019.

Be it enacted by the Legislature of West Virginia:

PREAMBLE: This act shall be known as the Haven McCarthy Memorial Act.

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; requirements for sale of buses; mounting of cameras; educational information campaign; limitation on idling.

1 (a) The driver of a vehicle, upon meeting or overtaking
2 from either direction any school bus which has stopped for
3 the purpose of receiving or discharging any school children,
4 shall stop the vehicle before reaching the school bus when
5 there is in operation on the school bus flashing warning
6 signal lights, as referred to in §17C-12-8 of this code, and
7 the driver may not proceed until the school bus resumes
8 motion, or is signaled by the school bus driver to proceed or
9 the visual signals are no longer actuated. This section
10 applies wherever the school bus is receiving or discharging
11 children including, but not limited to, any street, highway,
12 parking lot, private road, or driveway: *Provided*, That the
13 driver of a vehicle upon a controlled access highway need
14 not stop upon meeting or passing a school bus which is on a
15 different roadway or adjacent to the highway and where
16 pedestrians are not permitted to cross the roadway.

17 (b) Any driver acting in violation of subsection (a) of
18 this section is guilty of a misdemeanor and, upon conviction
19 for a first offense, shall be fined not less than \$500 or more
20 than \$1,000, or confined in jail not more than six months, or
21 both fined and confined. Upon conviction of a second
22 violation of subsection (a) of this section, the driver shall be
23 fined not less than \$1,000 nor more than \$1,500, or confined
24 in jail not more than six months, or both fined and confined.
25 Upon conviction of a third or subsequent violation of
26 subsection (a) of this section, the driver shall be fined
27 \$2,000 and confined not less than 48 hours in jail but not
28 more than six months.

29 (c) Where the actual identity of the operator of a motor
30 vehicle operated in violation of subsection (a) of this section
31 is unknown but the license plate number of the motor
32 vehicle is known, it may be inferred that the operator was
33 an owner or lessee of the motor vehicle for purposes of the
34 probable cause determination. Where there is more than one
35 registered owner or lessee, the inference created by this
36 subsection shall apply to the first listed owner or lessee as
37 found on the motor vehicle registration: *Provided*, That a
38 person charged with a violation of subsection (a) of this
39 section, under the provisions of this subsection, where the
40 sole evidence against the owner or lessee is the presence of
41 the vehicle at the scene at the time of the offense shall only
42 be subject to the applicable fine set forth in subsection (b)
43 of this section upon conviction: *Provided, however*, That
44 the offenses set forth in subsections (f) and (g) of this
45 section are separate and distinct from that set forth in
46 subsection (a) of this section.

47 (d) Service of process of a complaint issued pursuant to
48 subsection (c) of this section shall be effected consistent
49 with West Virginia Rule of Criminal Procedure 4.

50 (e) In addition to the penalties prescribed in subsection
51 (b) of this section, the Commissioner of Motor Vehicles
52 shall, upon conviction, suspend the driver's license of the
53 person so convicted:

54 (1) Of a first offense under subsection (b) of this section,
55 for a period of 60 days;

56 (2) Of a second offense under subsection (b) of this
57 section, for a period of 180 days; or

58 (3) Of a third or subsequent offense under subsection (b)
59 of this section, for a period of one year.

60 (f) Any driver of a vehicle who willfully violates the
61 provisions of subsection (a) of this section and the violation
62 causes serious bodily injury to any person other than the

63 driver, is guilty of a felony and, upon conviction, shall be
64 confined in a state correctional facility not less than one year
65 nor more than three years and fined not less than \$2,000 nor
66 more than \$5,000.

67 (g) Any driver of a vehicle who willfully violates the
68 provisions of subsection (a) of this section, and the violation
69 causes death, is guilty of a felony and, upon conviction,
70 shall be confined in a state correctional facility not less than
71 one year nor more than 10 years and fined not less than
72 \$5,000 nor more than \$10,000.

73 (h) Every bus used for the transportation of school
74 children shall bear upon the front and rear of the bus a
75 plainly visible sign containing the words "school bus" in
76 letters not less than eight inches in height. When a contract
77 school bus is being operated upon a highway for purposes
78 other than the actual transportation of children either to or
79 from school, all markings on the contract school bus
80 indicating "school bus" shall be covered or concealed. Any
81 school bus sold or transferred to another owner by a county
82 board of education, agency or individual shall have all
83 flashing warning lights disconnected and all lettering
84 removed or permanently obscured, except when sold or
85 transferred for the transportation of school children:
86 *Provided*, That every county board of education shall install
87 forward-facing and rear-facing cameras on all school buses
88 purchased on or after July 1, 2019, for the purpose of
89 enforcing this section and for any other lawful purpose.

90 (i) To the extent that state, federal, or other funds are
91 available, the State Police shall conduct an information
92 campaign to educate drivers concerning the provisions of
93 this section and the importance of school bus safety.

94 (j) The State Board of Education shall promulgate a rule
95 in accordance with the provisions of §29A-3B-1 *et seq.* of
96 this code governing the idling of school buses.

●

CHAPTER 260

(S. B. 493 - By Senator Maynard)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §17C-6-8 of the Code of West Virginia, 1931, as amended, relating to correcting terminology referring to racing vehicles illegally on the street.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-8. Racing on streets and highways prohibited; legislative findings; penalties; mandatory revocation of licenses.

1 The Legislature hereby determines and finds that the
2 racing of motor vehicles on the public streets and highways
3 of this state, whether within or in excess of the lawful speed
4 limit (much of which racing is commonly referred to as
5 “illegal street racing”), is extremely dangerous to life, limb,
6 and property, and that such racing is an ever increasing
7 problem. It is, therefore, hereby declared to be the public
8 policy of this state to prohibit all forms of such racing on the
9 public streets and highways, and to provide criminal
10 penalties for, and require the revocation of, the operator’s or
11 chauffeur’s license or nonresident privilege to drive, of
12 those persons who are convicted of engaging in or aiding or
13 abetting such racing.

14 (a) It is unlawful for any person to engage in, or aid or
15 abet by serving as lookout or timer or in any other capacity
16 whatever, any speed race, as defined herein, on any public

17 street or highway in this state. For the purposes of this
18 subdivision, “speed race” means:

19 (1) The operation of a motor vehicle in speed
20 acceleration competition with another motor vehicle or
21 motor vehicles; or

22 (2) The operation of a motor vehicle in speed
23 acceleration competition against time; or

24 (3) The operation of a motor vehicle in speed
25 competition with another motor vehicle, or motor vehicles
26 where speed exceeds the lawful speed limit.

27 (b) Any person who violates the provisions of
28 subdivision (a) of this section is guilty of a misdemeanor,
29 and, upon conviction thereof, shall be punished for a first
30 offense by a fine of not less than \$50 nor more than \$100;
31 and for a second offense by a fine of not less than \$50 nor
32 more than \$500, or by imprisonment for not less than six
33 days nor more than 60 days, or by both such fine and
34 imprisonment; and for a third and each subsequent offense
35 by a fine of not less than \$100 nor more than \$1000, or by
36 imprisonment for not less than 60 days nor more than four
37 months, or by both such fine and imprisonment. For the
38 purposes of this section, a forfeiture of bail or collateral
39 deposited to secure such person’s appearance in court,
40 which forfeiture has not been vacated, shall be equivalent to
41 a final conviction. If at the time of any violation of the
42 provisions of subdivision (a) of this section by any person
43 as an operator of a motor vehicle, such person was not
44 entitled to operate a motor vehicle in this state because his
45 or her operator’s or chauffeur’s license, or privilege to drive
46 in this state if such person be a nonresident, had earlier been
47 suspended or revoked, then in addition to the offense,
48 penalties, and mandatory revocation provided for in this
49 section, the provisions of §17B-4-3 of this code shall be
50 applicable.

51 (c) Whenever a person is convicted for a violation of the
52 provisions of subdivision (a) of this section, which
53 conviction has become final, the Commissioner of the
54 Division of Motor Vehicles shall in addition to the penalties
55 hereinbefore provided, forthwith:

56 (1) For a first offense, revoke the operator's or
57 chauffeur's license of such person, or such person's
58 privilege to drive in this state if he or she be a nonresident,
59 for a period of six months;

60 (2) For a second offense occurring within a two-year
61 period, revoke the operator's or chauffeur's license of such
62 person, or such person's privilege to drive in this state if he
63 or she be a nonresident, for a period of two years; or

64 (3) For a third or any subsequent offense occurring
65 within a five-year period, revoke the operator's or
66 chauffeur's license of such person, or such person's
67 privilege to drive in this state if he or she be a nonresident,
68 for a period of five years.

69 Whenever a person is convicted as aforesaid for a
70 second, third, or subsequent offense which occurred while
71 such person's operator's or chauffeur's license, or privilege
72 to drive in this state if he or she be a nonresident, was
73 revoked pursuant to the provisions of this subdivision, the
74 period or periods of mandatory revocation for such second,
75 third, or subsequent offense shall be cumulative and shall
76 run consecutively. If a person's junior or probationary
77 operator's license is revoked in accordance with the
78 provisions of this subdivision, such person may not apply
79 for a regular operator's or chauffeur's license until he or she
80 reaches 18 years of age or until the period of revocation has
81 elapsed, whichever event shall last occur. Notwithstanding
82 the provisions of §17B-3-8 of this code, any person whose
83 operator's or chauffeur's license, or privilege to drive in this
84 state if he or she be a nonresident, is revoked, under the
85 provisions of this subdivision, may, following the period or
86 periods of revocation, immediately apply for and obtain a

87 new operator's or chauffeur's license or nonresident
88 privilege to drive, as the case may be, if and only if the
89 Commissioner of the Division of Motor Vehicles is
90 satisfied, after investigation of the character, habits, and
91 driving ability of such person, that it will be safe to permit
92 such person to drive a motor vehicle on the public streets
93 and highways. Any period of revocation imposed under the
94 provisions of this subdivision shall be computed from the
95 date of such revocation.

CHAPTER 261

(H. B. 2036 - By Delegates Cooper, Pack and Rowan)

[Passed February 25, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2019.]

AN ACT to amend and reenact §17C-13-6 of the Code of West Virginia, 1931, as amended, relating to permitting vehicles displaying disabled veterans special registration plates to park in places where persons with mobility impairments may park.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; disabled veterans; definitions; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.

- 1 (a) (1) The commissioner may issue up to two special
- 2 registration plates or removable windshield placards to a
- 3 person with a mobility impairment or a West Virginia
- 4 organization which transports persons with disabilities and

5 facilitates the mobility of its customers, patients, students or
6 persons otherwise placed under its responsibility.

7 (2) Special registration plates or placards may only be
8 issued for placement on a Class A or Class G motor vehicle
9 registered under the provisions of §17A-3-1 *et seq.* of this
10 code.

11 (3) The applicant shall specify whether he or she is
12 applying for a special registration plate, a removable
13 windshield placard or both on the application form
14 prescribed and furnished by the commissioner.

15 (4) The applicant shall submit, with the application, a
16 certificate issued by any physician, chiropractor, advanced
17 nurse practitioner or physician's assistant who is licensed in
18 this state, stating that the applicant has a mobility
19 impairment or that the applicant is an organization which
20 regularly transports a person with a mobility impairment as
21 defined in this section. The physician, chiropractor,
22 advanced nurse practitioner or physician's assistant shall
23 specify in the certificate whether the disability is temporary
24 or permanent. A disability which is temporary shall not
25 exceed six months. A disability which is permanent is one
26 which is one to five years or more in expected duration.

27 (5) Upon receipt of the completed application, the
28 physician's certificate and the regular registration fee for the
29 applicant's vehicle class, if the commissioner finds that the
30 applicant qualifies for the special registration plate or a
31 removable windshield placard as provided in this section, he
32 or she shall issue to the applicant a special registration plate
33 (upon remittance of the regular registration fee) or a
34 removable windshield placard (red for temporary and blue
35 for permanent), or both. Upon request, the commissioner
36 shall also issue to any otherwise qualified applicant one
37 additional placard having the same expiration date as the
38 applicant's original placard. The placard shall be displayed
39 by hanging it from the interior rearview mirror of the motor
40 vehicle so that it is conspicuously visible from outside the

41 vehicle when parked in a designated accessible parking
42 space. The placard may be removed from the rearview
43 mirror whenever the vehicle is being operated to ensure
44 clear vision and safe driving. Only in the event that there is
45 no suitable rearview mirror in the vehicle may the placard
46 be displayed on the dashboard of the vehicle.

47 (6) Organization which transport people with
48 disabilities will be provided with a placard which will
49 permit them to park in a designate area for the length of time
50 necessary to load and unload passengers. These vehicles
51 must be moved to a nondesignated space once the loading
52 or unloading process is complete.

53 (b) As used in this section, the following terms have the
54 meanings ascribed to them in this subsection:

55 (1) A person or applicant with a “mobility impairment”
56 means a person who is a citizen of West Virginia and as
57 determined by a physician, allopath or osteopath,
58 chiropractor, advanced nurse practitioner or physician’s
59 assistant licensed to practice in West Virginia:

60 (A) Cannot walk two hundred feet without stopping to
61 rest;

62 (B) Cannot walk without the use of or assistance from a
63 brace, cane, crutch, prosthetic device, wheelchair, other
64 assistive device or another person;

65 (C) Is restricted by lung disease to such an extent that
66 the person’s force (respiratory) expiratory volume for one
67 second, when measured by spirometry, is less than one liter
68 or the arterial oxygen tension is less than sixty mm/hg on
69 room air at rest;

70 (D) Uses portable oxygen;

71 (E) Has a cardiac condition to such an extent that the
72 person’s functional limitations are classified in severity as

73 Class III or Class IV according to standards established by
74 the American Heart Association; or

75 (F) Is severely limited in his or her ability to walk
76 because of an arthritic, neurological or other orthopedic
77 condition;

78 (2) “Special registration plate” means a registration
79 plate that displays the international symbol of access, as
80 adopted by the Rehabilitation International Organization in
81 1969 at its Eleventh World Congress on Rehabilitation of
82 the Disabled, in a color that contrasts with the background,
83 in letters and numbers the same size as those on the plate,
84 and which may be used in lieu of a regular registration plate;

85 (3) “Removable windshield placard” (permanent or
86 temporary) means a two-sided, hanger-style placard
87 measuring three inches by nine and one-half inches, with all
88 of the following on each side:

89 (A) The international symbol of access, measuring at
90 least three inches in height, centered on the placard, in white
91 on a blue background for permanent designations and in
92 white on a red background for temporary designations;

93 (B) An identification number measuring one inch in
94 height;

95 (C) An expiration date in numbers measuring one inch
96 in height; and

97 (D) The seal or other identifying symbol of the issuing
98 authority;

99 (4) “Regular registration fee” means the standard
100 registration fee for a vehicle of the same class as the
101 applicant’s vehicle;

102 (5) “Public entity” means state or local government or
103 any department, agency, special purpose district or other
104 instrumentality of a state or local government;

105 (6) “Public facility” means all or any part of any
106 buildings, structures, sites, complexes, roads, parking lots
107 or other real or personal property, including the site where
108 the facility is located;

109 (7) “Place or places of public accommodation” means a
110 facility or facilities operated by a private entity whose
111 operations affect commerce and fall within at least one of
112 the following categories:

113 (A) Inns, hotels, motels and other places of lodging;

114 (B) Restaurants, bars or other establishments serving
115 food or drink;

116 (C) Motion picture houses, theaters, concert halls,
117 stadiums or other places of exhibition or entertainment;

118 (D) Auditoriums, convention centers, lecture halls or
119 other places of public gatherings;

120 (E) Bakeries, grocery stores, clothing stores, hardware
121 stores, shopping centers or other sales or rental
122 establishments;

123 (F) Laundromats, dry cleaners, banks, barber and beauty
124 shops, travel agencies, shoe repair shops, funeral parlors,
125 gas or service stations, offices of accountants and attorneys,
126 pharmacies, insurance offices, offices of professional health
127 care providers, hospitals or other service establishments;

128 (G) Terminals, depots or other stations used for public
129 transportation;

130 (H) Museums, libraries, galleries or other places of
131 public display or collection;

132 (I) Parks, zoos, amusement parks or other places of
133 recreation;

134 (J) Public or private nursery, elementary, secondary,
135 undergraduate or post-graduate schools or other places of

136 learning and day care centers, senior citizen centers,
137 homeless shelters, food banks, adoption agencies or other
138 social services establishments; and

139 (K) Gymnasiums, health spas, bowling alleys, golf
140 courses or other places of exercise or recreation;

141 (8) “Commercial facility” means a facility whose
142 operations affect commerce and which are intended for
143 nonresidential use by a private entity;

144 (9) “Accessible parking” formerly known as
145 “handicapped parking” is the present phrase consistent with
146 language within the Americans with Disabilities Act
147 (ADA).

148 (10) “Parking enforcement personnel” includes any
149 law-enforcement officer as defined by §30-29-1 of this
150 code, and private security guards, parking personnel and
151 other personnel authorized by a city, county or the state to
152 issue parking citations.

153 Any person who falsely or fraudulently obtains or seeks
154 to obtain the special plate or the removable windshield
155 placard provided for in this section and any person who
156 falsely certifies that a person is mobility impaired in order
157 that an applicant may be issued the special registration plate
158 or windshield placard under this section is guilty of a
159 misdemeanor and, upon conviction thereof, in addition to
160 any other penalty he or she may otherwise incur, shall be
161 fined \$500. Any person who fabricates, uses or sells
162 unofficially issued windshield placards to any person or
163 organization is committing a fraudulent act and is guilty of
164 a misdemeanor and, upon conviction thereof, in addition to
165 any other penalty he or she may otherwise incur, shall be
166 fined \$500 per placard fabricated, used or sold. Any person
167 who fabricates, uses or sells unofficially issued
168 identification cards to any person or organization is
169 committing a fraudulent act and is guilty of a misdemeanor
170 and, upon conviction thereof, in addition to any other

171 penalty he or she may otherwise incur, shall be fined \$700
172 per identification card fabricated, used or sold. Any person
173 who fabricates, uses or sells unofficially issued labels
174 imprinted with a future expiration date to any person or
175 organization is committing a fraudulent act and is guilty of
176 a misdemeanor and, upon conviction thereof, in addition to
177 any other penalty he or she may otherwise incur, shall be
178 fined \$700. Any person covered by this section who sells or
179 gives away their officially issued windshield placard to any
180 person or organization not qualified to apply or receive the
181 placard and then reapplies for a new placard on the basis it
182 was stolen is committing a fraudulent act and is guilty of a
183 misdemeanor and, upon conviction thereof, in addition to
184 any other penalty he or she, or they may otherwise incur,
185 shall lose their right to receive or use a special placard or
186 special license plate for a period of not less than five years.

187 (c) The commissioner shall set the expiration date for
188 special registration plates and permanent removable
189 windshield placards on the last day of a given month and
190 year, to be valid for a minimum of one year but not more
191 than five years, after which time a new application must be
192 submitted to the commissioner. After the commissioner
193 receives the new application, signed by a certified
194 physician, chiropractor, advanced nurse practitioner or
195 physician's assistant, the commissioner shall issue: (i) A
196 new special registration plate or new permanent removable
197 windshield placard; or (ii) official labels imprinted with the
198 new expiration date and designed so as to be placed over the
199 old dates on the original registration plate or windshield
200 placard.

201 (d) The commissioner shall set the expiration date of
202 temporary removable windshield placards to be valid for a
203 period of approximately six months after the application
204 was received and approved by the commissioner.

205 (e) The commissioner shall issue to each applicant who
206 is granted a special registration plate or windshield placard
207 an identification card bearing the applicant's name,

208 assigned identification number and expiration date. The
209 applicant shall thereafter carry this identification card on his
210 or her person whenever parking in an accessible parking
211 space. The identification card shall be identical in design for
212 both registration plates and removable windshield placards.

213 (f) An accessible parking space should comply with the
214 provisions of the Americans with Disabilities Act
215 accessibility guidelines, contained in 28 C.F.R. 36,
216 Appendix A, Section 4.6. In particular, the parking space
217 should be a minimum of eight feet wide with an adjacent
218 eight-foot access aisle for vans having side mounted
219 hydraulic lifts or ramps or a five-foot access aisle for
220 standard vehicles. Access aisles should be marked using
221 diagonal two- to four-inch-wide stripes spaced every 12 or
222 24 inches apart along with the words “no parking” in painted
223 letters which are at least 12 inches in height. All accessible
224 parking spaces must have a signpost in front or adjacent to
225 the accessible parking space displaying the international
226 symbol of access sign mounted at a minimum of eight feet
227 above the pavement or sidewalk and the top of the sign.
228 Lines or markings on the pavement or curbs for parking
229 spaces and access aisles may be in any color, although blue
230 is the generally accepted color for accessible parking.

231 (g) A vehicle displaying a disabled veterans special
232 registration plate issued pursuant to §17A-3-14(c)(6) of this
233 code shall be recognized and accepted as meeting the
234 requirements of this section.

235 (h) A vehicle from any other state, United States
236 territory or foreign country displaying an officially issued
237 special registration plate, placard or decal bearing the
238 international symbol of access shall be recognized and
239 accepted as meeting the requirements of this section,
240 regardless of where the plate, placard or decal is mounted or
241 displayed on the vehicle.

242 (i) Stopping, standing or parking places marked with the
243 international symbol of access shall be designated in close

244 proximity to all public entities, including state, county and
245 municipal buildings and facilities, places of public
246 accommodation and commercial facilities. These parking
247 places shall be reserved solely for persons with a mobility
248 impairment and disabled veterans at all times.

249 (j) Any person whose vehicle properly displays a valid,
250 unexpired special registration plate or removable
251 windshield placard may park the vehicle for unlimited
252 periods of time in parking zones unrestricted as to length of
253 parking time permitted: *Provided*, That this privilege does
254 not mean that the vehicle may park in any zone where
255 stopping, standing or parking is prohibited or which creates
256 parking zones for special types of vehicles or which
257 prohibits parking during heavy traffic periods during
258 specified rush hours or where parking would clearly present
259 a traffic hazard. To the extent any provision of any
260 ordinance of any political subdivision of this state is
261 contrary to the provisions of this section, the provisions of
262 this section take precedence and apply.

263 The parking privileges provided for in this subsection
264 apply only during those times when the vehicle is being used
265 for the loading or unloading of a person with a mobility
266 impairment. Any person who knowingly exercises, or
267 attempts to exercise, these privileges at a time when the
268 vehicle is not being used for the loading or unloading of a
269 person with a mobility impairment is guilty of a
270 misdemeanor and, upon first conviction thereof, in addition
271 to any other penalty he or she may otherwise incur, shall be
272 fined \$200; upon second conviction thereof, in addition to
273 any other penalty he or she may otherwise incur, shall be
274 fined \$300; and upon third and subsequent convictions
275 thereof, in addition to any other penalty he or she may
276 otherwise incur, shall be fined \$500.

277 (k) Any person whose vehicle does not display a valid,
278 special registration plate or removable windshield placard
279 may not stop, stand or park a motor vehicle in an area
280 designated, zoned or marked for accessible parking with

281 signs or instructions displaying the international symbol of
282 access, either by itself or with explanatory text. The signs
283 may be mounted on a post or a wall in front of the accessible
284 parking space and instructions may appear on the ground or
285 pavement, but use of both methods is preferred. Accessible
286 parking spaces for vans having an eight-foot adjacent access
287 aisle should be designated as “van accessible” but may be
288 used by any vehicle displaying a valid special registration
289 plate or removable windshield placard.

290 Any person who violates the provisions of this
291 subsection is guilty of a misdemeanor and, upon conviction
292 thereof, shall be fined \$200; upon second conviction
293 thereof, in addition to any other penalty he or she may
294 otherwise incur, shall be fined \$300; and upon third and
295 subsequent convictions thereof, in addition to any other
296 penalty he or she may otherwise incur, shall be fined \$500.

297 (l) All signs that designate areas as “accessible parking”
298 or that display the international symbol of access shall also
299 include the words “Up to \$500 fine”.

300 (m) No person may stop, stand or park a motor vehicle
301 in an area designated or marked off as an access aisle
302 adjacent to a van-accessible parking space or regular
303 accessible parking space. Any person, including a driver of
304 a vehicle displaying a valid removable windshield placard
305 or special registration plate, who violates the provisions of
306 this subsection is guilty of a misdemeanor and, upon
307 conviction thereof, shall be fined \$200; upon second
308 conviction thereof, in addition to any other penalty he or she
309 may otherwise incur, shall be fined \$300; and upon third and
310 subsequent convictions thereof, in addition to any other
311 penalty he or she may otherwise incur, shall be fined \$500.

312 (n) Parking enforcement personnel who otherwise
313 enforce parking violations may issue citations for violations
314 of this section and shall reference the number on the
315 vehicle’s license plate, since the driver normally will not be
316 present.

317 (o) Law-enforcement agencies may establish a program
318 to use trained volunteers to collect information necessary to
319 issue citations to persons who illegally park in designated
320 accessible parking spaces. Any law-enforcement agency
321 choosing to establish a program shall provide for workers'
322 compensation and liability coverage. The volunteers shall
323 photograph the illegally parked vehicle and complete a
324 form, to be developed by supervising law-enforcement
325 agencies, that includes the vehicle's license plate number,
326 date, time and location of the illegally parked vehicle. The
327 photographs must show the vehicle in the accessible space
328 and a readable view of the license plate. Within the
329 discretion of the supervising law-enforcement agency, the
330 volunteers may issue citations or the volunteers may submit
331 the photographs of the illegally parked vehicle and the form
332 to the supervising law-enforcement agency, who may issue
333 a citation, which includes the photographs and the form, to
334 the owner of the illegally parked vehicle. Volunteers shall
335 be trained on the requirements for citations for vehicles
336 parked in marked, zoned or designated accessible parking
337 areas by the supervising law-enforcement agency.

338 (p) Local authorities who adopt the basic enforcement
339 provisions of this section and issue their own local
340 ordinances shall retain all fines and associated late fees.
341 These revenues shall be used first to fund the provisions of
342 subsection (o) of this section, if adopted by local authorities,
343 or otherwise shall go into the local authorities' General
344 Revenue Fund. Otherwise, any moneys collected as fines
345 shall be collected for and remitted to the state.

346 (q) The commissioner shall prepare and issue a
347 document to applicants describing the privileges accorded a
348 vehicle having a special registration plate and removable
349 windshield placard as well as the penalties when the vehicle
350 is being inappropriately used as described in this section and
351 shall include the document along with the issued special
352 registration plate or windshield placard. In addition, the
353 commissioner shall issue a separate document informing the

354 general public regarding the new provisions and increased
 355 fines being imposed either by way of newspaper
 356 announcements or other appropriate means across the state.

357 (r) The commissioner shall adopt and promulgate rules
 358 in accordance with the provisions of §29A-3-1 *et seq.* of this
 359 code.



CHAPTER 262

(Com. Sub. for H. B. 2183 - By Delegates Shott,
 Steele, Harshbarger and Wilson)

[Passed March 5, 2019; in effect ninety days from passage.]
 [Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to driving a vehicle under the influence of alcohol, controlled substances, drugs, or a combination thereof; and clarifying that certain misdemeanor offenses of driving under the influence do not encompass or include operating a vehicle solely and exclusively on one's own property.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

- 1 (a) Definitions-
- 2 (1) "Impaired state" means a person:
 - 3 (A) Is under the influence of alcohol;
 - 4 (B) Is under the influence of any controlled substance;

5 (C) Is under the influence of any other drug or inhalant
6 substance;

7 (D) Is under the combined influence of alcohol and any
8 controlled substance or any other drug; or

9 (E) Has an alcohol concentration in his or her blood of
10 eight hundredths of one percent or more, by weight.

11 (2) "Bodily Injury" means injury that causes substantial
12 physical pain, illness or any impairment of physical
13 condition.

14 (3) "Serious Bodily Injury" means bodily injury that
15 creates a substantial risk of death, that causes serious or
16 prolonged disfigurement, prolonged impairment of health or
17 prolonged loss or impairment of the function of any bodily
18 organ.

19 (b) Any person who drives a vehicle in this state while
20 he or she is in an impaired state and such impaired state
21 proximately causes the death of any person is guilty of a
22 felony and, upon conviction thereof, shall be imprisoned in
23 a state correctional facility for not less than three nor more
24 than 15 years and shall be fined not less than \$1,000 nor
25 more than \$3,000: *Provided*, That any death charged under
26 this subsection must occur within one year of the offense.

27 (c) Any person who drives a vehicle in this state while
28 he or she is in an impaired state and such impaired state
29 proximately causes serious bodily injury to any person other
30 than himself or herself, is guilty of a felony and, upon
31 conviction thereof, shall be imprisoned in a state
32 correctional facility for not less than two nor more than 10
33 years and shall be fined not less than \$1,000 nor more than
34 \$3,000.

35 (d) Any person who drives a vehicle in this state while
36 he or she is in an impaired state and such impaired state
37 proximately causes a bodily injury to any person other than
38 himself or herself, is guilty of a misdemeanor and, upon

39 conviction thereof, shall be confined in jail for not less than
40 one day more than one year and shall be fined not less than
41 \$200 nor more than \$1,000: *Provided*, That such jail term
42 shall include actual confinement of not less than 24 hours:
43 *Provided, however*, That a person sentenced pursuant to this
44 subsection shall receive credit for any period of actual
45 confinement he or she served upon arrest for the subject
46 offense.

47 (e) Any person who drives a vehicle in this state: (i)
48 While he or she is in an impaired state or (ii) while he or she
49 is in an impaired state but has an alcohol concentration in
50 his or her blood of less than fifteen hundredths of one
51 percent by weight, is guilty of a misdemeanor and, upon
52 conviction thereof, shall be confined in jail for up to six
53 months and shall be fined not less than \$100 nor more than
54 \$500: *Provided*, That a person sentenced pursuant to this
55 subsection shall receive credit for any period of actual
56 confinement he or she served upon arrest for the subject
57 offense.

58 (f) Any person who drives a vehicle in this state while
59 he or she has an alcohol concentration in his or her blood of
60 fifteen hundredths of one percent or more, by weight, is
61 guilty of a misdemeanor and, upon conviction thereof, shall
62 be confined in jail for not less than two days nor more than
63 six months, which jail term is to include actual confinement
64 of not less than 24 hours, and shall be fined not less than
65 \$200 nor more than \$1,000. A person sentenced pursuant to
66 this subdivision shall receive credit for any period of actual
67 confinement he or she served upon arrest for the subject
68 offense.

69 (g) Any person who, being a habitual user of narcotic
70 drugs or amphetamine or any derivative thereof, drives a
71 vehicle in this state is guilty of a misdemeanor and, upon
72 conviction thereof, shall be confined in jail for not less than
73 one day nor more than six months, which jail term is to
74 include actual confinement of not less than 24 hours, and
75 shall be fined not less than \$100 nor more than \$500. A

76 person sentenced pursuant to this subdivision shall receive
77 credit for any period of actual confinement he or she served
78 upon arrest for the subject offense.

79 (h) Any person who knowingly permits his or her
80 vehicle to be driven in this state by any other person who is
81 in an impaired state is guilty of a misdemeanor and, upon
82 conviction thereof, shall be confined in jail for not more
83 than six months and shall be fined not less than \$100 nor
84 more than \$500.

85 (i) Any person who knowingly permits his or her vehicle
86 to be driven in this state by any other person who is a
87 habitual user of narcotic drugs or amphetamine or any
88 derivative thereof is guilty of a misdemeanor and, upon
89 conviction thereof, shall be confined in jail for not more
90 than six months and shall be fined not less than \$100 nor
91 more than \$500.

92 (j) Any person under the age of 21 years who drives a
93 vehicle in this state while he or she has an alcohol
94 concentration in his or her blood of two hundredths of one
95 percent or more, by weight, but less than eight hundredths
96 of one percent, by weight, for a first offense under this
97 subsection is guilty of a misdemeanor and, upon conviction
98 thereof, shall be fined not less than \$25 nor more than \$100.
99 For a second or subsequent offense under this subsection,
100 the person is guilty of a misdemeanor and, upon conviction
101 thereof, shall be confined in jail for 24 hours and shall be
102 fined not less than \$100 nor more than \$500. A person who
103 is charged with a first offense under the provisions of this
104 subsection may move for a continuance of the proceedings,
105 from time to time, to allow the person to participate in the
106 Motor Vehicle Alcohol Test and Lock Program as provided
107 in §17C-5A-3a of this code. Upon successful completion of
108 the program, the court shall dismiss the charge against the
109 person and expunge the person's record as it relates to the
110 alleged offense. In the event the person fails to successfully
111 complete the program, the court shall proceed to an
112 adjudication of the alleged offense. A motion for a

113 continuance under this subsection may not be construed as
114 an admission or be used as evidence.

115 A person arrested and charged with an offense under the
116 provisions of this subsection or subsection (b), (c), (d), (e),
117 (f), (g), (h) or (i) of this section may not also be charged with
118 an offense under this subsection arising out of the same
119 transaction or occurrence.

120 (k) Any person who drives a vehicle in this state while
121 he or she is in an impaired state and has within the vehicle
122 one or more other persons who are unemancipated minors
123 who have not yet reached their 16th birthday is guilty of a
124 misdemeanor and, upon conviction thereof, shall be
125 confined in jail for not less than two days nor more than 12
126 months, and shall be fined not less than \$200 nor more than
127 \$1,000: *Provided*, That such jail term shall include actual
128 confinement of not less than 48 hours: *Provided, however*,
129 That a person sentenced pursuant to this subdivision shall
130 receive credit for any period of actual confinement he or she
131 served upon arrest for the subject offense.

132 (l) A person violating any provision of subsection (d),
133 (e), (f), (g), (h), or (j) of this section, for the second offense
134 under this section, is guilty of a misdemeanor and, upon
135 conviction thereof, shall be confined in jail for not less than
136 six months nor more than one year and the court may, in its
137 discretion, impose a fine of not less than \$1,000 nor more
138 than \$3,000.

139 (m) A person violating any provision of subsection (d),
140 (e), (f), (g), (h) or (j) of this section, for the third or any
141 subsequent offense under this section, is guilty of a felony
142 and, upon conviction thereof, shall be imprisoned in a state
143 correctional facility for not less than two nor more than five
144 years and the court may, in its discretion, impose a fine of
145 not less than \$3,000 nor more than \$5,000.

146 (n) For purposes of subsections (l) and (m) of this
147 section relating to second, third and subsequent offenses,

148 the following events shall be regarded as offenses under this
149 section:

150 (1) Any conviction under the provisions of subsection
151 (b), (c), (d), (e), (f), (g) or (h) of this section or under a prior
152 enactment of this section for an offense which occurred
153 within the 10-year period immediately preceding the date of
154 arrest in the current proceeding;

155 (2) Any conviction under a municipal ordinance of this
156 state or any other state or a statute of the United States or of
157 any other state of an offense which has the same elements
158 as an offense described in subsection (b), (c), (d), (e), (f),
159 (g), (h) or (i) of this section, which offense occurred within
160 the 10-year period immediately preceding the date of arrest
161 in the current proceeding; and

162 (3) Any period of conditional probation imposed
163 pursuant to §17C-5-2b of this code for violation of
164 subsection (e) of this section, which violation occurred
165 within the 10-year period immediately preceding the date of
166 arrest in the current proceeding.

167 (o) A person may be charged in a warrant or indictment
168 or information for a second or subsequent offense under this
169 section if the person has been previously arrested for or
170 charged with a violation of this section which is alleged to
171 have occurred within the applicable time period for prior
172 offenses, notwithstanding the fact that there has not been a
173 final adjudication of the charges for the alleged previous
174 offense. In that case, the warrant or indictment or
175 information must set forth the date, location and particulars
176 of the previous offense or offenses. No person may be
177 convicted of a second or subsequent offense under this
178 section unless the conviction for the previous offense has
179 become final, or the person has previously had a period of
180 conditional probation imposed pursuant to §17C-5-2b of
181 this article.

182 (p) The fact that any person charged with a violation of
183 subsection (b), (c), (d), (e), (f) or (g) of this section, or any
184 person permitted to drive as described under subsection(h)
185 or (i) of this section, is or has been legally entitled to use
186 alcohol, a controlled substance or a drug does not constitute
187 a defense against any charge of violating subsection (b), (c),
188 (d), (e), (f), (g), (h) or (i) of this section.

189 (q) For purposes of this section, the term “controlled
190 substance” has the meaning ascribed to it in §60A-1-101 *et*
191 *seq.* of this code.

192 (r) The sentences provided in this section upon
193 conviction for a violation of this article are mandatory and
194 are not subject to suspension or probation: *Provided*, That
195 the court may apply the provisions of §62-11A-1 *et seq.* of
196 this code to a person sentenced or committed to a term of
197 one year or less for a first offense under this section:
198 *Provided, however*, That the court may impose a term of
199 conditional probation pursuant to §17C-5-2b of this code to
200 persons adjudicated thereunder. An order for home
201 detention by the court pursuant to the provisions of §62-
202 11B-1 *et seq.* of this code may be used as an alternative
203 sentence to any period of incarceration required by this
204 section for a first or subsequent offense: *Provided further*,
205 That for any period of home incarceration ordered for a
206 person convicted of a second offense under this section,
207 electronic monitoring shall be required for no fewer than
208 five days of the total period of home confinement ordered
209 and the offender may not leave home for those five days
210 notwithstanding the provisions of §62-11B-5 of this code:
211 *And provided further*, That for any period of home
212 incarceration ordered for a person convicted of a third or
213 subsequent violation of this section, electronic monitoring
214 shall be included for no fewer than 10 days of the total
215 period of home confinement ordered and the offender may
216 not leave home for those 10 days notwithstanding §62-11B-
217 5 of this code.

218 (s) As used in subsections (e), (f), (g), (h), (i), and (j) of
219 this section, the words “drives a vehicle in this state” do not
220 mean or include driving or operating a vehicle solely and
221 exclusively on one’s own property.

CHAPTER 263

**(H. B. 2926 - By Delegates Rowe, Longstreth,
Robinson, Estep-Burton, Pyles, Queen, Westfall,
Bates, McGeehan, Evans and Miller)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §9A-2-1 of the Code of West Virginia, 1931, as amended, relating to requiring the Secretary of the Department of Veterans' Affairs to study the housing needs of veterans; and requiring a report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE HOMES FOR VETERANS.

§9A-2-1. State homes for veterans.

1 (a) In consultation with the Governor and other
2 appropriate state agencies, the Division Of Veterans'
3 Affairs shall establish and maintain a home for qualified
4 veterans. The home in Barboursville shall be designated as
5 the sole veterans home of its type in the state. As used in
6 this article the term “qualified veteran” means a veteran as
7 determined by the Division of Veterans' Affairs, who meets
8 the requirements under federal regulations and laws.

9 (b) Any individual enlisting for the first time on or after
10 September 8, 1980, who fails to complete at least 24 months
11 of his or her enlistment is not eligible for any right, privilege
12 or benefit for which eligibility is based on active duty in the

13 Armed Forces. This provision does not apply when a
14 person: (1) Is discharged because of hardship; (2) is retired
15 or separated because of disability; or (3) is later determined
16 to have a service connected disability incurred during a
17 completed period of enlistment.

18 (c) In the event that a residential vacancy exists at any
19 veterans home or facility created and established pursuant
20 to this article, a veteran who has been a resident of the State
21 of West Virginia for one year or more prior to filing for
22 admission shall be given preference in filling such
23 residential vacancy over nonresident veterans.

24 (d)(1) The secretary shall study: (1) The need for
25 additional veterans homes; (2) general housing needs for
26 veterans; (3) and other veteran needs relating to housing.

27 (2) On or before November 1, 2019, the secretary shall
28 submit its study to the Joint Committee on Health and the
29 Joint Committee on Government and Finance regarding the
30 housing needs of veterans, including draft legislation
31 addressing those needs, where the need is greatest and the
32 need for additional veterans homes.

CHAPTER 264

**(H. B. 2691 - By Delegates Howell, D. Jeffries, Pack,
Phillips, Worrell, Sypolt, Hott, C. Martin, Cadle,
Dean and Storch)**

[Passed March 4, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating to providing that a license to carry a concealed deadly weapon currently in effect expires on the holder's birthday occurring during the fifth year

of licensure or five years from the date of issuance, whichever is later in time; providing that renewals of such licenses and licenses newly issued after the effective date of the amendments to this section are valid for five years from the licensee's birthday, and maintaining provisions making licenses subject to revocation for cause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Except as provided in §61-7-4(h) of this code, any
2 person desiring to obtain a state license to carry a concealed
3 deadly weapon shall apply to the sheriff of his or her county
4 for the license, and pay to the sheriff, at the time of
5 application, a fee of \$75, of which \$15 of that amount shall
6 be deposited in the Courthouse Facilities Improvement
7 Fund created by §29-26-6 of this code. Concealed weapons
8 license may only be issued for pistols and revolvers. Each
9 applicant shall file with the sheriff a complete application,
10 as prepared by the Superintendent of the West Virginia State
11 Police, in writing, duly verified, which sets forth only the
12 following licensing requirements:

13 (1) The applicant's full name, date of birth, Social
14 Security number, a description of the applicant's physical
15 features, the applicant's place of birth, the applicant's
16 country of citizenship and, if the applicant is not a United
17 States citizen, any alien or admission number issued by the
18 United States Bureau of Immigration and Customs
19 Enforcement, and any basis, if applicable, for an exception
20 to the prohibitions of 18 U.S.C. § 922(g)(5)(B);

21 (2) That, on the date the application is made, the
22 applicant is a bona fide United States citizen or legal
23 resident thereof and resident of this state and of the county
24 in which the application is made and has a valid driver's
25 license or other state-issued photo identification showing
26 the residence;

27 (3) That the applicant is twenty-one years of age or
28 older;

29 (4) That the applicant is not addicted to alcohol, a
30 controlled substance or a drug and is not an unlawful user
31 thereof as evidenced by either of the following within the
32 three years immediately prior to the application:

33 (A) Residential or court-ordered treatment for
34 alcoholism or alcohol detoxification or drug treatment; or

35 (B) Two or more convictions for driving while under the
36 influence or driving while impaired;

37 (5) That the applicant has not been convicted of a felony
38 unless the conviction has been expunged or set aside or the
39 applicant's civil rights have been restored or the applicant
40 has been unconditionally pardoned for the offense;

41 (6) That the applicant has not been convicted of a
42 misdemeanor crime of violence other than an offense set
43 forth in subdivision (7) of this subsection in the five years
44 immediately preceding the application;

45 (7) That the applicant has not been convicted of a
46 misdemeanor crime of domestic violence as defined in 18
47 U.S.C. § 921(a)(33), or a misdemeanor offense of assault or
48 battery either under §61-2-28 of this code or §61-2-9(b) or
49 §61-2-9(c) of this code, in which the victim was a current or
50 former spouse, current or former sexual or intimate partner,
51 person with whom the defendant cohabits or has cohabited,
52 a parent or guardian, the defendant's child or ward or a
53 member of the defendant's household at the time of the
54 offense, or a misdemeanor offense with similar essential
55 elements in a jurisdiction other than this state;

56 (8) That the applicant is not under indictment for a
57 felony offense or is not currently serving a sentence of
58 confinement, parole, probation or other court-ordered
59 supervision imposed by a court of any jurisdiction or is the
60 subject of an emergency or temporary domestic violence

61 protective order or is the subject of a final domestic violence
62 protective order entered by a court of any jurisdiction;

63 (9) That the applicant has not been adjudicated to be
64 mentally incompetent or involuntarily committed to a
65 mental institution. If the applicant has been adjudicated
66 mentally incompetent or involuntarily committed the
67 applicant must provide a court order reflecting that the
68 applicant is no longer under such disability and the
69 applicant's right to possess or receive a firearm has been
70 restored;

71 (10) That the applicant is not prohibited under the
72 provisions of §61-7-7 of this code or federal law, including
73 18 U.S.C. § 922(g) or (n), from receiving, possessing, or
74 transporting a firearm;

75 (11) That the applicant has qualified under the minimum
76 requirements set forth in subsection (d) of this section for
77 handling and firing the weapon: *Provided*, That this
78 requirement shall be waived in the case of a renewal
79 applicant who has previously qualified; and

80 (12) That the applicant authorizes the sheriff of the
81 county, or his or her designee, to conduct an investigation
82 relative to the information contained in the application.

83 (b) For both initial and renewal applications, the sheriff
84 shall conduct an investigation including a nationwide
85 criminal background check consisting of inquiries of the
86 National Instant Criminal Background Check System, the
87 West Virginia criminal history record responses and the
88 National Interstate Identification Index and shall review the
89 information received in order to verify that the information
90 required in subsection (a) of this section is true and correct.
91 A license may not be issued unless the issuing sheriff has
92 verified through the National Instant Criminal Background
93 Check System that the information available to him or her
94 does not indicate that receipt or possession of a firearm by
95 the applicant would be in violation of the provisions of §61-

96 7-7 of this code or federal law, including 18 U.S.C. § 922(g)
97 or (n).

98 (c) Sixty dollars of the application fee and any fees for
99 replacement of lost or stolen licenses received by the sheriff
100 shall be deposited by the sheriff into a concealed weapons
101 license administration fund. The fund shall be administered
102 by the sheriff and shall take the form of an interest-bearing
103 account with any interest earned to be compounded to the
104 fund. Any funds deposited in this concealed weapon license
105 administration fund are to be expended by the sheriff to pay
106 the costs associated with issuing concealed weapons
107 licenses. Any surplus in the fund on hand at the end of each
108 fiscal year may be expended for other law-enforcement
109 purposes or operating needs of the sheriff's office, as the
110 sheriff considers appropriate.

111 (d) All persons applying for a license must complete a
112 training course in handling and firing a handgun, which
113 includes the actual live firing of ammunition by the
114 applicant. The successful completion of any of the
115 following courses fulfills this training requirement:
116 *Provided*, That the completed course includes the actual live
117 firing of ammunition by the applicant:

118 (1) Any official National Rifle Association handgun
119 safety or training course;

120 (2) Any handgun safety or training course or class
121 available to the general public offered by an official law-
122 enforcement organization, community college, junior
123 college, college or private or public institution or
124 organization or handgun training school utilizing instructors
125 certified by the institution;

126 (3) Any handgun training or safety course or class
127 conducted by a handgun instructor certified as such by the
128 state or by the National Rifle Association;

129 (4) Any handgun training or safety course or class
130 conducted by any branch of the United States military,
131 reserve or National Guard or proof of other handgun
132 qualification received while serving in any branch of the
133 United States military, reserve or National Guard.

134 A photocopy of a certificate of completion of any of the
135 courses or classes or an affidavit from the instructor, school,
136 club, organization or group that conducted or taught the
137 course or class attesting to the successful completion of the
138 course or class by the applicant or a copy of any document
139 which shows successful completion of the course or class is
140 evidence of qualification under this section and shall
141 include the instructor's name, signature and NRA or state
142 instructor identification number, if applicable.

143 (e) All concealed weapons license applications must be
144 notarized by a notary public duly licensed under §39-4-1 *et*
145 *seq.* of this code. Falsification of any portion of the
146 application constitutes false swearing and is punishable
147 under §61-5-2 of this code.

148 (f) The sheriff shall issue a license unless he or she
149 determines that the application is incomplete, that it
150 contains statements that are materially false or incorrect or
151 that applicant otherwise does not meet the requirements set
152 forth in this section. The sheriff shall issue, reissue, or deny
153 the license within 45 days after the application is filed if all
154 required background checks authorized by this section are
155 completed.

156 (g) Before any approved license is issued or is effective,
157 the applicant shall pay to the sheriff a fee in the amount of
158 \$25 which the sheriff shall forward to the Superintendent of
159 the West Virginia State Police within 30 days of receipt. A
160 license in effect as of the effective date of the amendments
161 to this section enacted during the 2019 regular session of the
162 Legislature shall, subject to revocation for cause, be valid
163 until the licensee's birthday during the fifth year from the
164 date of issuance or five years from the date of issuance,

165 whichever is later in time. Renewals of such licenses and
166 licenses newly issued after the effective date of the
167 amendments to this section enacted during the 2019 regular
168 session of the Legislature shall, subject to revocation for
169 cause, be valid for a period of five years from the licensees'
170 most recent birthday.

171 (h) Each license shall contain the full name and address
172 of the licensee and a space upon which the signature of the
173 licensee shall be signed with pen and ink. The issuing sheriff
174 shall sign and attach his or her seal to all license cards. The
175 sheriff shall provide to each new licensee a duplicate license
176 card, in size similar to other state identification cards and
177 licenses, suitable for carrying in a wallet, and the license
178 card is considered a license for the purposes of this section.
179 All duplicate license cards issued on or after July 1, 2017,
180 shall be uniform across all 55 counties in size, appearance
181 and information and shall feature a photograph of the
182 licensee.

183 (i) The Superintendent of the West Virginia State
184 Police, in cooperation with the West Virginia Sheriffs'
185 Bureau of Professional Standards, shall prepare uniform
186 applications for licenses and license cards showing that the
187 license has been granted and shall do any other act required
188 to be done to protect the state and see to the enforcement of
189 this section.

190 (j) If an application is denied, the specific reasons for
191 the denial shall be stated by the sheriff denying the
192 application. Any person denied a license may file, in the
193 circuit court of the county in which the application was
194 made, a petition seeking review of the denial. The petition
195 shall be filed within 30 days of the denial. The court shall
196 then determine whether the applicant is entitled to the
197 issuance of a license under the criteria set forth in this
198 section. The applicant may be represented by counsel, but
199 in no case is the court required to appoint counsel for an
200 applicant. The final order of the court shall include the
201 court's findings of fact and conclusions of law. If the final

202 order upholds the denial, the applicant may file an appeal in
203 accordance with the Rules of Appellate Procedure of the
204 Supreme Court of Appeals. If the findings of fact and
205 conclusions of law of the court fail to uphold the denial, the
206 applicant may be entitled to reasonable costs and attorney's
207 fees, payable by the sheriff's office which issued the denial.

208 (k) If a license is lost or destroyed, the person to whom
209 the license was issued may obtain a duplicate or substitute
210 license for a fee of \$5 by filing a notarized statement with
211 the sheriff indicating that the license has been lost or
212 destroyed.

213 (l) Whenever any person after applying for and
214 receiving a concealed weapon license moves from the
215 address named in the application to another county within
216 the state, the license remains valid for the remainder of the
217 five years unless the sheriff of the new county has
218 determined that the person is no longer eligible for a
219 concealed weapon license under this article, and the sheriff
220 shall issue a new license bearing the person's new address
221 and the original expiration date for a fee not to exceed \$5:
222 *Provided*, That the licensee, within 20 days thereafter,
223 notifies the sheriff in the new county of residence in writing
224 of the old and new addresses.

225 (m) The sheriff shall, immediately after the license is
226 granted as aforesaid, furnish the Superintendent of the West
227 Virginia State Police a certified copy of the approved
228 application. The sheriff shall furnish to the Superintendent
229 of the West Virginia State Police at any time so requested a
230 certified list of all licenses issued in the county. The
231 Superintendent of the West Virginia State Police shall
232 maintain a registry of all persons who have been issued
233 concealed weapons licenses.

234 (n) The sheriff shall deny any application or revoke any
235 existing license upon determination that any of the licensing
236 application requirements established in this section have
237 been violated by the licensee.

238 (o) A person who is engaged in the receipt, review or in
239 the issuance or revocation of a concealed weapon license
240 does not incur any civil liability as the result of the lawful
241 performance of his or her duties under this article.

242 (p) Notwithstanding subsection (a) of this section, with
243 respect to application by a former law-enforcement officer
244 honorably retired from agencies governed by §7-14-1 *et seq.*
245 of this code; §8-14-1 *et seq.* of this code; §15-2-1 *et seq.* of
246 this code; and §20-7-1 *et seq.* of this code, an honorably
247 retired officer is exempt from payment of fees and costs as
248 otherwise required by this section. All other application and
249 background check requirements set forth in this section are
250 applicable to these applicants.

251 (q) Information collected under this section, including
252 applications, supporting documents, permits, renewals or
253 any other information that would identify an applicant for
254 or holder of a concealed weapon license, is confidential:
255 *Provided*, That this information may be disclosed to a law-
256 enforcement agency or officer: (i) To determine the validity
257 of a license; (ii) to assist in a criminal investigation or
258 prosecution; or (iii) for other lawful law-enforcement
259 purposes. A person who violates this subsection is guilty of
260 a misdemeanor and, upon conviction thereof, shall be fined
261 not less than \$50 or more than \$200 for each offense.

262 (r) A person who pays fees for training or application
263 pursuant to this article after the effective date of this section
264 is entitled to a tax credit equal to the amount actually paid
265 for training not to exceed \$50: *Provided*, That if such
266 training was provided for free or for less than \$50, then such
267 tax credit may be applied to the fees associated with the
268 initial application.

269 (s) Except as restricted or prohibited by the provisions
270 of this article or as otherwise prohibited by law, the issuance
271 of a concealed weapon license issued in accordance with the
272 provisions of this section authorizes the holder of the license
273 to carry a concealed pistol or revolver on the lands or waters
274 of this state.

●

CHAPTER 265

(S. B. 531 - By Senator Trump)

[Passed March 6, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §23-5-7 of the Code of West Virginia, 1931, as amended, relating to compromise and settlement of certain workers' compensation claims; and providing that occupational hearing loss and hearing impairment claims are not nonorthopedic occupational disease claims for the purpose of the requirement that a claimant be represented by counsel in a settlement for medical benefits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. REVIEW.

§23-5-7. Compromise and settlement.

1 (a) The claimant, the employer, and the Workers'
2 Compensation Commission, the successor to the
3 commission, other private insurance carriers, and self-
4 insured employers, whichever is applicable, may negotiate
5 a final settlement of any and all issues in a claim wherever
6 the claim is in the administrative or appellate processes:
7 *Provided*, That in the settlement of medical benefits for
8 nonorthopedic occupational disease claims, the claimant
9 shall be represented by legal counsel: *Provided, however*,
10 That for the purposes of this section, the term
11 "nonorthopedic occupational disease claim" does not
12 include an occupational hearing loss or hearing impairment
13 claim. If the employer is not active in the claim, the
14 commission, the successor to the commission, other private

15 insurance carriers, and self-insured employers, whichever is
16 applicable, may negotiate a final settlement with the
17 claimant and the settlement shall be made a part of the claim
18 record. Except in cases of fraud, no issue that is the subject
19 of an approved settlement agreement may be reopened by
20 any party, including the commission, the successor to the
21 commission, other private insurance carriers, and self-
22 insured employers, whichever is applicable. Any settlement
23 agreement may provide for a lump-sum payment or a
24 structured payment plan, or any combination thereof, or any
25 other basis as the parties may agree. If a self-insured
26 employer later fails to make the agreed-upon payment, the
27 commission shall assume the obligation to make the
28 payments and shall recover the amounts paid or to be paid
29 from the self-insured employer and its sureties or
30 guarantors, or both, as provided in §23-2-5 or §23-2-5a of
31 this code.

32 (b) Each settlement agreement shall provide the toll-free
33 number of the West Virginia State Bar Association and shall
34 provide the injured worker with five business days to revoke
35 the executed agreement. The Insurance Commissioner may
36 void settlement agreements entered into by an
37 unrepresented injured worker which are determined to be
38 unconscionable pursuant to criteria established by rule of
39 the commissioner.

40 (c) The amendments to this section enacted during the
41 regular session of the Legislature, 2015, apply to all
42 settlement agreements executed after the effective date.

●

CHAPTER 266

(S. B. 16 - By Senators Cline and Swope)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to authorize the expenditure of surplus funds by the Wyoming County Commission.

Be it enacted by the Legislature of West Virginia:

WYOMING COUNTY SHERIFF’S OFFICE K-9 UNIT.

§1. County commission authorized to create special fund for the Wyoming County Sheriff’s Department for a K-9 unit to assist with drug searches.

1 The County Commission of Wyoming County is hereby
2 authorized and empowered to use any unexpended sums and
3 surpluses, presently or hereafter existing, in the General
4 Fund or in any special fund for the Wyoming County
5 Sheriff’s Department to establish a K-9 Unit to assist with
6 drug searches.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2019**HOUSE BILLS**

Bill No. Chapter	Bill No. Chapter	Bill No. Chapter
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2004 97	2492 141	2737 201
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2010 44	2510 124	2740 83
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2036 261	2521 177	2746 109
2049 158	2524 195	2759 110
2083 58	2525 214	2761 169
2183 262	2538 40	2768 218
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2209 192	2550 88	2816 126
2307 193	2583 215	2821 231
2311 249	2600 105	2827 65
2324 194	2601 125	2829 253
2351 147	2607 216	2831 46
2359 173	2608 48	2846 174
2362 103	2609 108	2848 219
2378 237	2612 217	2849 196
2396 12	2617 152	2850 175
2405 250	2618 2	2853 168
2422 99	2647 153	2854 254
2439 223	2662 238	2856 127
2446 230	2665 32	2872 232
2452 123	2666 33	2907 81
2459 140	2667 34	2926 263
2462 59	2668 35	2934 128
2474 148	2690 154	2945 220
2476 149	2691 264	2947 197
2479 150	2694 13	2954 156
2480 151	2709 179	2958 129
2481 18	2715 180	2968 41

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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3007 14	3093 43	3141 132
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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2019**SENATE BILLS**

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3.....42	241.....233	396.....187
4.....60	255.....206	398.....67
13.....111	264.....72	400.....188
16.....266	267.....91	402.....74
17.....77	268.....241	404.....8
18.....68	269.....242	405.....243
26.....89	270.....235	408.....116
27.....112	272.....114	421.....86
28.....61	285.....3	424.....20
30.....142	291.....239	435.....21
36.....240	295.....73	441.....134
40.....78	310.....143	442.....22
60.....184	316.....62	443.....23
61.....79	317.....176	444.....24
72.....69	318.....138	452.....25
90.....258	323.....4	453.....38
100.....66	324.....5	461.....117
101.....70	329.....92	481.....118
103.....113	330.....115	485.....144
119.....185	340.....47	489.....145
152.....71	344.....6	491.....101
153.....85	345.....222	493.....260
154.....90	352.....55	496.....9
157.....159	354.....19	499.....244
163.....160	356.....225	502.....245
175.....161	357.....226	510.....1
177.....162	358.....227	511.....15
187.....163	360.....49	518.....53
199.....164	369.....186	519.....228
223.....165	373.....56	520.....207
237.....224	377.....157	529.....16
238.....259	387.....80	531.....265

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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539.....198	603..... 39	658..... 172
543.....50	605..... 93	664..... 84
544.....199	613..... 210	667..... 87
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546.....246	622..... 102	669..... 234
550.....45	625..... 120	670..... 95
554.....200	627..... 10	672..... 96
561.....17	632..... 94	673..... 136
564.....139	635..... 170	675..... 106
566.....119	636..... 135	677..... 26
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593.....209	641..... 212	679..... 28
596.....171	653..... 190	680..... 29
597.....189	655..... 11	681..... 30

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2019

House Bills = 4 Digits

Senate Bills = 1-3 Digits

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1	510	34.....	2667	67	398
2.....	2618	35.....	2668	68	18
3.....	285	36.....	3135	69	72
4.....	323	37.....	2982	70	101
5.....	324	38.....	453	71	152
6.....	344	39.....	603	72	264
7.....	393	40.....	2538	73	295
8.....	404	41.....	2968	74	402
9.....	496	42.....	3	75	2739
10.....	627	43.....	3093	76	2975
11.....	655	44.....	2010	77	17
12.....	2396	45.....	550	78	40
13.....	2694	46.....	2831	79.....	61
14.....	3007	47.....	340	80.....	387
15.....	511	48.....	2608	81.....	2907
16.....	529	49.....	360	82.....	3057
17.....	561	50.....	543	83.....	2740
18.....	2481	51.....	657	84.....	664
19.....	354	52.....	3143	85.....	153
20.....	424	53.....	518	86.....	421
21.....	435	54.....	2509	87.....	667
22.....	442	55.....	352	88.....	2550
23.....	443	56.....	373	89.....	26
24.....	444	57.....	601	90.....	154
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26.....	677	59.....	2462	92.....	329
27.....	678	60.....	4	93.....	605
28.....	679	61.....	28	94.....	632
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31.....	2020	64.....	2743	97.....	2004
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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2019
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House Bills = 4 Digits

Senate Bills = 1-3 Digits

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101.....	491	133.....	1	165.....	223
102.....	622	134.....	441	166.....	240
103.....	2362	135.....	636	167.....	545
104.....	2547	136.....	673	168.....	2853
105.....	2600	137.....	3020	169.....	2761
106.....	675	138.....	318	170.....	635
107.....	2193	139.....	564	171.....	596
108.....	2609	140.....	2459	172.....	658
109.....	2746	141.....	2492	173.....	2359
110.....	2759	142.....	30	174.....	2846
111.....	13	143.....	310	175.....	2850
112.....	27	144.....	485	176.....	317
113.....	103	145.....	489	177.....	2521
114.....	272	146.....	587	178.....	2540
115.....	330	147.....	2351	179.....	2709
116.....	408	148.....	2474	180.....	2715
117.....	461	149.....	2476	181.....	2716
118.....	481	150.....	2479	182.....	2809
119.....	566	151.....	2480	183.....	3140
120.....	625	152.....	2617	184.....	60
121.....	2191	153.....	2647	185.....	119
122.....	2204	154.....	2690	186.....	369
123.....	2452	155.....	2770	187.....	396
124.....	2510	156.....	2954	188.....	400
125.....	2601	157.....	377	189.....	597
126.....	2816	158.....	2049	190.....	653
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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2019**-Continued-**

House Bills = 4 Digits

Senate Bills = 1-3 Digits

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199.....	544	223.....	2439	247.....	656
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202.....	3083	226.....	357	250.....	2405
203.....	3095	227.....	358	251.....	2515
204.....	3131	228.....	519	252.....	2813
205.....	3139	229.....	600	253.....	2829
206.....	255	230.....	2446	254.....	2854
207.....	520	231.....	2821	255.....	3045
208.....	537	232.....	2872	256.....	3142
209.....	593	233.....	241	257.....	3144
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